

# ASSESSING THE EFFECTIVENESS OF KAZAKHSTAN OMBUDSMAN INSTITUTION

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## ABSTRACT

*The purpose of the article is to assess the effectiveness of the ombudsman institution in the Republic of Kazakhstan in protecting the rights and freedoms of citizens from abuse of public administration. The article examines the effectiveness of the ombudsman institution based on the ombudsman's reports and special reports, as well as on public education work, legislative activities, and international cooperation in strengthening the status of the ombudsman institution. The article describes the activities of the Ombudsman institution and the stages of the emergence of the Ombudsman institution in foreign countries. The factors that led to the establishment of the Ombudsman institution in the Republic of Kazakhstan are identified. In addition, based on the amendments made to the Constitution by referendum in 2022, the Ombudsman was given constitutional status and the Constitution was supplemented with Article 83-1. Besides, identifies the factors that affect the effective work of the Ombudsman institution, and makes recommendations for the effective functioning of the institution.*

**Keywords:** Protection of Human Rights, Ombudsman Institution, Effectiveness, Democracy, Society.

## INTRODUCTION

An ombudsman institution is an independent oversight body that receives complaints and investigates issues related to the protection of human rights and the prevention of maladministration of public bodies. Through their investigations, reports and recommendations, ombudsman institutions improve the effectiveness of governance and ensure the rights and freedoms of citizens. Ombudsman institutions are a type of oversight institution that help ensure that public administrations carry out their tasks in a fair, transparent and accountable manner. While they have different mandates and powers, all ombudsman institutions aim to prevent and respond to both maladministration and human rights violations. By receiving and investigating complaints and reporting on thematic issues and systemic problems, ombudsman institutions can improve security, governance and oversight. For an ombudsman institution to be effective, it must be independent of both the body it is tasked to oversee and the government that has granted it its mandate. Without independence, conflicts of interest and a lack of trust in the institution will undermine trust in its work. Independence cannot be guaranteed simply by creating an office outside the chain of command. The ombudsman institution must also be granted operational independence, which should include an independent budget and the ability to make its own personnel decisions and to act without undue interference or instructions, including the right to investigate. It is particularly important that the head of the office and staff are free from political influence, because even if financial, legal and operational independence are guaranteed, all this can be overturned if the institution's staff are perceived to be insufficiently independent. If they are perceived to be too friendly or close to senior officials in the institution, or if they have served in one of the institutions themselves, this can undermine trust. For this reason, the effectiveness of the ombudsman institution depends on the personal independence and impartiality of its head and staff.

Achieving institutional, operational and personal independence of the ombudsman institution is a serious challenge that is difficult to solve and sustain.

The term "ombudsman" itself comes from the word "*umbud*", which in medieval Swedish means a person who has power and authority, an interpreter or representative of others (Reif, 2023). In the legal sense, the ombudsman is understood as a reliable independent person authorized by parliament to protect the rights of individual citizens and exercise indirect parliamentary control in the form of comprehensive supervision over all public offices and representatives (Skala, 1989). The term "ombudsman", despite the variety of names, is collective and denotes a special service that reflects the social power of society and essentially means one thing - the protection of human rights from arbitrariness and abuse of power by officials (Sześciło & Zakroczymski, 2021). The institution has various names: ombudsman (Sweden, Finland), parliamentary commissioner (Canadian provinces), parliamentary administrative commissioner (Great Britain, Ireland), human rights commissioner (Russian Federation), public defender (Spain), mediator (France), justice ombudsman (Portugal). In Kazakhstan, the ombudsman is called the "human rights commissioner", while in Turkey, he is called the "public watchdog". With the end of the Cold War and the strengthening of democratic processes in the world in the last decade of the 20th century, ombudsman services began to appear in Eastern European countries. The first ombudsman in Eastern Europe was the Polish Commissioner for Citizens' Rights, appointed in 1988. In 1989, the position of ombudsman was established in Hungary, in 1990 in Croatia, and in 1993 in Romania. With the collapse of the Soviet Union and the formation of the Commonwealth of Independent States, governmental human rights defenders appeared in the former Soviet republics: in Lithuania (1994), Ukraine, Moldova, Georgia (1999), Azerbaijan (2002), Armenia (2004), the Republic of Kazakhstan, and the Kyrgyz Republic (2002).

Since the 1990s, after the collapse of the USSR in the 20th century, the organization of an effective system for the protection of human and civil rights and freedoms has become a priority for the CIS countries. Each country sought to create a democratic legal state in which the rights and freedoms of man and citizen are the highest value. The process of formation and development of the ombudsman institution in the CIS has its own characteristics; in a number of countries, human rights commissions were established before the position of ombudsman was established. On the basis of the decrees of the leaders (in Armenia, Uzbekistan, Tajikistan), human rights commissions were established and operated (Saidov, 2022). The socio-economic situation in Kazakhstan, like in all post-Soviet states, hindered the full-fledged formation of democratic institutions. At the same time, the protection and provision of human rights was a key factor in effectively resolving the problems of the transition period and creating guarantees of democratic development. Therefore, the institution of the ombudsman, which is successfully operating in many countries of the world, has aroused particular interest. Kazakhstan's approach to the ombudsman model was associated with the desire to strengthen the protection of citizens' rights from violations by state bodies and to reduce citizens' feelings of defenselessness before the bureaucratic system (Bashimov, 2008). According to Bashimov, "the emergence of the Human Rights Institute in the Republic of Kazakhstan was a factor in the development of society and the state, its democratization, and the formation of a law enforcement system in the country. As for the formation of the ombudsman institution in Kazakhstan, it is the result of a lot of continuous work in this direction. For many years, specialists have been trying their best to determine the significance of this institution in protecting human rights and accumulate world experience in its creation. In particular, it is worth mentioning such international bodies as the United Nations Development Program, the Office of the UN High Commissioner for Human Rights, and the Organization for Security and Cooperation in Europe.

In 2022, Kazakhstan entered a new stage of its democratic development and took measures to improve legislation in key areas of the political system. One of these was the amendments to the Constitution of the Republic of Kazakhstan, adopted by referendum in 2022, which established the status of the Ombudsman (Article 83-1). That is, this law establishes the rights and powers of the Ombudsman at the constitutional level, demonstrating the importance and relevance of the Ombudsman institution. On November 5, 2022, the Law “On the Ombudsman for Human Rights” was adopted, expanding the scope of the Ombudsman’s competence and scope of law enforcement.

It is more difficult to assess the effectiveness of the activities of human rights commissioners than the work of executive bodies of state power, since the results of the activities of ombudsmen cannot always be demonstrated clearly: human rights commissioners do not build housing or roads, do not provide public services, do not implement state programs. The criteria for assessing its effectiveness should be determined by the effectiveness of the use of powers established by law, with the help of which it ensures the solution of its main tasks: assistance in ensuring guarantees of state protection of the rights, freedoms and legitimate interests of a person and citizen; assistance in the unimpeded implementation and observance of the rights, freedoms and legitimate interests of a person and citizen by state bodies and local government bodies and their officials; assistance in the restoration of violated rights, freedoms and legitimate interests of a person and citizen. It is proposed to recognize the "satisfaction" of his requests by law enforcement agencies as the criterion for the effectiveness of the commissioner's work, although this formal indicator does not at all reflect the real situation with the restoration of violated rights and freedoms.

## METHODOLOGY OF RESEARCH

The efficiency of the Ombudsman's activities is a cumulative concept that integrally unites a multifactorial process. Therefore, certain criteria should be developed in the form of a scale of indicators reflecting individual aspects of the implementation of powers expressed in quantitative and qualitative values. When constructing a scale for assessing certain rights, it is necessary to take into account the impossibility of constructing an assessment based on the principle of "one power - one indicator".

1. Indicators of the efficiency of restoration of violated rights: - the share of restoration of rights in the number of results of consideration of appeals with established facts of their violation; - the number of inspections of the activities of bodies and their officials on issues of compliance with human rights; - the number of conclusions sent to bodies, organizations or officials (in whose decisions or actions (inaction) a violation is found) containing recommendations on possible and necessary measures to restore violated rights.
2. Indicators of the efficiency of information and analytical activities: - the number of reports on compliance with human rights ; - the number of publications on human rights and their protection; — the number of free legal consultations on human rights provided to applicants; — the number of events on legal education and explanation to citizens of their rights, forms and means of their protection; — the number of proposals sent to bodies or officials on improving legislation, administrative procedures in the field of human rights and their protection.
3. Performance indicators of supporting activities: — traffic to the official website; — the number of citizens' appeals to public reception offices; — the number of media publications covering the activities; — the level of development of budget funds allocated for financing the activities. Let us consider the relationship between the above types of efficiency using the example of the activities of commissioners in preparing annual reports.

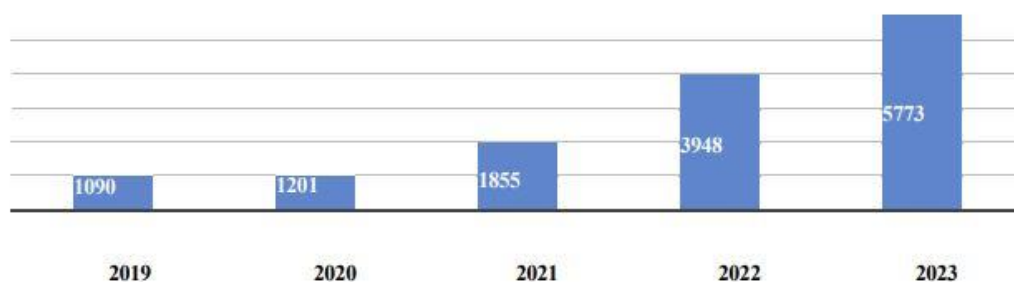
## FINDING/DISCUSSION

Complaint handling is measured merely because it is easily measurable, useful

statistics can be gathered:

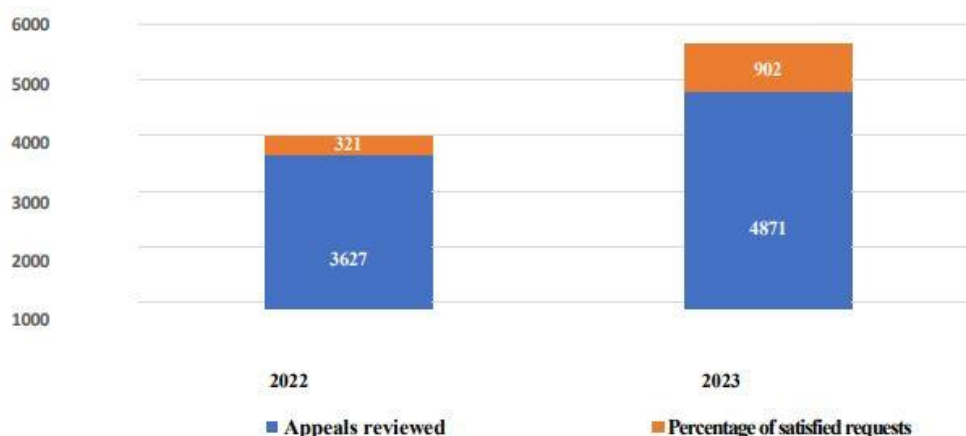
Total numbers of complaints – Compared year by year this may indicate the public profile of the ombudsman institution or show deterioration or improvement in the human rights situation. Breakdown of complaints by type – This may reveal the more widespread human rights violations – or just the issues which the public feels can be resolved through ombudsman institution. Statistics are only the starting point for evaluating impact. Institutions should supplement them with qualitative analysis (Dženana & George, 2018). In 2023, 5,773 requests were received, which is 1.5 times more than in 2022 (Figure 1).

This is due to the appearance of representatives of the Human Rights Office in the regions.



**FIGURE 1**  
**NUMBER OF APPEALS TO THE HUMAN RIGHTS DEPARTMENT OF THE**  
**REPUBLIC OF KAZAKHSTAN**

Explanations were provided for 4,057 requests, 814 were sent to the competent government agencies, and 902 requests and demands of applicants were satisfied (15.6% of the total number of requests). Compared to 2022, the number of positively resolved requests has almost doubled (in 2022, 321 or 8.1% of 3,948 requests were satisfied) (Figure 2).



**FIGURE 2**  
**RESULTS OF CONSIDERATION OF APPLICATIONS IN 2022-2023**

The largest number of complaints were received about the actions/inaction of pre-trial investigation bodies - **1,263**. In 2023, their slight increase of 9% is noted. The second large group is disagreement with judicial decisions (*an increase of 66% compared to 2022*). When such appeals were received, citizens were mainly explained the procedure for judicial appeal and the inadmissibility of interference in the activities of the court. The third group is

complaints about violations of the rights of convicts. Their number has increased 4 times. This category covers a large block of issues - failure to provide quality medical care, unsatisfactory conditions of detention, disagreement with the imposition of disciplinary sanctions, assistance in reviewing court decisions and satisfying petitions. Due to the presence of chronic problems in ensuring the rights of convicts in penitentiary institutions, the number of appeals continues to grow steadily. In complaints from citizens about the protection of the rights of persons with disabilities, a 4-fold jump is also observed. In 2023, 36 requests were received on the issue of establishing a disability group alone, while in 2022, only 27 complaints were received from persons with disabilities.

Requests for social security increased by 1.5 times. We believe that the reason for their growth is also the emergence of representative offices - 69% of applications were received by the regions. Complaints about violations of labor rights, the rights of minors, adequate housing and freedom of religion remained at almost the same level.

In total, the Commissioner and his representatives held 2,405 personal receptions, of which the Commissioner held 234, and representatives - 2,171, which is 5 times exceeds the 2022 figure (*443 were held in 2022*).

In 2024, special attention was paid to protecting the rights of vulnerable groups of the population, including people with disabilities. One of the illustrative cases was the case of a blind resident of Almaty, whom police officers repeatedly illegally brought to administrative responsibility. After the intervention of the Commissioner's representative, the decrees were canceled, and a pre-trial investigation was launched against the officials. This case not only restored justice, but also became an example confirming that the rights of citizens can be protected even in the most difficult situations. An equally important part of the Commissioner's work remains the protection of the rights of citizens serving sentences in correctional institutions. Complaints from convicts largely concerned unsatisfactory living conditions, failure to provide medical care, refusal to satisfy petitions for early release and replacement of punishment.

In total, during the year, the Commissioner and his representatives visited 770 institutions, including criminal justice institutions, social facilities and educational organizations. As a result of the visits, 1,014 recommendations were issued, of which 818 (81%) have already been implemented. Based on the results of the visits, 186 officials were brought to disciplinary responsibility, 29 to administrative responsibility. This indicates constructive interaction with government agencies and increased responsibility.

Personal receptions of citizens are another important tool of the Commissioner's work. In 2024, more than 2.7 thousand receptions were held, with Ombudsman Artur Lastayev personally receiving more than 100 people. During these meetings, legal assistance was provided, and in over 21% of cases, citizens' rights were restored. This confirms that direct interaction with the population remains one of the most effective ways to solve problems.

In 2024, much attention was paid to legal education. Offline and online training events reached more than 300 thousand people. (<https://www.gov.kz/memleket/entities/ombudsman/documents/details/649896?directi onId=52856&lang=ru>).

At the initiative of the Human Rights Commissioner Artur Lastayev, a "Legal Hour" was held in a number of regions of Kazakhstan. As part of this event, the Ombudsman held online meetings with various categories of the population for the purpose of legal education. During the "Legal Hour", regional representatives of the Commissioner took an active part. In addition, information about citizens' rights was actively disseminated through the media and social networks, which contributed to increasing legal awareness among the population. It is worth noting that the Commissioner's office is actively involved in legislative activities. In

particular, a contribution was made to the formation of a bill on the protection of women's rights and children's safety, which received a positive assessment from the international community. Following the results of the International Conference on Combating Domestic Violence, the key causes of domestic violence were discussed together with government agencies, experts, representatives of NGOs and crisis centers. As a result, a package of legislative amendments was formed, which was sent to Parliament. An information campaign was also organized to explain the new law on the protection of women's and children's rights, since not all citizens had a correct understanding of it. As part of this work, more than 900 publications were published on the pages of the Commissioner and his representatives on social networks, as well as in the media.

In general, over the past two years, the Ombudsman has submitted a number of initiatives to the government and government agencies aimed at solving systemic issues. Among them are the possibility of obtaining higher education for convicts in isolation, the construction of multidisciplinary colonies in regional centers, amendments to legislation to improve the conditions of detention of prisoners and the reintegration of citizens returned from conflict zones. For example, the initiative of the Human Rights Commissioner Artur Lastayev to establish liability for the kidnapping of a person for the purpose of forced marriage is at the development stage. It is proposed to toughen the punishment by introducing a special article into the Criminal Code of the Republic of Kazakhstan, which would also exclude the possibility of releasing a criminal who kidnapped a person for the purpose of marriage from criminal liability, even if he voluntarily releases the victim.

The issue of building multidisciplinary colonies is also under consideration. The need to build such institutions is due to the fact that currently penitentiary institutions are located far from large settlements. This negatively affects the provision of necessary living conditions, staffing, complicates logistics, complicates the provision of medical services. It also limits the communication of convicts with relatives. In this regard, Artur Lastayev, submitted a proposal to the Government to build multidisciplinary mixed security institutions that could provide conditions of detention that meet the characteristics and needs of all categories of prisoners. The concept involves the creation of colonies with separate blocks for life-sentenced prisoners, minors, women, including mothers with children, and others.

At the same time, the Ombudsman continues to work to strengthen international ties. During the year, active participation was taken in more than 20 international events, which allowed for the exchange of knowledge, strengthening partnerships and studying best practices. This also includes bilateral meetings with international partners and representatives of foreign organizations - the UNDP Resident Representative in Kazakhstan Katarzyna Wawrynia, the Chairperson of the Committee and the Commissioner for Human Rights of the German Bundestag Renate Alt, the President of the Geneva Diplomatic Circle Robert Blum, the EU Special Representative for Central Asia Teri Hakala.

Effectiveness is determined by levels of achievement and the added value of the investigation. The degree of goal attainment is an expression of the extent to which an investigation has led to resolution of the detected problem. That may range from merely highlighting an issue to fully eliminating a problem experienced by citizens (N.G.O. et al., 2017)

If we analyze the report of the Kazakhstan Ombudsman for 2024, we can see an increase in the number of complaints from citizens. In addition, statistics show us the actions of which state bodies citizens have complained about. The Ombudsman showed in his report that the legal problems of citizens in the country are being resolved through the Ombudsman institution. However, it is still difficult to say that the effectiveness of the Ombudsman institution is satisfactory. The new Constitutional Law "On Human Rights of the Republic of Kazakhstan",

adopted on November 5, 2022, grants the Ombudsman expanded powers. For example, Article 7 of this Law states that, "*the Ombudsman shall appeal to the Constitutional Court of the Republic of Kazakhstan on the issue of compliance with the Constitution of the Republic of Kazakhstan of regulatory legal acts affecting the rights and freedoms of a person and a citizen enshrined in the Constitution of the Republic of Kazakhstan.*" However, we note that so far the Ombudsman has not exercised this power.

## CONCLUSION AND RECOMMENDATION

Assessing the effectiveness of ombudsman institutions is a complex task. They intervene in a variety of ways, from law enforcement to public education, monitoring human rights conditions, and handling complaints. Each of these activities requires specific assessment methods. They also cover a wide range of issues, from labor rights to torture, from discrimination to environmental protection. More importantly, they are just one of many actors that influence the human rights environment.

The effectiveness of an ombudsman institution is not determined by how far they have moved toward a society in which all human rights are respected, protected, and fulfilled. Many ombudsman institutions operate in environments in which human rights are not an official priority, or worse, are under attack. They have limited powers. Their primary responsibility may be to maintain the line by continually monitoring government behavior and maintaining human rights awareness in society. Ombudsman institutions are often most effective when they work in conjunction with other organizations, perhaps as a catalyst. This role is not easy to quantify.

Finally, it is important to stress that quantitative and qualitative indicators are not goals in themselves when examining the effectiveness of the ombudsman institution. They are useful tools if they help the ombudsman institution become more effective in promoting and protecting human rights. They generate performance targets and impact information.

In conclusion, ombudsman institutions tend to be more effective when they: *Are accessible to society*: ombudsman institutions should make inform what the purpose of their activity, and how they can be contacted, to the public and non-governmental groups. Their offices should be accessible. Vulnerable groups should have access to the ombudsman.

*Have public trust*: national institutions gain public or popular confidence when they are seen to defend the rights of the powerless against powerful interests and to act fairly in matters within their competence.

*Ensure integrity and quality of staff*: the quality of members, management and staff is vital to the effectiveness of the ombudsman institution. Transparent appointment procedures will result in independent, professional and courageous members.

*Contact with civil society*: civil society organisations, human rights NGOs and community based groups, can be effective links between national institutions and individuals or groups who are politically, socially marginalised.

*Have a broad mandate*: the most effective national institutions generally have a broad and non-restrictive mandate, which includes civil, cultural, economic, political and social rights. Have power to monitor compliance with their recommendations: ombudsman institutions should have power to monitor the extent to which relevant authorities follow their advice and recommendations.

*Have adequate budget*: ombudsman institutions are often ineffective because they lack resources. Control over their funding should be independent of the government of the day. Governments and legislatures should ensure that institution receive adequate funds to perform all the functions set out in their mandates.

*Develop effective international relations:* through international relations, ombudsman institutions can develop national systems and exchange experiences in protecting human rights.

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