



REFORM OF THE OMBUDSMAN INSTITUTIONS IN LITHUANIA

Edita Ziobiene

Mykolas Romeris University, Faculty of Law,
Department of Constitutional Law
Ateities 20, LT-08303 Vilnius, Lithuania
Phone (+370 5) 2714 546
E-mail ziobiene@takas.lt

Received 1 February, 2010; accepted 15 March, 2010

Abstract. *The ombudsman tradition originated in Sweden in 1809 and has spread throughout the world in less than two hundred years. An ombudsman is a public official that offers people an opportunity to have their complaints heard, evaluated, and investigated by a neutral and independent body, and offers recommendations to the involved parties. The ombudsman plays an important role in strengthening democratic governance, rule of law, and civil society. Article 73 of the Constitution of the Republic of Lithuania establishes that:*

‘The Seimas controllers shall examine complaints of citizens concerning the abuse of powers by, or bureaucratic intransigence of, State and municipal officials (with the exception of judges). They shall have the right to submit a motion before a court that the guilty officials be dismissed from office.

The powers of the Seimas controllers shall be established by law.

If necessary, the Seimas shall also establish other institutions of control. Their system and powers shall be established by law.’

This means that the Constitution empowers the Seimas (Lithuanian parliament) to establish the Seimas controllers (‘Parliamentary Ombudsmen Institution’) and other specialized ombudsman institutions. The Law on the Parliamentary Ombudsmen¹ was enacted in 1994.

1 The Law on Seimas Ombudsmen. *Official Gazette*. 1994, No. I-363. The law has been amended twice so far and the Chairperson of the Parliament initiated the reform of the Ombudsmen institution.

The law provided that the institution is to be composed of five ombudsmen. The specialized ombudsman institutions are the Ombudsman for Equal Opportunities, established in 1999 and the Ombudsman for the Rights of the Child, established in 2000. According to the Law on the Provision of Information to the Public, the institution of the Inspector of Journalist Ethics was established. This institution could be compared to the Media Ombudsman. The Ministry of Economy has initiated deliberations on establishing a business ombudsman. This article analyses the strengths and weakness of the ombudsman institutions in Lithuania and the need for reform in these institutions, focusing on appointment, structure, independence, relations with other state institutions, mandate and authority of the institution and the implementation of its decisions.

Keywords: *ombudsman, independence, accountability, mandate, powers, decisions.*

1. Appointment and Dismissal of Ombudsmen

1.1. Appointment

Parliamentary ombudsmen and specialized ombudsmen are appointed by the Seimas upon the Recommendation of the Speaker of the Seimas. Recommendations of the Parliamentary Assembly of the Council of Europe on the Institution of Ombudsman provides that ‘appointment procedure shall be exclusive and transparent’². Some observers have criticized the appointment procedure of ombudsmen in Lithuania, stating that the procedure by which nominations are forwarded to the Speaker of the Seimas is not transparent or not open to the public. There is no tradition of involving civil society in the nomination procedures, or conducting public hearings, and the commencement of the nomination process is not publicized.³ This criticism is quite valid. The ombudsman must serve as a bridge between state institutions and the citizens, so respect and confidence should be mutual. A public nomination hearing process and dialog with non-governmental organizations would help the Speaker of the Seimas to choose a well qualified, respectable and earnest person for the post.

1.2. Qualification Requirements

Several legal systems, such as the one in Sweden, impose no qualification requirements. This is based on the idea that candidates for the position of ombudsman cannot be evaluated using the criteria of professional qualification or prior career experience. After all, qualified candidates should not be excluded unnecessarily due to a mere lack of for-

2 The Recommendations of the Parliamentary Assembly of the Council of Europe “The Institution of Ombudsman”, 1615 (2003), 7 iii para.

3 Hansen, T. T.; Kerrigan, F. *A National Human Rights Institution in Lithuania. Mapping Report*. The Danish Institute for Human Rights, 2008, p. 26.

mal preconditions, when personal qualities such as charisma are also highly important.⁴ In other countries, laws on ombudsmen require a law degree (or even experience as a qualified judge), high personal reputation, citizenship, minimum age, knowledge or experience in the field of human rights.

Recommendation on the Institution of Ombudsman indicates that an ombudsman should be a suitably qualified and experienced individual of high moral standing and politically independent.⁵

Let's analyse the requirements for ombudsmen in Lithuania. The Law on Parliamentary Ombudsmen⁶ provides that a citizen of the Republic of Lithuania who is a person of high moral character, has a bachelor's and master's degree in law or is a university graduate in law with a record of at least ten years of practice or teaching of law shall be eligible for appointment to the position of the Parliamentary Ombudsman. Very similar requirements are set for the Ombudsman of Equal Opportunities (a citizen of the Republic of Lithuania who is a person of the highest integrity, has a university degree in law and whose record of service in the legal profession or at a State government and administration institution is not less than 5 years)⁷, the Ombudsman for the Rights of the Child (a citizen of the Republic of Lithuania of good repute who has acquired a bachelor's or master's degree in law, or a lawyer's professional qualification degree (one-cycle university education in law) and whose period of employment in legal or educational work is at least 10 years)⁸ and the Inspector of Journalist Ethics (a citizen of the Republic of Lithuania of excellent reputation, having a university law degree and the competence required in the performance of duties)⁹. These requirements satisfy international recommendations and compare well to practices found in other countries. However, not every person who meets these requirements may be appointed as an ombudsman. As already noted—personality, charisma and other abilities are no less important.

1.3. Number of Ombudsmen and Deputies

The vast majority of parliamentary ombudsman institutions in the world are monocratic—only one ombudsman is appointed. In other countries, two, three, four, or as is Lithuania's case, five ombudsmen are appointed. The biggest parliamentary ombudsmen institutions are in Sweden with four ombudsmen and in Lithuania—with five. The Swedish ombudsman institution has more than two hundred years of history. Why is the number of parliamentary ombudsmen so high in Lithuania? Article 73 of the Constitution grants the ombudsmen (using the plural) power to review complaints. Perhaps the legislator, when drafting the Law on Parliamentary Ombudsmen in 1994, was consid-

4 Kucsko-Stadmayer, G. The Legal Structures of Ombudsman – Institutions in Europe – Legal Comparative Analysis. In *European Ombudsman – Institutions*. Kucsko-Stadmayer, G. (ed.). Wien: Springer –Verlag, 2008, p. 11.

5 The Recommendations of the Parliamentary Assembly of the Council of Europe 'The Institution of Ombudsman', 1615 (2003), 7 Para. iii.

6 The Law on the Seimas Ombudsmen, new version as of 25 November 2004, No. IX-2544, Art. 6.

7 The Law on Equal Opportunities for Women and Men. *Official Gazette*. 1998, No. 112-3100, Art. 13.

8 The Law on the Ombudsman for Child, new version as of 18 December 2007, No. X-1384, Art. 5.

9 The Law on Provision of Information to the Public, last amendment 2009-07-15 – No. XI-348. Art. 49.

ring issues of administrative malpractice in such sensitive areas as the restitution of property, police conduct, the living conditions of detainees in police custody, the integrity of pre-trial investigation, etc. Nevertheless, Lithuania is rather small compared to other countries and having the highest number of Ombudsmen in Europe is quite impressive. At the end of 2009, the Speaker of the Seimas initiated the reform of the Parliamentary Ombudsmen Institution and proposed a reduction of the number of ombudsmen from five to two, separating the ombudsmen powers as such: one to investigate complaints of malpractice (including abuse of powers, bureaucracy) in state institutions, the second one to investigate complaints of malpractice (including abuse of powers, bureaucracy) in municipalities and counties (note that these regional institutions are to be dismantled in the near future). The aim of this reform is commendable, but the legislator must address the problem of governance within the institution. Although there were five appointed ombudsmen, they worked independently of each other and their status was equal. Prior to the reform, one ombudsman was appointed as the head of the institution, but was not responsible for the other ombudsmen's decisions. The draft law proposes that one of the two ombudsmen be appointed as the head of the institution. This may result in the second ombudsman being mistreated as less important and his or her decisions may be unduly influenced. Consequently, the second ombudsman may be relegated as *de facto* a deputy.

In some countries, where the institution is headed by a single official, the ombudsman may be appoint deputies, while in other countries, position of deputy does not exist.

In Lithuania, the specialized ombudsmen are single-ombudsman institutions and the laws do not provide for the position of deputy. The ombudsman, as any other civil servant, has a right to annual vacations, sick leave or leave due to other important circumstances. Under these circumstances, no other person has the right to act on behalf of the Ombudsman (this applies to the Ombudsman for Equal Opportunities, the Ombudsman of the Rights of Child, and the Inspector of Journalists Ethics).

1.4. Removal from the Office

In most countries, an ombudsman can be dismissed before completion of his or her term. Regulations regarding the reasons for removal from the office differ. Usually the ombudsman may be dismissed because of 'loss of confidence' or 'serious reasons' by a qualified or a simple majority of votes in the parliament. The Law on Parliamentary Ombudsmen and laws on specialized ombudsmen in Lithuania provide that an ombudsman may be dismissed on the basis of a no-confidence vote by a qualified majority in the Seimas. Usually, the ombudsman's term of office differs from that of the Seimas. The parliamentary elections do not affect the ombudsman institution and the ombudsman cannot be dismissed because of lack of political loyalty. The Recommendations on the Institution of Ombudsman provide that the ombudsman may only be dismissed by the parliament for his or her incapacity or serious ethical misconduct.¹⁰

10 The Recommendations of the Parliamentary Assembly of the Council of Europe 'The Institution of Ombudsman', 1615 (2003), 7 Para. v.

1.5. Reappointment

The possibility of reappointment takes into account the person's experience and charisma (prestige), which could be an advantage in the new term of office. On the other hand, a person who seeks reappointment may become political in his or her work. In some countries, laws on parliamentary and specialized ombudsmen provide that reappointment is possible only once, while in other countries, the possibility of reappointment is unlimited or, conversely, entirely impermissible.

In Lithuania, the Law on Parliamentary Ombudsmen, the Law on the Ombudsman of Equal Opportunities, and the Law on the Ombudsman of the Rights of Child do not eliminate the possibility of reappointment, while the Law on the Provision of Information to the Public defines limitations for the reappointment of the Inspector of Journalists Ethics—the same person may only be reappointed once. Overall, even if a person is reappointed only once, the total term of office will be 10 years. For example, the chairman of the parliamentary ombudsman was reappointed as a chairman for a second term and, subsequently, as an ombudsman for a third term. The Ombudsman of Equal Opportunities was reappointed for a third term. These examples may be treated as signs of confidence and respect in highly qualified professionals. However, after ten years an institution may indeed need some change.

2. The Independence of the Ombudsman Institutions

The principle of independence is central to the effectiveness of ombudsman institutions. Law should guarantee the ombudsman decision-making autonomy and independence from other bodies of state authority. It should prevent the ombudsman from being recalled from office for political reasons. It is positive sign that during the fifteen years since ombudsmen institutions were established in Lithuania no ombudsman has ever been dismissed during his or her term.

The most important question is how extensively parliamentarians may control the ombudsman's activity. As already mentioned, the ombudsman enjoys independence in his or her decision-making process. The ombudsman has to periodically submit information on his activities and on the status of adherence to human rights and freedoms to the Parliament. This also includes sending information on the state of compliance with human and civil rights to other authorities, including the Government.

Financial independence from the government should guarantee the ombudsman the exclusive right to plan his or her own budget within the general plan of the state budget. The oversight of how this budget is allocated should be solely the responsibility of the Seimas.

All ombudsman institutions in Lithuania are accountable to the Seimas and receive funding from the state budget. Whether the funding allocated to the institutions is sufficient to carry out their mandate is another question. At the international roundtable of

ombudsmen, the Lithuanian Ombudsman of the Rights of Child reported insufficient personnel and financial resources.¹¹

The Human Rights Monitoring Institute study ‘Overview and analysis of Lithuanian non-judicial human rights institutions’ (all ombudsman institutions) indicates that the allocation of funds made in 2007 were insufficient.¹² In its concluding observations published in March 2006 to the report submitted by Lithuania, the UN Committee on the Rights of the Child also raised concerns about inadequate funding for the Children’s Rights Ombudsman.¹³

The ombudsman institutions do not complain and do not inform society on how the lack of funding may adversely affect the effectiveness of these institutions. Inadequate funding could just as well be a threat to any institution—an indication that human rights protection and promotion are not a priority.

Another aspect of ombudsman independence is the power of the institution to appoint its own staff. The ombudsman should be provided with adequate human resources, in terms of numbers and qualifications, appropriate to the extent of his territorial competence and the number of individuals who might call on his services. Because of the financial crisis, staff of ombudsman institutions has been cut. Hopefully, ombudsman institutions will once again strengthen when a financial recovery takes place.

There are several other limitations for ombudsmen. They cannot hold any other office in state institutions and organisations, be employed in business, commercial and other private institutions or enterprises. They also can receive no other remuneration except the official salary and remuneration for educational and creative activities. Ombudsmen cannot participate in the activities of political parties.

3. The Mandate of the Parliamentary Ombudsmen

The failure of administrative bodies to meet citizens’ legitimate expectations is often ambiguous referred to as ‘*maladministration*’. This term generally covers not only violation of the letter of the law but also instances where the citizen, unable to point to a violation of some particular law, feels certain that the actions of public administrators towards him are unfitting according to some public standard. In examining individual citizens’ complaints about flaws, omissions, or shortcomings in administrative activity, the Parliamentary Ombudsman is not just as a tool of ‘external’ control of the administration but also an institutional mechanism for self-reflection in a liberal democratic state.

11 The Report of VI UNDP International Roundtable for Ombudsman Institutions in Eastern Europe and the CIS [interactive] Prague, 2005 [accessed 05-01-2010]. <http://www.ioi-europe.org/projects/prague/Prague-draftreport_Final_Final.pdf>.

12 Published by Human Rights Monitoring Institute, in 2007. Available on the website only in Lithuanian: <www.hrmi.lt>.

13 UN Committee on the Rights of the Child (CRC), UN Committee on the Rights of the Child: Concluding Observations, Lithuania, 17 March 2006. CRC/C/LTU/CO/2. Online. UNHCR Refworld, available at: <<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=45377ed40>>.

Article 3 of the Law on the Parliamentary Ombudsmen provides that the purpose of the Parliamentary Ombudsmen is to ensure the individual's right to good public administration respectful of human rights and freedoms, to supervise fulfilment by state authorities of their duty to properly serve the people. Protection of an individual's rights may be understood very broadly, but if we take a close look at the law, we will find that the mandate of the Parliamentary Ombudsmen is focused only on the investigation of complaints or the possibility of opening an investigation on his or her own initiative. The law does not provide any other important functions, such as monitoring of the situation, collecting data, initiating research, etc. These important functions would help the ombudsman identify sectors where maladministration exists and hence concentrate on those areas.

In many European countries, the parliamentary ombudsman enjoys the right of permanent oversight over special institutions such as prisons¹⁴, children's homes¹⁵, psychiatric hospitals¹⁶, refugee camps¹⁷ and others. The monitoring of the human rights situation in these special institutions is essential and particularly important for the prevention of human rights violations.

Article 19 of the Law specifies the rights of the Parliamentary Ombudsmen. It provides that the Parliamentary Ombudsman has a right to inform the Seimas about gaps in law or the need to amend the law because of human rights violations. If the Parliamentary Ombudsmen were granted the right to monitor the human rights situation, collect data and initiate research, the advice provided to the Seimas regarding law amendments would be better qualified.

3.1. Object of Control Investigation

The object of investigation usually refers to state and regional organs and officials commonly called administration. The definition of 'administration' varies from country to country. The oversight of public administration does not necessarily imply that investigations are restricted to public entities. In some countries¹⁸, the ombudsman is entitled to investigate private legal entities as far as they have public authority (private legal entities performing public tasks or public services). In other countries, only those private legal entities are subject to the ombudsman's supervision, which are to a certain extent controlled by the state (on account of held shares or explicit organizational regulations). For example, in Greece, this depends on whether the corporate management is appointed by the state; in Sweden, activities are supervised where the Government

14 The ombudsman enjoys this right in Albania, Armenia, Croatia, Denmark, Estonia, Finland and etc. This right is granted for the Lithuanian Parliamentary Ombudsmen.

15 The ombudsman enjoys this right in Albania, Andorra, Czech Republic, Estonia, Finland, Georgia and etc. Part of this right is granted to the Ombudsman of Rights of Child in Lithuania.

16 The ombudsman enjoys this right in Albania, Croatia, Norway, Poland and etc.

17 The ombudsman enjoys this right in Albania, Bosnia and Herzegovina, Croatia, Denmark, Latvia, Norway, Slovenia, Ukraine and etc.

18 Albania, Bulgaria, Croatia, Estonia, Finland, France, Iceland, Israel, Latvia, Norway, Spain, Sweden and etc.

exercises ‘decisive influence’ through the agency of the enterprise; in Portugal, the relevant criterion is capital majority of the state. In Israel, all institutions are within the ombudsman’s area of control if they administer state property or if the state holds shares in the company.¹⁹

The Lithuanian Parliamentary Ombudsmen investigate complaints about bureaucratic intransigence and abuses of office by public officials or other violations of human rights and freedoms in the sphere of public administration. Article 2 defines ‘official’ as a state or municipal institution or agency employee, as well as any other employee performing public administration functions; an employee of a public institution or a non-governmental organisation having powers of public administration granted according to the procedure prescribed by law, who exercises powers of administration over persons not subordinate to him; a person authorised by the state, performing functions prescribed by law which have been granted by the state.

3.2. Relations with Judiciary

In a democratic country, the constitutional principles of separation of powers and independence of the judiciary are fundamental. The majority of parliamentary ombudsman institutions in Europe, including Lithuania, are not authorised to supervise the judiciary. The Assembly of the Council of Europe recommends that ombudsmen have at most strictly limited powers of supervision over the courts. If circumstances require any such role, it should be confined to ensuring the procedural efficiency and administrative propriety of the judicial system.²⁰

In Sweden and Finland, the judiciary is submitted to the ombudsman’s authority to the same degree as the administrative branch. Article 110 of the Finnish Constitution provides that the Ombudsman with the Chancellor of Justice shares a monopoly to bring charges against a judge for unlawful conduct in office. According to the Swedish Act with Instructions for the Parliamentary Ombudsmen, the Ombudsmen are to ensure in particular that the courts and public authorities in the course of their activities obey the injunction of the Instrument of Government about objectivity and impartiality and that the fundamental rights and freedoms of citizens are not encroached upon in public administration.²¹

The Swedish Ombudsman was established two centuries ago as the eye of the king. In 1810, of course, there was no democracy or separation of powers as all the powers emanated from the king. The task entrusted to the Ombudsman was to ensure that judges and public officials in general acted in accordance with the laws in force and discharged their duties satisfactorily in other respects. If the Ombudsman found that this was not the case, he was empowered to initiate legal proceedings against them for dereliction of their duties. The Swedish Ombudsman possesses disciplinary and prosecuting authority

19 Kucsko-Stadlmayer, G., *supra* note 4, p. 23–25.

20 The Recommendations of the Parliamentary Assembly of the Council of Europe ‘The Institution of Ombudsman’, 1615 (2003), Para. 6.

21 The Act with Instruction for the Parliamentary Ombudsmen, Lag 1986: 765.

against judges for excessive delays or other negligence in executing their duties, including manifest illegality and incorrect reasoning of the judicial decisions. The power to check the actual content of the judicial decisions, to impose disciplinary sanctions and to prosecute the judges distinguishes the Swedish Ombudsman from the ideal type of Ombudsman institutions and makes it resemble judicial councils or other bodies that monitor the judiciary's discharge of duties in the other legal systems.

If these Ombudsman powers have survived in modern Sweden, which enjoys a well-applied rule of law, could this pro-democratic paradigm be exported to other European countries? Shifting the Ombudsman's mission from the accountability of the executive to the accountability and monitoring of the judicial system presents a series of problems. The rule of law in modern societies relies on a system of checks and balances. According to the principle of separation of powers, political liberty is in danger when a person or institution is endowed with more than one of the main state functions of legislature, executive and judiciary. It is very doubtful that the ombudsman, who is accountable to the Parliament, could supervise the independent judiciary.

Then some authors have asked: who can guarantee the fairness, efficiency, transparency and courtesy of the judiciary?²² Most European countries do not infringe upon the principle of external independence of the judiciary and have entrusted other, higher judicial bodies with the supervision of the judges. In Lithuania, there are several autonomous institutions supervising the courts: the Judicial Council, the Judicial Court of Honour, the Judicial Ethics and Discipline Commission.

4. The Mandates of Specialised Ombudsmen

Article 12 (1) of the Law on Equal Opportunities states that the objective of the Equal Opportunities Ombudsman is to investigate complaints concerning direct and indirect discrimination, harassment or sexual harassment. The Law on the Fundamentals of Protection of the Rights of the Child provides that the objective of the Ombudsman of the Rights of the Child is to safeguard the rights and legal interests of children. Article 50 of The Law on the Provision of Information to the Public defines the objectives of the Inspector of Journalist Ethics as follows: to supervise the implementation of the provisions of the Law on the Provision of Information to the Public.

The mandates of these institutions are very limited, and therefore, the Ombudsmen face many challenges. All specialised ombudsman institutions protect the human rights foreseen in their mandates, mainly through the handling of individual complaints. One of the challenges is that all of these institutions are limited to certain rights, target groups or certain sectors of society. In the absence of an explicit mandate, the risk remains that institutions may prioritise their efforts and resources to fulfil only the most basic part of their mandate—protection through the handling of complaints.

Another challenge in the Lithuanian system of human rights protection and promotion is that the mandates of the different institutions overlap with each other. For instance, the Inspector of Journalist Ethics monitors the protection of children from

22 Mauerer, M. *The Relationship between the Ombudsman Institutions and the Judiciary*. UNDP, 2005.

the detrimental effect of public information, which to some extent is also covered by the mandate of the Ombudsman of the Rights of the Child; the Ombudsman of Equal Opportunities investigates complaints of inequality in secondary schools (based on ethnicity or religion).

This requires a high level of coordination, ability to collect data and distribute it in a systematic manner, and to formulate advice that takes into account the concerns of the other institution. International experts have recognized the risk of redundancy in the duties of these institutions and have advised Lithuania to improve structural and systematic coordination among the ombudsmen institutions.²³

The legislator needs to revise the laws on ombudsmen institutions to eliminate certain dubious provisions. For example, Article 73 of the Constitution and the Law on the Parliamentary Ombudsmen provide that the Parliamentary Ombudsmen examine complaints of citizens concerning the abuse of powers by, or bureaucratic intransigence of, State and municipal officials (with the exception of judges), but Article 16 of Law on Ombudsman of the Rights of the Child provides that the Ombudsman investigates the complaints concerning misuse of powers of officials or bureaucratic intransigence in the field of the protection of the rights of children. Does this mean that parliamentary ombudsmen do not have the right to investigate complaints concerning bureaucracy in the area of children's rights? If so, Article 16 of Law on the Ombudsman of the Rights of the Child contradicts the Constitution. If not, we must recognize that there is redundancy in the mandates of these institutions.

5. Decisions

5.1. The Nature of Decisions

One of the essential features of ombudsman institutions is that the ombudsman does not use any measures of state power and acts solely on the power of authority. The parliamentary ombudsmen are exceptional in their activity: they submit a qualified exhaustive conclusion on the legality of officials' conduct in the field of public administration; however, they do not interfere with governance and do not make specific decisions. The ombudsmen, upon investigating a case, submit a decision of an advisory nature, which should be implemented by public officials on a voluntary basis.

In legal doctrine, recommendations are usually treated as legal acts with 'soft-law character': they are supposed to achieve effect not through typical state enforcement, but through the ombudsman's special authority, his arguments and his public presence. The instrument of recommendation expresses the particular character of the ombudsman's mission: ombudsman's recommendations must be fulfilled due to his persuasive skills and the power of public condemnation. On the other hand, the lack of legally binding character in recommendations legitimates the ombudsman's immunity to the control of other state organs, even the courts.²⁴

23 Hansen, T. T.; Kerrigan, F., *supra* note 3, p. 35–36.

24 Reif, L. *The International Ombudsman Anthology*. The Hague: Kluwer Law, 1999, p. 52; Kucsko-Stadlmayer, G., *supra* note 4, p. 44.

The head of the Lithuanian Parliamentary Ombudsmen, R. Valentukevičius has reflected that when the institution commenced its activities, it was easier to gain recognition and respect on the international level than it was in Lithuania. The Parliamentary Ombudsmen had a difficult task—to introduce recommendations as a legally effective mechanism in a post-Soviet society and legal system that was used to the power of top-down mandatory laws.²⁵

The Law on the Parliamentary Ombudsmen defines the ombudsman's decisions as statements. The law provides that the ombudsman's statement be presented to the complainant. The statement must also be submitted to the head of the institution or agency where the investigation was conducted or the officer whose actions were subject to investigation, and, as necessary, to the head of a superior institution or agency as well as other institutions or agencies. In cases where the statement contains information that constitutes a state, official, commercial or bank secret as well as information about personal data protected by law, an edited text of the statement should be presented.

The nature of the specialised ombudsmen's decisions is different. The Law regulating the competence of the Ombudsman on Equal Opportunities provides that the Ombudsman is empowered not only to issue recommendations, but also to hear cases of administrative offences and impose administrative sanctions.²⁶ The Code of Administrative Offences grants the right for the Inspector of Journalist Ethics to impose administrative sanctions. These decisions are legally binding. This nature of these decisions diverges from the classical doctrine of an ombudsman's powers. As mentioned above, the ombudsmen are supposed to achieve effect not through typical state enforcement, but through their special authority, arguments and public presence. An institution that issues legally binding decisions with financial penalties contradicts the very nature and status of the ombudsman's institution and becomes a pre-trial institution. The legislator should analyse the nature of the specialised ombudsmen's decisions and give closer consideration as to the nature of the ombudsman institution.

5.2. Appeal against an Ombudsman's Decision

The Law on Administrative Proceedings states that the Parliamentary Ombudsmen's recommendations are outside the remit of competence of the administrative courts. This provision was adopted only in 2007. Until then, there were some misunderstandings between the parliamentary ombudsmen and administrative courts. The above-mentioned provision applies only to the parliamentary ombudsmen. A decision by one of the specialised ombudsmen may be appealed to the administrative court. The reasoning is that if the specialised ombudsmen are granted the right to impose financial sanctions, a person who thinks that the decision violates his or her rights will have a right to appeal

25 Valentukevičius, R. Seimas Ombudsmen's Office in Lithuania: Development and Prospects [interactive] 10th Anniversary Conference, Vilnius [accessed 15-01-2010]. <<http://www.lrski.lt/preview.php?n=119&l=EN&pusl=orig>>.

26 The Law on Equal Opportunities for Women and Men. The latest amendment of Article 24 on 18 December 2007, No. X-1380.

to a court. Otherwise, that person's right to the fair trial would be violated. This situation is not even a subject of discussions in other European countries and not well understood by legal scholars.

5.3. Reporting to the Parliament

In most European countries, ombudsmen have to submit annual reports on their activities to the parliament. In this respect, the ombudsman functions as an auxiliary organ of the parliament and helps them carry out their own duties more effectively. G.Kuscsko-Stadlmayer affirms that the function of reporting is particularly important in imposing a type of soft sanction in case of non-compliance with recommendations or lack of cooperation in investigating and clearing up affairs. This is achieved not so much by the report itself, but rather by its publication, whereby important individual cases come to public attention (particularly on the internet and in newsletters).²⁷

According to the laws, all ombudsmen in Lithuania are accountable to the Seimas and must submit annual reports. The reporting usually aims to illustrate the activity of ombudsman—the handling of complains, presentation of recommendations and suggestions to the Seimas regarding gaps in laws or needed amendments. The Ombudsmen accent the need for parliamentary attentiveness and support so that the problems pointed out by the Ombudsmen are addressed promptly and effectively. Thus—the need to review and discuss these reports actively and effectively.²⁸

6. The Importance of Ombudsmen in a Democratic Society

The Constitutional Court of the Republic of Lithuania has stated that the Constitution obliges the state to respect human rights and freedoms and to guarantee their protection from any unlawful attempt or restriction by legal, material or organizational means.²⁹ Thus, the protection of human rights is reflected in the existing system of state guarantees. The ombudsman institutions are very important institutional guarantees of human rights. First, any person can apply to an ombudsman institution. Because it is free of charge, and entails a short term of investigation and a 'soft' decision, — every person is guaranteed to receive help. Second, the ombudsmen may 'softly' influence state and municipal institutions to respect the law and human rights. Third, the ombudsman is empowered to report to the Parliament on the need for legal amendments and improvements to the human rights situation in the country.

Until Lithuania establishes a national human rights institution based on the Paris Principles, the ombudsmen institutions will be very important not only in the area of handling complaints, but also in the monitoring of the human rights situation, collection

27 Kuscsko-Stadlmayer, G., *supra* note 4, p. 48.

28 Valentukevičius, R., *supra* note 25.

29 2000 June 30 Constitutional Court of the Republic of Lithuania, ruling 'On the compliance of Part 1 of Article 3 and Item 1 of Part 1 of Article 4 of the Republic of Lithuania Law on Compensation for Damage Inflicted by Unlawful Actions of Interrogatory and Investigatory Bodies, the Prosecutor's Office and Court with the Constitution of the Republic of Lithuania'.

of data and research in the field of human rights. Hopefully, the legislator will improve the laws on the ombudsmen institutions: strengthen and extend their mandates, revise the power of the ombudsman's decisions, especially that of the specialised ombudsmen.

It is also important that an ombudsman can serve as a catalyst for ensuring that international human rights standards are upheld on the national level by reflecting on these issues in his or her recommendations and reports, particularly in the context of grievances brought for consideration or in the advice issued to the Seimas regarding legislation and policies. An Ombudsman can thus serve as a privileged interface between international human rights standards and domestic legal norms. Networking with other Ombudsman institutions and close cooperation with the United Nations Treaty Bodies and the Council of Europe would help the ombudsmen strengthen the institution itself, find for new avenues for the improvement of human rights protection and promotion and ideas for the revision of their mandate as established by law.

Conclusions

The ombudsman as an institution reflects a commitment to the consolidation of the democratic system. It constitutes a mechanism of oversight, accountability and transparency, whose aim is to protect the citizens, combat maladministration (discrimination, violation of other human rights) and ensure the application of the rule of law.

The mandates of the Lithuanian Ombudsmen institutions cover a wide range of areas within the field of human rights. Article 73 of the Constitution has empowered the Seimas to establish a system of Ombudsmen institutions³⁰. It seems that, intentionally or not, the Seimas has failed to establish such a system, and instead established the parliamentary ombudsmen and the specialised ombudsmen institutions without consideration for a unified system and other areas of human rights. As a result, international experts indicate that it is nearly impossible to get a general picture of the human rights situation in Lithuania. All ombudsmen institutions can, upon the request of the relevant government department or the Seimas, participate in the legislative process. However, they are not systematically involved in the legislative process or active monitoring thereof. Consequently, institutions may not always be informed about the new laws that could have an impact in their field. Legislative initiatives falling outside the scope of the institutions' mandates may remain unscrutinized and unmonitored. As the institutions' main source of information about the present state of human rights is individual complaints, there is no monitoring on the overall situation of human rights in the country.³¹

The mandates of all ombudsmen institutions should be revised to eliminate the contradictions between the Constitution and other laws, functional redundancies, and remaining issues concerning the power of ombudsmen's decisions.

30 The original text of Article 73 says 'the system and power of control institutions', while the ombudsmen are named 'controllers' in Lithuanian language.

31 Hansen, T. T.; Kerrigan, F., *supra* note 3, p. 35–36.

References

- Andre, K. Roles for the Ombudsmen. View from Sweden. In *Parliamentary Ombudsman of Finland. 80 Years*. Ilkka, R. (ed.). Helsinki, 2000.
- Gottelher, D. M.; Hostina, M. The Classical Ombudsman Model. In *Righting Wrongs*. Gregory, R.; Giddings, P. (eds.). Amsterdam: IOS Press, 2000.
- Hansen, T. T.; Kerrigan, F. *A National Human Rights Institution in Lithuania. Mapping Report*. The Danish Institute for Human Rights, 2008.
- Kuscsko-Stadlmayer, G. The Legal Structures of Ombudsman – Institutions in Europe – Legal Comparative Analysis. In *European Ombudsman – Institutions*. Kuscsko-Stadlmayer, G. (ed.). Wien: Springer –Verlag, 2008.
- Mauerer, M. *The Relationship between the Ombudsman Institutions and the Judiciary*. UNDP, 2005.
- Reif, L. *The International Ombudsman Anthology*. The Hague: Kluwer Law, 1999.
- Valentukevičius, R. Seimas Ombudsmenų's Office in Lithuania: Development and Prospects. [interactive] 10th Anniversary Conference, Vilnius [accessed 15-01-2010]. <<http://www.lrski.lt/preview.php?n=119&l=EN&usl=orig>>.

OMBUDSMENO INSTITUCIJŲ REFORMA

Edita Žiobienė

Mykolo Romerio universitetas, Lietuva

Santrauka. Lietuvos Respublikos Konstitucijos 73 straipsniu remiantis įkurta Seimo kontrolierių institucija. Tò paties straipsnio trečioje dalyje numatyta suteikti galimybę įstatymų leidėjui sukurti kontrolės institucijų sistemą, tačiau nagrinėjant įsteigtas kontrolierių institucijas akivaizdu, kad sistema nėra sukurta. Pavienės institucijos, nors veikia sėkmingai ir gana efektyviai, vis dėlto neapima visų žmogaus teisių sričių, jų mandatas skirtas nagrinėti skundus, kai kuriose srityse kontrolierių funkcijos yra dubliuojamos, kyla abejonių dėl įstatymų, reglamentuojančių šių institucijų veiklą, konstitucingumo.

Nei vienai institucijai nėra priskirta žmogaus teisių padėties stebėjimo, duomenų rinkimo funkcija, kurią efektyviai įgyvendinus būtų didžiulė įtaka valstybės vidaus žmogaus teisių politikai, gerinant įstatymų leidybos procesą, taikant tam tikras prevencines priemones ir t. t.

Straipsnyje Lietuvos kontrolierių institucijos analizuojamos besiremiant klasikine ombudsmeno teorija ir tarptautiniais dokumentais, lyginama su kitų valstybių praktika, pateikiami kontrolierių statuso, veiklos, mandato, tarpusavio koordinavimo klausimai, kuriems būtina reforma.

Reikšminiai žodžiai: kontrolierius (ombudsmenas), nepriklausomumas, atskaitomybė, mandatas, funkcijos, sprendimai.

Edita Žiobienė, Mykolo Romerio universiteto Teisės fakulteto Konstitucinės teisės katedros docentė. Mokslinių tyrimų kryptys: savivaldos teisė, parlamento teisė, žiniasklaidos teisė ir žmogaus teisės.

Edita Ziobienė, Mykolas Romeris University, Faculty of Law, Department of Constitutional Law, associated professor. Research interests: municipality law, parliament law, media law and human rights.