

TAI-UK CHUNG, ZHULDYZ SAIRAMBAEVA,
PIERRE CHABAL (eds.)

ON THE ASIAN AND EUROPEAN ORIGINS OF LEGAL AND POLITICAL SYSTEMS

VIEWS FROM KOREA,
KAZAKHSTAN AND FRANCE



Cultures juridiques
et politiques



PETER LANG



Cultures juridiques et politiques

Vol. 13

Les conceptions du pouvoir, du droit et de l'ordre se réfèrent inévitablement à l'ensemble du système de représentations qu'est la culture de chaque société. Toute forme de culture ayant donc nécessairement une dimension politique et juridique, la collection « Cultures juridiques et politiques » publie des travaux, tels que des thèses, synthèses de recherches, ouvrages collectifs et actes de colloques, se proposant de faire connaître les systèmes politiques et juridiques des pays européens, d'évaluer les grandes tendances des processus d'intégration politique et d'harmonisation juridique en cours dans l'Union européenne et d'éclairer les interférences entre le politique, le juridique et les autres aspects « culturels » dans le contexte de ces processus.

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deepening). 3) *Converting these preferences* (done) as policies is a sort of trade-mark of European regionalism. Other regions do have common programmes of action⁷; European have common policies monitored by a *supra-sovereign* system of (political) decision-making and a *supra-sovereign* system of (legal) sanctions.

*

In conclusion, this paper suggests that both facts and theories point to a constant progress in region-building. By contrast, a recent paradox seems to offset this view rather strongly. A number of regional groupings are loosing momentum: 1) in 2016, the British inspiration of a “Brexit” signalled that in Europe things could “fall apart” (Ch. Achebe); 2) in 2017, the US inspiration of reshuffling NAFTA suggests a dismantling of twenty-five years of neo-construction in north America; 3) in 2014, the offer to Ukraine of an association has destabilised all partnerships: Ukraine-EU and Ukraine-EAEU; 4) in 2012, the Uzbek exit from the Russia-dominated CSTO suggested a limit to Russia’s capacity to hold together post-sovietism for the benefit of the China-dominated “new Asia” of the “Shanghai cooperation”.

Yet, this paradox is not recent. Or, otherwise put, it is not a surprising paradox. It is a paradox that marks a return to – or a continuation of – the long-standing system of rival ambitions in the world. Maritime powers (England, the United States, ...) and continental powers (Russia, China, ...) are resuming their historical inclinations. This is an “origin” of some aspects of the world “system” of power-balancing. The passing of time gives any period in history (the cold war, ...) the connotation of a parenthesis.

Today, time has passed since the cold war, since colonial times, since imperialisms. The world is not a *tabula rasa* but, still, we can think “anew” about old “origins” of our political and legal systems. And so we should!

⁷ See “De la décolonisation bilatérale à la construction régionale: le cas de l’Afrique de l’Ouest”, *op. cit.*

International and National Frameworks for the Legal Status of the *Ombudsman* in Kazakhstan

Zulfiya BAIMAGAMBETOVA and Alexandra BERKUTA

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The *Ombudsman* or Commissioner for Human Rights in Kazakhstan, a comparatively novel institution, is analysed here through the legal basis for the functioning of the *Ombudsman* office since its inception.

After reviewing the prerequisites of the creation of a national human rights institution in Kazakhstan, this article examines the national legislation regulating the legal status of the *Ombudsman* and its correlation with international standards. Kazakhstan has a specific model of *Ombudsman*, one characteristic features being the procedure for his/her appointment.

The peculiarity of the Kazakhstani model is achieved through the synthesis of two different ways of appointing the Commissioner, which, according to the Provision, is a nomination by the President after consulting the Committees of the Houses of Parliament.

It is suggested some appropriate changes and amendments to the national legislation, expanding the competence of the Commissioner for Human Rights, enhancing his role and significance as an effective national human rights institution.

I. Materials and methods: the creation of the institution of an *Ombudsman*

The active participation of Kazakhstan in international relations was an important factor in the emergence of new goals for the state and society, successful achievement of which is impossible without effective instruments for protecting rights and freedoms of citizens. Undoubtedly, the need to establish effective mechanisms for the protection of human rights is objectively determined by the tasks of building a law-governed state in

Kazakhstan, where the highest values, according to the Constitution, are the individual, his/her rights and freedoms.

In 2012, the head of state in his annual message to the people of Kazakhstan noted: "We have preserved and strengthened domestic political stability and national unity in the country where representatives of 140 ethnic groups and 17 confessions live. Our policy was successful. We consistently form the institutions of civil society on the basis of a democratic model of development. The institution of the *Ombudsman* has been established".

The *Ombudsman* institution is a relatively new concept for the post-Soviet states. The creation of the *Ombudsman* institution in Kazakhstan was a result of long-term efforts to encourage the establishment, highlighting its role in international practice and identifying the positive impact on the human rights situation¹.

Today, Kazakhstan has a necessary legal framework regulating the activities of the *Ombudsman* institution.

It should be noted that the Constitution establishes the priority of international treaties ratified by the Republic over its laws in the field of human rights and freedoms. As a result, international acts (such as treaties, conventions, etc.) constitute the basis of the legal provision of the institution. In this regard, it is necessary to pay attention to the issue of international legal support for the activities of the *Ombudsman*.

World practice shows that the international legal basics of the *Ombudsman* institution functioning well can be formed within the framework of universal organisations, such as the UN, or within the framework of regional international organisations, for example, the Council of Europe.

The Paris Principles adopted by the resolution of the General Assembly in 1993 play an important role in determining the international legal basics of the institution functioning. This act represents a set of declarative norms aimed at increasing the effectiveness of the functioning of national human rights institutions due to their independence from the authorities and the principle of pluralistic representation of civil society members.

The methodological basis of the article is the formal logical method of law interpretation. To give a full description of the international legal and national foundations of the legal status of Kazakhstan's *Ombudsman*,

¹ History of establishment of the *Ombudsman* institute in the Republic of Kazakhstan (in Russian), <http://www.ombudsman.kz/about/history.php?print=Y>.

using the method of historical analysis, a comparative legal method, an analysis of various legal acts and official documents, scientific dissertations and information published in scientific publications and official websites, legal bases.

II. Results of the study: Kazakhstan's rapport with the principles of human rights

An analysis of these principles shows that in the world practice there have not yet been established any "rigid" standards with which *Ombudsmen* of all countries of the world should comply in detail. The recommendatory nature of the norms – the Paris and Belgrade principles – allows for the modification and transformation of the institution in various States and legal systems, depending on the political, social and other characteristics of states.

European standards developed within the Council of Europe have a significant impact on the definition of the legal basis for the functioning of human rights institutions in participating countries. The adopted 1950 *Convention on the Protection of Human Rights and Fundamental Freedoms*, a number of protocols supplementing and amending its provisions and other international treaties (to date, about 216 documents) have a significant impact on the norm-setting activities of the Council of Europe's member-states, including in the field of human rights.

Thus, the *Convention on the Protection of Human Rights and Fundamental Freedoms* not only proclaimed fundamental human rights, but also created a special human rights mechanism, initially comprising three bodies: the European Commission on Human Rights, the European Court of Human Rights and the Committee of Ministers of the Council of Europe.

The organisation of the control mechanism was altered by the 1998 Protocol No. 11 to the Convention. As a result, the European Court of Human Rights has become a single, constantly acting judicial mechanism.

Standards developed within the framework of the Council of Europe also provide for the establishment of national human rights institutions. The main control-measures carried out by this regional organisation are consideration of the reports of Member States on the human rights situation and the law enforcement practice in the country.

Kazakhstan is to date not a member of the Council of Europe, however, as an author noted, after studying the functioning of the human rights

mechanism of the Council of Europe: "Kazakhstan needs to closely monitor the development of the European model of individual rights, and, if possible, bring its national legislation in line with European standards"².

It should be noted that states that are not members of the Council of Europe cannot act as defendants in the ECHR because they are not parties to the *Convention on the Protection of Human Rights and Fundamental Freedoms*. Thus, a State not recognizing the jurisdiction of the Court thereby deprives its citizens and other persons residing on its territory of the possibility of filing a complaint about violations of human rights guaranteed by the European Convention and its protocols.

However, the jurisdiction of Convention bodies operating within the UN framework (for example, the Human Rights Committee, the Committee on Enforced Disappearances, the Committee against Torture, etc.) may be recognised in the state³.

The Republic of Kazakhstan thus ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and its Optional Protocol (2002). The Presidential Decree of 19 December 2007 "On signing the Declaration of the Republic of Kazakhstan on recognizing the competence of the Committee against Torture provided for in Articles 21 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" recognised the competence of the Committee against Torture⁴.

As a result, the Republic of Kazakhstan can act as a defendant in the event that any person who believes that his rights guaranteed by

² Erzhanov T.K., "Correlation of the legislation of Kazakhstan with the norms of the European Convention on the Protection of Human Rights and Fundamental Freedoms (in Russian)", *Legal regulation of the legislative process in Kazakhstan and improvement of political system in the conditions of modernisation of Kazakhstan society (problems of theory and practice): materials of the theoretical conference*, Almaty, 2014, pp. 23-28.

³ Aidarbaev S., Shumilov M., *International Public Law (in Russian)*, Almaty, Kazak universiteti, 2012, 432 p.

⁴ The decree of the President of the Republic of Kazakhstan, 19 December 2007 No. 493 "About signing of the Statement of the Republic of Kazakhstan for recognition of the competence of Committee Against Torture provided by articles 21 and 22 of the Convention against tortures and other cruel, inhuman or degrading treatment or punishment of December 10, 1984" (in Russian), http://online.zakon.kz/Document/?doc_id=30148507&doc_id2=30153835#sub_id=1000714878&sel_link=1000714878.

the Convention against Torture have been violated has appealed to the Committee against Torture.

It is important to note that Kazakhstan is a member of several regional organisations such as the Shanghai Cooperation Organisation, the Commonwealth of Independent States etc. Thus, at the 24th plenary meeting of the Inter-parliamentary Assembly of the CIS member states in 2004 was adopted the Model Law of the CIS "On the Status of the Ombudsman for Human Rights". However, this act operating only as a norm-setting standard has recommendatory nature and is not mandatory for the legislative bodies of the Member States.

The Model Law regulates the issues of the legal status of the Commissioner, the procedure for his appointment and termination of powers, the principles and guarantees of activities, and other issues that determine the basis for the functioning of the institution. Partly the norms of the Model Law are reflected in the legislation of the Republic of Kazakhstan.

In sum, regional and international standards can influence the formation of the legal status of the Ombudsman institution, which indicates the appearance of various variations of the institute models, its modification and transformation.

III. Discussion of the results: an appraisal of the Ombudsman in Kazakhstan

A comparative legal analysis of the Ombudsman status in different states is sufficiently illuminated in the works of some⁵. Proceeding from this, it is possible to limit ourselves to the above-mentioned basic features of the Ombudsman institution formation. Regardless of the international legal basis for the formation of the institution, it has the status of a national institution.

a)

In Kazakhstan, the institution of the Ombudsman is defined in accordance with the Paris Principles. However, the ratified international treaties on human rights, such as the International Covenant on Civil

⁵ Bashimov M.S., "The Ombudsman in Kazakhstan: The status of this human rights institute in our country is not yet clear (in Russian)", *Legal Newspaper*, 2002, No. 19, pp. 14-17.

and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment etc., have also had an important impact on the determination of its legal status.

The above-mentioned international treaties have defined the basic set of rights and freedoms that every individual possesses without any discrimination. It should be noted that in international treaties only general principles for the establishment and functioning of the *Ombudsman* institution are indicated. From the content of international documents in the field of human rights it follows that the legal conditions for the establishment of this institution are created at the national level.

Depending on the peculiarities of the state legal system, the *Ombudsman* institution acquires its own specific characteristics in each state, which may not always fully correspond to international standards (despite the fact that the Paris Principles are of a general, recommendatory nature). First of all, it is connected with the determination of the place of the new body in the already established system of state bodies, the designation of the basic functions and the limits of its competence. Such difficulties arose in Kazakhstan in the process of establishing the institution of the *Ombudsman*.

b)

The idea of establishing a human rights institution in Kazakhstan was first voiced at an international seminar in Geneva in January 1995, conducted by the OHCHR. Based on the study of international experience in organizing the work of such institutions, the Kazakh delegation spoke about the possibility of establishing the institution of the *Ombudsman* for Human Rights in Kazakhstan⁶. The initiative was supported by the UNDP Resident Representative in Kazakhstan, N. Ringros, who also took part in the seminar.

By 1997, chaired by the Commission on Human Rights, a series of round-tables were held to discuss issues related to the establishment of the *Ombudsman* institution.

Later, the government of Kazakhstan, the Commission on Human Rights and the United Nations Development Program signed a joint project aimed at strengthening the capacity of the Commission on Human

⁶ *History of establishment of the Ombudsman institute in the Republic of Kazakhstan* (in Russian), <http://www.ombudsman.kz/about/history.php?print=Y>.

Rights and promoting the development of the *Ombudsman* institution in Kazakhstan in 1998.

Thus, in Kazakhstan, the rights and freedoms of man and citizen are recognised and guaranteed in accordance with the norms of the Constitution (section II). In addition, Kazakhstan has also assumed obligations arising from international treaties on human rights ratified in accordance with established legislation. Article 4-3 of the Constitution declares that "International treaties ratified by the Republic shall have priority over its laws and be directly implemented, except in cases when the application of an international treaty shall require the promulgation of a law"⁷.

The rights and freedoms enshrined in the Constitution form the basis of a person's legal status, reflect his dignity and inviolability, emphasizing the absolute and inalienable nature of such rights. The right to life, personal freedom, inviolability of private life and housing, judicial protection and other civil rights express the humanistic basis for the development of a democratic society.

However, there are no norms in the Constitution providing for the existence and functioning in the public administration system of an independent human rights body, the *Ombudsman* institution. In addition, although the Constitution contains an exhaustive list of parliamentary powers, it does not include a provision on the appointment of the *Ombudsman* for Human Rights as the supreme representative body.

Thus, when developing a normative legal act regulating the activity of the *Ombudsman*, a difficulty arose: to ensure that such an act fully complies with international standards (independence, procedure for appointing the Commissioner by the Parliament, etc.) it was necessary to amend the Constitution of the Republic.

At the same time, the concept of Kazakhstani legal policy in the sphere of national law in 2002 provided for further improvement of the legislation on elections, along with a more precise definition of the competence and functions of various levels of government, including local government and the development of the *Ombudsman* institution⁸.

In August 2002, in his speech on the occasion of the 7th anniversary of the Constitution, N. Nazarbayev noted the importance of the *Ombudsman*

The Constitution of the Republic of Kazakhstan. Educational and practical guide (in Russian), Almaty, "Norma-K" Publishing House, 2011, 44 p.

Concept of the legal policy of the Republic of Kazakhstan in 2002 (in Russian), Electronic information system "PARAGRAPH".

institution establishment as a phenomenon inherent in democratic countries and stressed the need to create such an institution in the Republic of Kazakhstan.

The main act that determined the establishment of the institution was the Decree of the President of the Republic of Kazakhstan of 19 September 2002 No. 947 "On establishment of the position of the Commissioner for human rights".

Thus, the establishment of the *Ombudsman* institution in Kazakhstan became possible due to the political initiative of the President.

The legal status of the *Ombudsman* is regulated by the Provision on the Commissioner for Human Rights, approved by the above Decree. Thus, Article 1-1 of the Provisions stipulates the following: "The Commissioner for Human Rights is an official who monitors the observance of human and citizen's rights and freedoms, empowered within its competence to take measures to restore violated rights and freedoms of a person and citizen"⁹. The norms of the Provision consolidate the role and place of the *Ombudsman* as an additional element in the mechanism for the protection of human rights, along with the already available human rights instruments.

It should be noted that the main principles on which rest the Commissioner's activities are: the principle of legality, the priority of human and citizen rights and freedoms, objectivity and publicity. The legislative consolidation of these principles is the guarantor of the independence in the activities of the *Ombudsman*. In addition, the independence of the institution is guaranteed by the procedures for appointing and dismissing, prohibiting unlawful interference in the activities of the *Ombudsman* in the performance of his duties (Clause 5 of the Provision).

c)

The analysis of the norms of the Provision suggests that Kazakhstan has a specific model of the *Ombudsman* institution.

The peculiarity of Kazakhstan's model is achieved through the synthesis of two different ways of appointing the Commissioner, who, according to the Provision, is appointed to the post by the President after consulting the Committees of the Houses of Parliament. Thus, having received his/

⁹ Decree of the President of the Republic of Kazakhstan, September 19, 2002 No. 947, "On establishment of the position of the Commissioner for human rights" (in Russian), *Legislation of the Republic of Kazakhstan*, 2002, No. 30, Article 328.

her power, a derivative of both the President and not, according to the Constitution, to either the branches of power or the Parliament, the Commissioner achieves an equally independent position vis-à-vis the executive and legislative branches of government¹⁰.

The UN Center for Human Rights explained that "an independent legal status must be at a sufficiently high level so that the institution can perform its functions without being interfered or opposed by any branch of government or any public or private entity. This can be achieved by subordinating the institutions directly to the parliament or head of state"¹¹.

The Provision regulates the following activities of the Commissioner for the implementation of his mandate: 1) request from officials and organisations necessary for the consideration of the complaint information; 2) taking measures to protect the violated rights and freedoms of man and citizen; 3) facilitating the implementation of the legislation of the Republic of Kazakhstan; 4) participation in the work of international human rights organisations and other non-governmental human rights organisations; 5) to promote legal education in the field of human rights and freedoms; 6) publication in the mass media of official communications on the results of inspections, etc.¹²

d)

Proceeding from the foregoing, as the main function of the *Ombudsman*, as a human rights institution, it is possible to single out consideration and resolution within the competence of applications for the restoration of violated rights.

In the opinion of specialists, a comparative legal analysis of the completeness of the powers conferred by *Ombudsmen* in other countries of the Central Asian region (for example, Akyikatchy Kyrgyzstan) allows us to conclude that the powers of the national Ombudsman are rather limited.

¹⁰ *History of establishment of the Ombudsman institute in the Republic of Kazakhstan* (in Russian), <http://www.ombudsman.kz/about/history.php?print=Y>.

¹¹ Bashimov M.S., "The Ombudsman in Kazakhstan: The status of this human rights institute in our country is not yet clear (in Russian)", *Legal Newspaper*, 2002, No. 19, pp. 14-17.

¹² Decree of the President of the Republic of Kazakhstan, September 19, 2002, No. 947, "On establishment of the position of the Commissioner for human rights" (in Russian), *Legislation of the Republic of Kazakhstan*, 2002, No. 30, Article 328.

Thus, Paragraph 18 of the Provision contains norms concerning the restriction of its competence: "The Commissioner does not consider complaints against actions and decisions of the President, Parliament of the Republic of Kazakhstan and its deputies, the government of the Republic of Kazakhstan, the Constitutional Council, the Prosecutor General, the Central Election Commission, and courts of the Republic of Kazakhstan". This provision does not comply with the norms of the Paris Principles, which directly stipulate the allocation of national human rights institutions to a broad mandate of authority.

In 2004, the Presidential Decree "On Further Improvement of the System of Protection of Constitutional Rights and Freedoms of Man and the Citizen" made some changes and additions to the Provision that expand the competence of the Commissioner by granting him/her the power to participate in judicial proceedings and appeal to a court or prosecutor's office with a request for verification entered into legal force of the judicial act. It was intended to allow the *Ombudsman* to participate at any stage of the trial in court, if such participation is necessary to protect the violated human rights. In addition, submission of motions to verify legally-enacted acts could lead to an increase in the role and significance of this institution in respecting and protecting the rights of individuals.

In order to expand the mandate, Parliament adopted in 2006 the Law "On Amendments and Additions to the Criminal Procedural and Civil Procedural Codes of the Republic of Kazakhstan on the Support of Activities of the Human Rights *Ombudsman*". Subsequently, the Constitutional Council recognised the Law as not in accordance with the norms of the Constitution, and it lost its legal force¹³.

Thus, the attempt to expand the powers of the Commissioner by giving him the right to participate in the proceedings and filing motions to verify the acts that came into force was not successful.

In addition, the analysis of the Provision shows that the only act of response is the sending by the *Ombudsman* of recommendations on measures that an official should take to restore violated rights. However, at the legislative level, there is still no mechanism for monitoring the implementation of each act of response. The Provision only says that an official is obliged to consider recommendations within a month and inform the *Ombudsman* of the results of their consideration or reject the recommendations, motivating such a refusal on the merits.

¹³ The report on activity of the Commissioner for Human Rights, 2006 (in Russian), http://www.ombudsman.kz/publish/docs/doklad_zhyl/detail_2.php?ID=1439.

In our view, since the *Ombudsman's* activities are primarily aimed at ensuring respect for human rights, it is necessary to develop a mechanism for monitoring the implementation of his recommendations, which in turn will strengthen the position of the *Ombudsman's* institution as a national human rights institution.

Also, it is necessary to pay attention to the issue of participation of the *Ombudsman* in the processes of improving the legislation and bringing it in line with the generally recognised principles and norms of international law as one of the fundamental directions of its activities.

Within the framework of the program of bilateral partnership of the *Ombudsmen* of Kazakhstan, Spain and Greece "Strengthening of the Ombudsman Institution in Kazakhstan", suggestions and recommendations were made on empowering the Commissioner with the right of legislative initiative following the example of Finland, Croatia and a number of other countries. As noted, vesting the *Ombudsman* with such a right would facilitate the effective performance of this institution and function to improve legislation.

The issue of material and personnel support of the *Ombudsman* institution in Kazakhstan does not lose its relevance. As noted in the Paris Principles, the financial independence of the institution is an important principle in the work of human rights institutions. The need to expand the Commissioner's staff is connected, first of all, with the increasing number of complaints and appeals, expert-consulting work, projects implemented in cooperation with international organisations.

Based on the results of the national report of Kazakhstan under the Universal Periodic Review (UPR), held in 2010, the Human Rights Council adopted a number of recommendations on bringing the national legislation governing the *Ombudsman* in line with the Paris Principles.

The main recommendations proposed to improve the effectiveness of human rights institutions include the following: a) to review institutions such as the Human Rights Commission and the Commissioner for Human Rights (*Ombudsman*), and take the necessary measures to bring them in line with the Paris Principles; b) to establish the position of the National *Ombudsman* for Children with a view to effectively promoting and protecting the rights of children, etc.¹⁴

¹⁴ Human Rights Council. Report of the working group on the universal periodic review: Kazakhstan, 23 March 2010, A/HRC/14/10 (in Russian), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/124/94/PDF/G1012494.pdf?OpenElement>.

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In order to implement the recommendations in practice, the Action Plan for the implementation of the recommendations of the UN Member States in the framework of the Universal Periodic Review of Human Rights for 2011-2014 was adopted by the governmental Decision in 2011¹⁵.

It should be noted that, based on incomplete compliance with international standards, the Subcommittee on Accreditation of the International Coordinating Committee of National Human Rights Institutions, the Ombudsman for the Republic of Kazakhstan was given the status "B" in 2012.

To date, we can talk about the partial implementation of recommendations aimed at bringing the institution of the *Ombudsman* in line with the norms of the Paris Principles.

Starting from 2013, there has been a tendency to expand the powers of the Commissioner by introducing changes and amendments to the legislative acts of the Republic of Kazakhstan. Thus, the Penal Enforcement Code assigns the post of coordinator of the National Preventive Mechanism to the Commissioner for Human Rights. However, practice shows that the process of bringing the institution of the Ombudsman in line with international standards requires radical changes in Kazakhstan's legislation.

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In conclusion, this research on the definition of the international and national bases of the Ombudsman institution's legal status in Kazakhstan, suggests the following.

The Paris Principles was the basis of the creation of the Kazakhstan model of the *Ombudsman* institution. Today, there is a partial compliance of the *Ombudsman's* legal status with international norms for several reasons.

- a) the lack of regulations governing the Commissioner's activities in the Constitution caused a number of difficulties in the establishment and functioning of the institution. The solution of these difficulties was overcome by creating a specific model of the *Ombudsman*, adapted

¹⁵ Decree of the Government of the Republic of Kazakhstan, October 13, 2011, No. 1165, "The Action Plan of the Government of the Republic of Kazakhstan on implementation of the recommendations of the Member States of the United Nations in the Universal Periodic Review on Human Rights for 2011-2014" (in Russian), <http://www.adilet.gov.kz/ru/nodc/30634>.

to the Constitution of the country. To date, the Kazakhstani model of the Institution assumes the use of the method of appointing the Commissioner to the post by the President after consulting the Committees of the Houses of Parliament.

- b) the considerably limited mandate of the *Ombudsman* also affects the effective implementation of human rights activities and the importance of the institution in society. The norms defining the Commissioner's mandate restrict his/her activities, excluding complaints against actions and decisions of the president of the Republic, the government, the Constitutional council and a number of other authorities. In addition, no legislative act provides for the right of the *Ombudsman* to apply to the Constitutional Council, to participate in the judicial examination of the case, to initiate bills. Such restrictions run counter to the Paris Principles recommending the allocation of a wide range of powers to national human rights institutions.
- c) the personnel and material support of the institution of the *Ombudsman* to date does not satisfy the needs of the institution for the effective performance of human rights functions. Providing sufficient government funding and labour is a prerequisite for the Paris Principles.

This list of factors, which to some extent influence the compliance of the institution with international norms and standards, is not exhaustive. These shortcomings were identified as a result of the analysis conducted within the framework of the study.

In addition to the Paris Principles, the ratified international treaties on human rights, as well as the Model Law on the Status of the Human Rights *Ombudsman*, adopted by the Inter-parliamentary Assembly of the CIS Member-States, had an important impact on the determination of the legal status of the Commissioner. Thus, one may suggest here their indirect influence on the formation of the national regulatory framework governing the activities of the *Ombudsman* in Kazakhstan.

The *Ombudsman* institution in Kazakhstan for a short period of its existence has made a significant impact in improving the situation with respect for human rights in the country.

The assignment of the status of the semi compliance with the principles of the Paris Principles by the Sub-Committee on Accreditation again underlines the need to make changes and additions to the existing legislation and the adoption of new regulations for the conversion of a human rights institution in a full-fledged institution of the *Ombudsman*.