

CHILDREN'S RIGHTS OMBUDSMAN: EXPERIENCE OF UKRAINE AND FOREIGN COUNTRIES

**Oksana Nadybska, Odessa State University of Internal Affairs
Hanna Fedotova, State Research Institute of the Ministry of Internal Affairs
of Ukraine**

**Serhii Shcherbyna, National University Zaporizhzhia politechnic
Yulia Chornous, National Academy of Internal Affairs of Ukraine**

Iryna Basysta, Lviv State University of Internal Affairs

ABSTRACT

The article explores the activities of the children's rights ombudsman in Ukraine and foreign countries. It is noted that the relevance of this topic is due to existing social problems in many countries of the world: the need for state protection of children deprived of parental care, the increase in children's migration rates, and the like. In this regard, it has been indicated that one of the first steps towards the protection of the children's rights was the adoption of the Children's Rights Convention, which actually intensified the process of creating and improving existing children's rights protection mechanisms at the national level. Among the entities of such a mechanism, the children's rights ombudsman, who is an official responsible for the issues of legislative support and the actual implementation, protection of personal non-property and property rights of the child, has a primary role. Among foreign countries where the institution of the children's rights ombudsman, Norway, Finland, and Croatia, are highlighted. The current state of the children's rights protection in Ukraine, in particular, the activities of the Human Rights Commissioner for the President of Ukraine and the Human Rights Commissioner of the Verkhovna Rada of Ukraine, is also considered, and the conclusion about the need to allocate the position of the human rights ombudsman in the Ukrainian parliament and to establish cooperation between him and the Children's Rights Commissioner for the President of Ukraine is drawn.

Keywords: Children's Rights Ombudsman, Child, Legal Support of the Children's Rights, Children's Rights Protection Mechanism.

INTRODUCTION

The development of each state as a democratic and legal one requires the protection of the rights of all categories of the population. Children are one of these categories, which is associated with more frequent cases of deprivation of their parents of parental rights and a number of other socio-economic problems. According to official figures in Ukraine, more than 600,000 children live in families where parents do not provide them with proper care and upbringing. The number of families in which one parent brings up children is almost 706,000. Meanwhile, the number of children whose parents are deprived of parental rights annually is up to 10,000. In the context of Ukraine's European integration, there is also the issue of inclusive

education, which is aimed at solving important issues in ensuring the children's right with special educational needs to education (Kulish et al., 2016). In addition, the conflict in eastern Ukraine revealed a number of shortcomings in the children's rights protection in the state, in particular the lack of a mechanism for identifying children involved in hostilities and armed conflicts.

Moreover, the problem of the children's rights protection today is relevant not only for Ukraine but also for a number of other states. For European states, the migration of children and, accordingly, the need to regulate ways to protect their rights in other states are vital. According to official figures, only in 2015, more than a million people who sought asylum arrived in Europe, and another 500,000 arrived between January 2016 and June 2017. Therewith, children make up a significant proportion of the population, which arrives. Only in the first semester of 2017, approximately 17,000 children migrated to Greece, Italy, Spain, and Bulgaria, representing almost 16% of the total number of arrivals. Despite the state in which they are located, appropriate conditions must be created for them to exercise their rights, freedoms, legitimate interests, and the like by them.

The experience of developed countries indicates that one of the ways to overcome this problem is the creation and activities of the children's rights ombudsman.

Formulation of the Problem

Thus, the desire of states to ensure the proper protection of the rights, freedoms, and legitimate interests of all segments of the state's population, especially vulnerable segments of the population such as children, determines not only their improvement of the legal regulation of the status of children, the provision of legal guarantees for orphans but also the introduction of institutional changes. The creation of the children's rights ombudsman is one of these changes.

LITERATURE REVIEW

Today, a small number of scientific papers have been devoted to the work of the children's rights ombudsman despite the relevance of this topic. At the same time, it is advisable to pay attention to some of them in order to reveal the theoretical principles and formulate conclusions based on the results of the study. Thus, Akimzhanova et al. note that, with the adoption of the Children's Rights Convention, the states-parties of this international document are making active efforts to improve national legislation in order to bring it into line with the provisions of the said convention. This applies in particular to the legislative support of the property and personal non-property rights of the child, as well as the creation and operation of the institution of the children's rights ombudsman (Akimzhanova et al., 2018).

Cheshmedzhieva draws attention to the fact that the need for the institution of the children's rights ombudsman is due to the fact that children are the most vulnerable group of the population, and the protection of their rights and interests as persons who form the future of a nation should be a top priority in the activities of each state. At the same time, the creation of the position of the ombudsman in the state, according to the scientist, is not only a confirmation of the state's obligation to ensure the children's rights but also the willingness of its public authorities to take responsibility for fulfilling this obligation (Cheshmedzhieva, 2015).

Abedin draws attention to the fact that in the period after the Second World War, the institution of the ombudsman increasingly became an alternative tool for resolving conflicts. In

the strictest sense, the ombudsman's main duty is to protect members of the public from bureaucratic crime and poor governance. Today, the ombudsman institution faces serious challenges in the modern world. At the same time, doubts regarding the usefulness, suitability, and success of this institution in the states of the so-called third world, including states where democracy is only starting to develop, are often expressed. Nevertheless, the available data indicate that, on the contrary, this institution contributes to the resolution of conflicts in these states and is one of their first steps towards democracy (Abedin, 2006). In support of this, it should be noted that Ballesté & Moudelle, considering the ombudsman institution in Paraguay consider it ineffective, while they propose creating another independent service with similar powers instead (Ballesté & Moudelle, 2019).

METHODOLOGY

The methodological basis of the study of the issues of the human rights ombudsman's activities in Ukraine and foreign countries is general scientific and special methods of scientific knowledge. In particular, the logical-semantic method was used to determine the nature and characteristics of the institution of the children's rights ombudsman. The comparative legal method was the basis for the study of foreign experience in regulating the activities of the human rights ombudsman and relevant norms of the current legislation of Ukraine in the field of protection of the children rights by a specially authorized entity. The formal legal method made it possible to interpret legal norms to clarify answers to questions about the activities of the children's rights ombudsman and the prospects for their improvement.

FINDINGS AND DISCUSSIONS

The adoption of the Children's Rights Convention in 1989 caused a leap in recognition and expansion of initiatives regarding the protection of the children's rights, in particular the implementation of such activities by the children's rights ombudsman. The children's rights ombudsman in Norway takes children's opinions and experience into account when making decisions that directly affect them (Musinguzi & Ellingsen, 2017). In general, all northern European Union member states are considered strong supporters of children's rights; accordingly, children's rights are highly represented both in law and at the policy level. At the same time, the position of the children's rights ombudsman was created in 1981 in Norway, in fact, the first of its kind in the world (Faye, 2017). It is important to focus on the fact that the children's rights protection issue should also be implemented through the participation of the ombudsman in the adoption of regulations directly or indirectly affecting the interests of children in the state, and here the experience of Norway is indicative. Today in Ukraine there are a number of situations, in the elimination of which the Human Rights Commissioner of the Verkhovna Rada of Ukraine, unfortunately, does not take part. In particular, the issue of hidden advertising of narcotic drugs and psychotropic substances that takes place on television, radio, and in other mass media (Burbyka et al., 2015) needs to be addressed and negatively affects the legal awareness of children as the future generation of the country.

In Chile, the institution of the children's rights ombudsman is only starting to develop and consolidate in the context of new Chilean legislation guaranteeing the children's rights and adolescents and testifying to the final consolidation of the children's rights protection mechanism in Chile (Ravetllat, 2017). In turn, in Croatia, the children's rights ombudsman protects,

monitors, and promotes the children's rights and interests on the basis of the Constitution of the Republic of Croatia, international treaties, and laws. At the same time, the children's rights ombudsman is appointed and dismissed by Parliament on the proposal of the Government of the Republic of Croatia.

It should be noted that in Ukraine the children's rights protection mechanism includes the Human Rights Commissioner of the Verkhovna Rada of Ukraine and the Children Rights Commissioner for the President of Ukraine. Thus, in accordance with Article 101 of the Constitution of Ukraine, parliamentary control over the observance of constitutional rights and freedoms of man and citizen, including children, is carried out by the Human Rights Commissioner of the Verkhovna Rada.

The status of the human rights ombudsman is determined by the Law of Ukraine "*On the Human Rights Commissioner of the Verkhovna Rada of Ukraine*" (Law of Ukraine, 1997), which stipulates that its tasks include, in particular, the protection of human and civil rights and freedoms proclaimed by the Constitution of Ukraine, laws of Ukraine, and international treaties of Ukraine; prevention of violations of human and civil rights and freedoms or assistance in their restoration; assistance in bringing the legislation of Ukraine on the rights and freedoms of man and citizen in accordance with the Constitution of Ukraine, international standards in this field; prevention of any form of discrimination in the exercise of human rights and freedoms, and the like. Despite the fact that the Commissioner of the Verkhovna Rada of Ukraine is also involved in the protection of the children's rights, in fact, this institution is simply not capable of covering the full range of problems of ensuring the children's rights in the state in modern conditions.

As for the other children's rights entity-the Children's Rights Commissioner for the President of Ukraine, in accordance with the same provision approved by the decree of the President of Ukraine dated 11 August (Law of Ukraine, 2011), its main tasks include continuous monitoring of compliance with the children's constitutional rights in Ukraine, fulfillment of its international obligations by Ukraine in this area and making proposals to the President of Ukraine to stop and prevent the recurrence of violations of the children's rights and legitimate interests; taking measures aimed at protecting and restoring violated rights and legitimate interests of the child, informing the public about such measures and their results; taking measures to establish interaction between executive authorities and local authorities on issues of protection of the children's rights and legitimate interests, and others. Besides, one should pay attention that such an approach to determining the status and tasks of the Children's Rights Commissioner for the President of Ukraine rather indicates that the purpose of his activity is to ensure that the head of the state exercises his powers in the field of the children's rights protection, and not the independent protection of the children's rights, freedoms, and legitimate interests. This substantially narrows the general purpose of the children's rights ombudsman. Moreover, if we compare the powers of the Human Rights Commissioner of the Verkhovna Rada of Ukraine and the Children's Rights Commissioner for the President of Ukraine, the authorities of the latter do not provide for the opportunity to apply to the Constitutional Court to establish compliance with the normative act of the Constitution of Ukraine; there are also no procedural powers in it.

It should also pay attention to the experience of Finland, where the Finnish Office of the children ombudsman is the authoritative body in the field of child policy, and in accordance with the policies of the United Nations and the provisions of the Children's Rights Convention, guides public authorities towards the adoption of the most political decisions and legal acts that are most

appropriate for the child (Alasuutari et al., 2016). That is, it is obvious that the Finnish Office of the children ombudsman is a body that does not ensure the fulfillment by other state bodies of their powers in the field of the children's rights protection but rather contributes to the adoption by these state structures of the most beneficial legal acts for children, and the like. Whereas in Ukraine, unfortunately, the situation is fundamentally different. In this regard, it can even be stated that the institution of the Children's Rights Commissioner for the President of Ukraine is rather an advisory institution under the head of state than an independent institution in the children's rights protection mechanism.

In turn, in Austria, the Ombudsman's Council, together with six regional expert commissions, formed the so-called "National Prevention Mechanism" on July 1, 2012, which implemented the UN Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Accordingly, the children's rights ombudsman and the relevant commissions received the right, regularly, without restrictions, and without prior notice of visits, to visit places that already have or may have deprivation or restriction of personal freedom, including children's hospitals, family-type homes, boarding schools, and the like. However, such an authority of the Children's Rights Commissioner for the President of Ukraine is not mentioned in the legislation of Ukraine, which, in our opinion, is a significant drawback of modern national legislation.

Comparing the status of the children's rights ombudsman in foreign countries and the status of the Children's Rights Commissioner for the President of Ukraine, the independence of the latter's activities is doubtful. If the legislation in Croatia clearly stipulates that the children's ombudsman acts independently and autonomously, adhering to the principles of justice and morality, and no one can give instructions to the children ombudsman in his work, then, according to the legislation of Ukraine, the activities of the Commissioner are provided by the appropriate structural unit of the Administration of the President of Ukraine. This not only threatens the independence and impartiality of the activities of the Children's Rights Commissioner of Ukraine but also reduces its significance in the jurisdictional mechanism for protecting the children rights in the state.

RECCOMENDATIONS

Given the above, the need to allocate in Ukraine not only the human rights ombudsman but also the children's rights ombudsman, who should be an official of the Ukrainian parliament and be more independent and autonomous in its activities than the Children's Rights Commissioner for the President of Ukraine, is obvious. At the same time, in order to ensure the most effective protection of the children's rights in the state, it is recommended to establish cooperation between the children's rights ombudsman and the Commissioner for the President of Ukraine for Children's Rights. The feasibility of such proposals is confirmed by the fact that in Ukraine the problem of social and economic protection of children has really become acute, as well as the fact that Ukraine is a state party to the Children's Rights Convention dated November 20, 1989 and, in accordance with it, has undertaken certain obligations in the field of the children's rights protection.

CONCLUSIONS

Thus, the accession of states to the Children's Rights Convention has significantly intensified the national children's rights protection mechanisms, taking into account the fact that this is one of the most vulnerable segments of the population, as well as the future of the nation. An important subject of the children's rights protection mechanism in each state is the children's rights ombudsman, whose first position arose in Norway. Today, the northern member states of the European Union are known for one of the best children's rights protection mechanisms. However, for Ukraine this issue remains relevant, primarily in terms of creating the position of the children's rights ombudsman in Parliament. For this, the experience of Croatia, Norway, Finland, and a number of other foreign countries can be successfully used, where this institution functions quite successfully. At the same time, cooperation should be established between the children's rights ombudsman and the Children's Rights Commissioner for the President of Ukraine Children's Rights to achieve the common goal of the activities of both institutions. In turn, at the level of the European Union, coordination within the limits that do not violate the sovereignty of the member states, the activities of the children's rights ombudsmen to improve their performance of their tasks and functions, as well as the development of interstate standards for ensuring the safety and well-being of the child remains relevant.

REFERENCES

- Abedin, N. (2006) The Ombudsman institution and conflict resolution in the contemporary third world societies. *Journal of Third World Studies*, 23(1), 219–233.
- Akimzhanova, M., Ilyassova, G., Nukusheva, A., & Rustembekova, D. (2018). Extending legislation of the Republic of Kazakhstan by anchoring international child rights. *Journal of Legal, Ethical and Regulatory Issues*, 21(3), 1-17.
- Alasuutari, P., Rautalin, M., & Syväteri, J. (2016). Organizations as Epistemic Capital: the Case of Independent Children's Rights Institutions. *International Journal of Politics, Culture and Society*, 29(1), 57-71.
- Ballesté, I.R., & Moudelle, C.P.S. (2019). *The human rights of children and adolescents in Paraguay: Towards an autonomous defender who looks after their best interest*.
- Burbyka, M.M., Kulish, A.M., Reznik, O.N., & Solonar, A.V. (2015). The particularities of counteraction of hidden advertising of narcotic drugs. *Criminology Journal of Baikal National University of Economics and Law*, 9(2), 334-342.
- Cheshmedzhieva, M. (2015). Children's rights ombudsman, efficient defense mechanism. *Journal of Politics and Law*, 8(2), 137-141.
- Faye, J.A. (2017). *Children's rights and duties: Snapshots into the history of education and child protection in Denmark (ca. 1700-1900) Nordic Childhoods 1700-1960: From Folk Beliefs to Pippi Longstocking*.
- Kulish, A.N., Harust, Y.V., Reznik, O.N., & Utkina, M.S. (2016). Implementation and administrative framework of the inclusive education in the context of the European integration process. *Journal of Advanced Research in Law and Economics*, 7(6), 1-11.
- Law of Ukraine. (1997). *On the Ombudsman of Ukraine*. Retrieved from URL: <https://zakon.rada.gov.ua/laws/show/776/97-%D0%B2%D1%80>
- Law of Ukraine. (2011). *Regulation on the Ombudsman of Ukraine*. URL: <https://zakon.rada.gov.ua/laws/show/811/2011/>
- Musinguzi, P., & Ellingsen, I.T. (2017). The Norwegian ombudsman for children on child participation: perceptions, impacts and dilemmas. *Journal of Comparative Social Work*, 12(2), 1-15.
- Ravetllat, B.I. (2017). The children's ombudsman in Chile: To the best child's interest guarantor. *Estudios Constitucionales*, 15(1), 255-306.