

ЮРИДИЧНІ НАУКИ

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Veranika Bryliova

*PhD (Laws), Associate Professor, Department of Theory and History of the State and Law
F. Skorina Gomel State University
Gomel, Belarus*

ABOUT THE BELARUSIAN MODEL OF OMBUDSMAN THROUGH THE PRISM OF THE INSTITUTION OF OMBUDSMAN OF SWEDEN

Abstract. *One of the reasons that the institute of ombudsman remains hypothetical is the absence of the Ombudsman concept developed in view of legal, political, social environment in Belarus. In more than 90 countries of the world there are about 150 various bodies and structures carrying out functions of ombudsman now. This institute has proved a surprising ability to updating in view of social, legal conditions of the concrete state, its traditions. In the context of the problem, the article is devoted to a substantiation of Byelorussian model of the institute of Ombudsman through the prism of the institution of the Ombudsman of Sweden.*

Keywords: *Ombudsman, Ombudsman of Sweden, the Ombudsman against Ethnic Discrimination, the Equal opportunities Ombudsman, powers, forms of response to violations, the national model, human rights.*

Вероніка Брильова

*канд. юр. наук, доцент кафедри теорії та історії держави і права
Гомельський державний університет ім. Франциска Скорини
м. Гомель, Республіка Білорусь*

ПРО БІЛОРУСЬКУ МОДЕЛЬ ОМБУДСМЕНА КРІЗЬ ПРИЗМУ ІНСТИТУТУ ОМБУДСМЕНА ШВЕЦІЇ

Анотація. *Однією з причин того, що сьогодні інститут омбудсмена залишається гіпотетичним, є відсутність концепції омбудсмена, розробленої з урахуванням правового, політичного, соціального середовища Республіки Білорусь. На даний час більш ніж у 90 країнах світу існує близько 150 різних органів і структур, що виконують функції омбудсмена. Цей інститут довів дивовижну здатність до модифікацій з урахуванням соціальних, правових умов конкретної держави, її традицій. У контексті означеної проблеми, стаття присвячена обґрунтуванню білоруської моделі інституту омбудсмена крізь призму інституту омбудсмена Швеції.*

Ключові слова: *омбудсмен, омбудсмен Швеції, омбудсмен у сфері етнічної дискримінації, омбудсмен з питань гендерної рівності, повноваження, форми реагування на порушення, національна модель, права людини.*

Вероніка Брильова

*Канд. юр. наук, доцент кафедри теорії та історії держави і права
Гомельський державний університет ім. Франциска Скорини
г. Гомель, Республіка Білорусь*

О БЕЛОРУССКОЙ МОДЕЛИ ОМБУДСМЕНА ЧЕРЕЗ ПРИЗМУ ИНСТИТУТА ОМБУДСМЕНА ШВЕЦИИ

Аннотация. *Одной из причин того, что в настоящее время институт омбудсмена остается гипотетическим, является отсутствие концепции омбудсмена, разработанной с учетом правовой, политической, социальной среды Республики Беларусь. В настоящее время*

более чем в 90 странах мира существует около 150 различных органов и структур, выполняющих функции омбудсмена. Этот институт доказал удивительную способность к модификациям с учетом социальных, правовых условий конкретного государства, его традиций. В контексте обозначенной проблемы, статья посвящена обоснованию белорусской модели института омбудсмена через призму института омбудсмена Швеции.

Ключевые слова: омбудсмен, омбудсмен Швеции, омбудсмен в сфере этнической дискриминации, омбудсмен по вопросам гендерного равенства, полномочия, формы реагирования на нарушения, национальная модель, права человека.

The Republic of Belarus enshrined international human rights standards in national legislation. At the same time, the authorities are afraid to create an ombudsman institution between society and the state.

The research problem: the absence of Ombudsman in Belarus. There is no point of contact between civil society and the state. The specified problem raises two questions:

1. **What will be the Ombudsman's plan for Belarus?**
2. **What is the concept of the Ombudsman institution for Belarus?**

The research of methods are: general scientific (analysis, synthesis, analogy, induction and deduction) and private-scientific (comparative legal, historical, logical-legal, structure-but-functional) methods of scientific cognition.

Every year, thousands of complaints about human rights violations come from citizens to state bodies, including the Administration of the President, the Parliament, the Constitutional Court of the Republic of Belarus. For example, *in 2016, the Administration of the President received 24291 written, electronic and oral appeals.*

In addition to the Administration of the President, Parliament, the Constitutional Court of the Republic of Belarus, dozens of local officials are forced to consider complaints (telephone lines with local officials even at weekends).

The essence of the Ombudsman institution

Professor Gellhorn said that the Ombudsman concept is very simple. He means only that a citizen aggrieved by an official's action or inaction should be able to state his grievance to an influential functionary, empowered to investigate and to express conclusions.

Belarusian society needs this institution.

Decree of the President of the Republic of Belarus (November 16, 2006) on the National Commission on the Rights of the Child established an analogue of a specialized ombudsman on the rights of the child. Belarus is moving towards the creation of specialized ombudsmen, for example, on the rights of the child.

The Committee on the Rights of the Child has similar functions with the Ombudsman.

So, the study of specialized Ombudsmen of Sweden is important. More interesting are the following institutions. Historically, two:

1. The Equal Opportunities Ombudsman (Ja"mO) was created in 1980 to combat gender discrimination;
2. The Ombudsman against Ethnic Discrimination (DO) in 1986 to fight ethnic discrimination.

The establishment of these two offices represents a state response to the criticism of the universal Swedish welfare model constructed earlier in the twentieth century. The creation of the two ombudsman offices was a response to the critique of the welfare state for assuming a «male» and a «Swedish» norm. That is, a welfare state blind to power structures other than class. With the establishment of the two ombudsman offices, the class perspective became accompanied by a gender and an ethnic perspective [1, pp. 85].

The creation of two ombudsman offices did not correspond to a purely Swedish one social-democratic welfare model. On the contrary, this represents an important shift in the as a political policy of social justice was aimed at a more liberal. Serious conflicts associated with Signs of this are the creation of offices. In this three key elements change. First, the class perspective was accompanied by a gender and ethnic prospects, that is, the social class was no longer considered one and only important power structure. Secondly, the previous political emphasis on the team It is challenged and ultimately replaced by an individual with priority. This change occurred both at a discursive and institutional level. For example, there were in the long run, wider choice opportunities between different service providers (for example, care for the elderly, social assistance, childcare). The third sign of the changing «logic of politics» was the increasing importance attached to civil rights (rather than social rights). This change is quite logical to think that the concept of discrimination is closely related to the idea of human rights. In combination with increased attention to specific than universal) social security benefits and cultural (and not economic) injustices, this suggests that the creation of two ombudsman offices was part of a larger process in which the model of liberal welfare was protested, and ultimately replaced, the universal Swedish model of the welfare state [1, pp. 97].

A few years ago they were united.

Today, the Ombudsman in Sweden has a huge influence, but very rarely acts as a prosecutor. Working in the field of discrimination, the Ombudsman does not conduct national investigations or public hearings on the case, public examination. The powers of the Swedish Ombudsman for discrimination are limited. He has great authority, can act as a representative in court, conduct private investigations, but his powers are limited and need to be strengthened.

The website of the Swedish Ombudsman in the field of discrimination contains an extensive conceptual apparatus: definitions, forms of discrimination, and areas of discrimination, the spheres in which it is possible, cases, and much more (*www.do.se*).

The website of the Belarusian Ombudsman for the Rights of the Child contains only a schedule for the reception of officials and activities with children, such as drawing contests or holidays (www.nchtdm.by).

The term «discrimination» can broadly encompass events or chains of events that some perceived as abusive, disadvantageous, racist, unfair, unequal or similar. However, there are often differences between the legal definitions of discrimination and what individuals may experience as discriminatory.

A simplified description of the law's definition of discrimination is that someone is disadvantaged or violated. The disadvantage or violation should also be related to any of the seven grounds for discrimination:

1. sex;
2. gender identity or expression;
3. ethnicity;
4. religion or other beliefs;
5. disabilities;
6. sexual orientation;
7. age [2].

So, in Sweden, the activities of one specialized ombudsman for discrimination cover 7 areas or unite seven specialized ombudsmen.

In the case of the Republic of Belarus, this may be the following:

1. the right to freedom of religious belief;
2. the rights of disabled people;
3. the rights of children;
4. the rights of elderly people.

Thus, we can answer the first research question: What will be the Ombudsman's plan for Belarus? **This is a Specialized Ombudsman, which will combine four activities.** It can be called the Discriminatory Ombudsman, as in Sweden, or the Ombudsman for the unprotected layers of society.

The answer to the second research question: What is the concept of the Ombudsman institution for Belarus?

We propose the following concept of the Specialized Ombudsman of Belarus.
The concept of the Specialized Ombudsman of Belarus:

1. The institution Ombudsman should be organized at the republican level with activities: the right to freedom of religious belief, the rights of disabled people, the rights of children, the rights of elderly people.

2. The government type of the Ombudsman institution (appoints the President).

3. The rights to appeal with have: citizens of the Republic of Belarus, foreign citizens, stateless people, citizens' organizations through authorized representatives of these organizations.

4. The access to the Ombudsman should not be bounded with requirements of the legal validity of the complaint; payment of state duty; strict complaint procedures. Moreover, it is not necessary for the applicant to suffer from an official; he can act in the interests of the injured person.

5. The procedure for applying to the Ombudsman may be limited if a victim has not used existing legal remedy, for instance – has not appealed against action or inaction of violator to higher authorities within an organization.

6. The procedure for receiving complaints to the Ombudsman's service: directly from interested persons and indirectly, that is, through state authorities.

7. The Ombudsman in Belarus should take actions not only on the basis of a complaint, but also on its own initiative.

8. The Ombudsman's competence is extended to state bodies, local self-government bodies, except of presidential structures, government, and parliament.

9. Belarus has an extensive system of control and supervisory bodies that have the right to conduct audits and inspections. Therefore, we propose the model of the ombudsman, the main method of activity of which will be the examination of complaints. *We think that the ombudsman should not inspect the courts, because this could violate the principle of independence of the judiciary.*

10. The most common forms of the Ombudsman's response to human rights violations are proposals, recommendations, reports to the parliament. Along with these forms of response, we propose to give the Belarusian Ombudsman the right to legislative initiative and the right to verify the compliance of the laws to the constitution.

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