

# Commissioner for children's rights: foreign experience of becoming and creating in the Republic of Uzbekistan

Juraeva Anora Zapparovna

Doktorant basic doctoral studies

Academies of the Prosecutor General's Office of the Republic Of Uzbekistan

Email: [anora\\_djuraeva@mail.ru](mailto:anora_djuraeva@mail.ru)

**Annotation:** This article discusses the evolution of the institution of the children's ombudsman, also analyzes the positive foreign experience, forms and methods of implementing competencies to protect the rights and interests of children, monitor the observance of children's rights and promote their protection. Currently, a new independent institution of the Commissioner for Children's Rights is being formed in the Republic of Uzbekistan. . The article analyzes its activities in comparison with foreign experience.

**Key words:** Commissioner for Children's Rights, Ombudsman, protection of the rights and interests of children, competence, Convention on the Rights of the Child, concept.

In the Republic of Uzbekistan, in April 2019, in accordance with the Decree of the President, the post of Deputy Commissioner for Human Rights of the Oliy Majlis of the Republic of Uzbekistan (Ombudsman e Na) - Commissioner for Children's Rights was introduced. <sup>1</sup>Foreign experience and practice have repeatedly proved the importance of the institution of the ombudsman, as exercising his control over the activities of the management apparatus, which provides effective protection of individual rights. The institute opened a new chapter in the relationship between the state and the citizen.

The purpose of this study is to study the evolution of the institution of the ombudsman for the rights of the child, to determine the forms and methods of its activities, models for the implementation of competence and tasks.

The objectives of this study are to analyze foreign studies and legislation to identify the positive experience of foreign countries and determine the forms and methods of implementing the competence of this institution, as well as forms of interaction with other public authorities in order to protect the rights and interests of children.

The UNICEF global study states that at the end of the twentieth century, the institution of the Ombudsman began its new stage of development, its role has increased significantly, and it has become one of the most influential bodies that defend the interests of people in the decision-making process and discussions at the state level. <sup>2</sup>

The idea of creating an independent body, whose competence includes the control of the activities of the government and other bodies of the executive branch in order to protect the rights of the individual was first developed in Sweden, in 1809 the first ever ombudsman of general competence was appointed. <sup>3</sup>

According to A. Gil-Robles, the Ombudsman in the state-legal sense is defined as a trustworthy independent institution (persona), empowered by the parliament to protect the rights of individual citizens and indirect parliamentary control in the form of extensive supervision of all state bodies and officials without the right to change the decisions taken by them .

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<sup>1</sup> Resolution of the President Of the Republic of Uzbekistan "On additional measures to further strengthen the guarantees of the rights of the child" dated 23.04.2019 NoPP-4296. National Legislation Database, 23.04.2019, No. 07/19/4296/3001; 27.01.2021, No 06/21/6146/0065

<sup>2</sup> Protecting and Supporting Children's Rights (Global Study of Independent Institutions for the Protection of Children's Rights, UNICEF Research Division. 2012, p.5

<sup>3</sup> Gil-Robles A. Parliamentary control over the administration (institute of the ombudsman). M.: Ad Marginem, 1997. p. 35.

Studying foreign experience in this area and the development of the institute, we have established that the wide distribution of this institute has its origins in the twentieth century. , it should be noted that the ruler of Sweden was followed by Finland, Denmark, Norway and other countries only in the twentieth century.

An analysis of foreign legislation makes it possible to conclude that, historically, the task of the ombudsman consisted in parliamentary control over the administration. But later, with the development of society, the trends of globalization of the models of competences of the ombudsman changed significantly. This trend contributed to a change in the control and imperative functions and, which in the it has now become one part of a massive human rights machinery.

According to the Swedish Act on the Instructions for Parliamentary Control of the Ombudsman, it follows that the control and imperative model of the competence of the Ombudsman in Sweden includes tasks to improve the efficiency of public administration and the authority to apply appropriate measures to eliminate the violations identified.<sup>4</sup>

Consequently, the competence to improve the efficiency of public administration contains requirements for the observance of formal legality by the executive and judicial authorities.

The second competence of the Ombudsman gives him the power to initiate criminal proceedings against officials for the commission of crimes in the performance of official duties.<sup>5</sup>

In considering the institution of the Ombudsman, an institution established to protect the rights of the individual in order to ensure good governance, he promotes that the public administration is held accountable for its actions. Within the framework of the studied foreign policy, it follows that the need for its creation arises when existing institutions are not able to solve all control functions, which in turn creates the need for an additional tool for protecting the rights of citizens from administrative arbitrariness.

The tasks and competence of the traditional ombudsman do not take into account the problems of children, in many cases they differ from the problems of adults, the nature of children's rights and the mechanisms for ensuring respect for these rights are also different. The institution of the Children's Ombudsman creates an opportunity for children to seek advice or protection, when their rights are violated, without additional procedural actions or third parties. This fact confirms the fact that a special commissioner for the rights of the child is necessary.

The tasks of the Ombudsman for Children's Rights are to fight not only for the observance of the legally enshrined rights of children, but also for their expansion and fuller observance of the fundamental human rights of children, i.e., the Children's Ombudsman makes every effort and uses all opportunities and existing mechanisms to create a more favourable and equitable attitude towards children, helping them, To enjoy the rights already in place, it also promotes the recognition of children's human rights that have not yet found their place in legislation, culture and daily life.

The development of the institution in question in the twentieth century led to the emergence of specialized ombudsmen. A number of countries have now established the institution of independent ombudsmen (ombudsmen) or commissioners for the rights of the child. Children's ombudsmen were introduced, in particular, in Norway (1981), in the French-speaking community of Belgium (1991), in Sweden (1993). The mechanism for establishing such a position was different: in Norway, the initiative came from a government-appointed committee, in Sweden from parliamentarians, in Denmark and Israel from ministers. —

The modern model of the competence of ombudsmen is human rights, in his study A. Grove, for ombudsmen endowed with these powers gives the definition of "second generation ombudsmen<sup>6</sup>". In our opinion, the activities of this generation of ombudsmen are aimed at helping to protect human rights and freedoms, in this context, the task of the children's ombudsman is to protect the rights and interests of the child and to speak out in support of the hopes and aspirations of children. Their achievements are manifested at many levels, from promoting significant changes in national policy to taking operational measures on behalf of individual children.

<sup>4</sup> The Act (1986:765) with the Instructions for the Parliamentary ombudsman, adopted on 13 November 1986 (Sweden) // URL: [http://www.jo.se/Page.aspx?MenuId=37&MainMenuId=12&ObjectClass=DynamX\\_Document&Id=575](http://www.jo.se/Page.aspx?MenuId=37&MainMenuId=12&ObjectClass=DynamX_Document&Id=575) (date Treatment 10.04.2021 г.)

<sup>5</sup> V.V. Emich Competence of human rights ombudsmen in the Russian Federation. Ekaterinburg: UrO RAN, 2010. C.14

<sup>6</sup> Satyanand A. Growth of the ombudsman concept.

About the ombudsman or commissioner for children's rights in each country is individual, in his study N.V. Kombarov divides this institution into four main models of creation: <sup>7</sup>

1) ombudsmen established by a special law that is adopted by the Parliament (Norway, Sweden, Iceland, Guatemala, Peru, Costa Rica, Colombia, Luxembourg, etc.);

2) ombudsmen established in accordance with the legislation on the protection of children (New Zealand, Ontario (Canada), etc.);

3) ombudsmen whose positions are established within the framework of the relevant state bodies (Israel, Austria, Spain, Denmark, etc.);

(4) Ombudsmen whose offices are established by non-governmental organizations and who work under their auspices.

For example, the format of creating the services of the Ombudsman for the Rights of the Child of Finland fits the fourth model, so the non-governmental non-profit organization - Mannerheim League for the Promotion of Child Protection - was established in 1981. children's ombudsman.

It may also be noted that, in many countries, non-governmental organizations campaign for the rights of children, lobby for their interests and promote these rights and interests, but not all such organizations explicitly indicate that they perform the functions of ombudsman or commissioner for children's rights. In many cases, these organizations do not have any legal status, moreover, they are not endowed with official opportunities or powers. It should be noted that these organizations act in the interests of children, and due to the fact that they have no connection with state bodies, these organizations retain their full independence, both financial and activity, this fact gives them considerable freedom of action, this makes it possible to be critical of government policies and methods of its implementation.

The main tasks and terms of reference of independent institutions for the protection of children's rights are enshrined in the Convention on the Rights of the Child, <sup>8</sup> this document is a unique set of legal norms defining civil, political, economic, social and cultural rights relevant to children. The Convention is based on the idea of the child as an integral person, and it is this vision that is decisive in the work of independent institutions.

In his study, J. S. Miller, Jr. Duk defines the realization of children's rights as activities carried out within a triangular system of relations in which the state, parents (or guardians) and the child participate. <sup>9</sup>

The Children's Ombudsman is one of the measures to implement the Convention and complements other measures, including legal reform, resource allocation, public bodies and policies, data monitoring systems, awareness-raising and the role of civil society.

A comprehensive analysis of child rights issues provides a basis for policy recommendations made by agencies. Their state (but independent) essence determines their place between the state and civil society, allowing them to create opportunities for dialogue between these two parties. They seek to bring together different parts of the political and institutional system and society in order to ensure the best interests of the child. <sup>10</sup>

The United Nations Committee on the Rights of the Child is the main organization supporting them with monitoring and guiding the actions of States parties to implement the Convention on the Rights of the Child, in accordance with general comment No. 2, the existence of an independent institution responsible for the promotion and protection of the rights of the child is an essential element confirming the State party's commitment to implementing the Convention in practice. General comment No. 2, adopted by the Committee in 2002, provides guidance on the role and characteristics of these institutions. It is based on the Paris Principles, adopted by the UN General Assembly in 1993 as the main package of international norms

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<sup>7</sup> Kombarov N. V. Mirovoi i rossiiskoi opyt arkii institutel'nogo omuznogo po psitel'ezvy // Zhurnal pravovyskikh i ekonomicheskikh issledovaniya., 2009. № 2. pp. 37–48.

<sup>8</sup> Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20.11.1989 [https://www.un.org/ru/documents/decl\\_conv/conventions/childcon.shtml](https://www.un.org/ru/documents/decl_conv/conventions/childcon.shtml)

<sup>9</sup> Convention on the Rights of the Child, articles 5 and 18. Cm. Doek, J. E., 'Independent Human Rights Institutions for Children', рабочий доклад центра «Инноченти» № 2008-06, Исследовательский центр ЮНИСЕФ «Инноченти», Флоренция, 2008 г

<sup>10</sup> Smith, A., 'The Unique Position of National Human Rights Institutions: A Mixed Blessing?', Human Rights Quarterly, 28(4), 2006 г., page. 908–911.

governing the mandate, functions, composition, activities and competences of national human rights institutions and adapted to the framework of the rights of the child embodied in the Convention.<sup>111213</sup>

The Committee on the Rights of the Child has subsequently systematically recommended, in its concluding observations on States parties' reports, the establishment and strengthening of independent institutions for the protection of children's rights.

Analysis of foreign experience in the field under study shows that in many states there are well-known institutions that deal with children's rights issues. States parties to the Convention on the Rights of the Child (CRC)<sup>14</sup> are responsible for the implementation of the provisions of the Convention, a fact that requires the active participation of all public authorities.

The legislatures of States parties to the Convention were responsible for enacting laws enshrining the rights of the child, and special parliamentary committees often played an important role in overseeing the practical implementation of policies and the implementation of legislation. Thus, sectoral ministries are responsible for the development and implementation of state policy in the field of children's rights, and the state apparatus also uses coordination mechanisms to ensure that all state structures recognize the obligations provided for in the Convention on the Rights of the Child.

Consequently, the institution of the Empowered Person for Children's Rights does not absolve the responsibility of public authorities and other state institutions, but on the contrary contributes to the achievement of better results. The purpose of the work is to promote the processes of public administration in which other parties are involved.

It is also within the competence of the Ombudsman for Children to fill gaps in order to implement the principle of mutual limitation of the branches of government as a direct mechanism of accountability, this way of working ensures understanding and recognition of the impact of policies and practical measures on the rights of the child, thus implementing the process of eliminating shortcomings and carrying out reforms, in the case of the results of the previous policies or programs of public authorities are unsatisfactory. The establishment of the ombudsman institution contributes to greater flexibility and a political system and institutional structure that can sometimes be cumbersome and inaccessible to the public, in particular to children or those who deal with their problems.

When examining the mandate of independent institutions for the protection of children's rights in different countries, close attention should be paid to the ability to bring about change, this is due to the combination of independence and "soft power", convene meetings and meetings, act as a mediator and influence legislators, government bodies, state institutions and public opinion.

The next competence is to be able to influence those responsible for policy and practical actions. A special approach is required by the concept of competencies of national systems of public administration, when resolving acute social issues (including the attitude to childhood enshrined in normative documents), which can underlie the rights of the child.

Another important task assigned to the Ombudspersons for the Rights of the Child is the establishment of a specific normative framework in the field of the rights of the child. In this context, special attention is paid to the concepts and principles of the rights of the child and their practical significance at the national or local levels. Through interventions Ombudspersons for the Rights of the Child carry out the protection of children's rights in practice.

Children's issues are becoming more relevant to the Republic of Uzbekistan every year, and in this connection the role of the ombudsman for children's rights has been strengthening in recent years, as

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<sup>11</sup> General comment No. 2 of the Committee on the Rights of the Child. The role of independent human rights institutions in the promotion and protection of the rights of the child, CRC/GC/2002/2, 15 November 2002, pp. 1-2.

<sup>12</sup> The Principles relating to the status of national institutions (the Paris Principles) were adopted by United Nations General Assembly Resolution No. 48/134 of 20 December 1993.

<sup>13</sup> General comment No. 2 of the Committee on the Rights of the Child. The role of independent human rights institutions in the promotion and protection of the rights of the child, CRC/GC/2002/2, 15 November 2002, pp. 1-2.

<sup>14</sup> Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20.11.1989 [https://www.un.org/ru/documents/decl\\_conv/conventions/childcon.shtml](https://www.un.org/ru/documents/decl_conv/conventions/childcon.shtml)

exemplified by the Presidential Decision on Additional Measures to Improve the System for the Protection of the Rights of the Child.<sup>15</sup>

Moreover, the President of the Republic of Uzbekistan in his Address to the Oliy Majlis for 2021, stressed the importance of developing and adopting the law "On the Children's Ombudsman".<sup>16</sup>

Ombudspersons for Children often participate in the drafting of legislation, sending recommendations to the legislature, participating in drafting meetings and holding public office. Illustrative examples of activities include the systematic review of legislation on children's issues by the Children's Ombudsman in the Republic of Mauritius and the National Commission for the Protection of the Rights of the Child in India. Many institutions conduct investigations and prepare reports on the results of hearings and investigations. These investigations and reports have often had a decisive impact in identifying abuses or weaknesses in practice and in the implementation of institutional reform.<sup>17</sup>

The Ombudspersons for Children's Rights seek to contribute to the creation of an enabling environment for the realization of children's rights, indeed, their activities contribute to the positive social changes that are necessary to ensure the realization of the rights of the child. These institutions in most cases work closely with informationservices, their educational activities emphasize the importance of fulfilling the obligations of states to provide families with the necessary assistance<sup>18</sup>, as well as supporting policies that provide families with opportunities for childcare. at the proper level and the creation of favorable conditions for the development of children, and the reduction of the number of forced placement of children in specialized institutions.

Ombudspersons for the Rights of the Child are uniquely empowered to speak on behalf of a particular category of children, as well as in the interests of children. In many countries, the Commissioner for Children's Rights is specially empowered to monitor childcare facilities; organizes regular visits to children placed in alternative care to assess the well-being of children, compliance with children's rights and the quality of services provided.

Effective cooperation between children's rights institutions and these and other thematic institutions (e.g. those dealing with women's issues, persons with disabilities, migrants or indigenous peoples) plays an important role in promoting an integrated approach to the rights of the child and in providing the children of these groups with the necessary assistance in realizing their rights.

Consideration of complaints or study of specific situations is important for ombudspersons for the rights of the child, as it creates an opportunity for direct contact with life situations and experiences of children, moreover, the resolution of a particular problem allows them to demonstrate concrete positive results. and identifying the cause of the problem or situation.

Foreign studies emphasize the specialization of ombudsmen, according to which they are divided into areas of activity, as well as by territory under their jurisdiction. Consequently, the creation of this body is possible at the level of individual administrative-territorial units. The specialization of ombudsmen is due to the task of increasing the effectiveness of their activities. Many current ombudsmen for children's rights do not correspond to the generally accepted idea of the ombudsman. While some of them occupy legislatively established positions, others act on a basis not fixed by law within the framework of non-governmental organizations. Some are engaged in the traditional consideration of specific complaints, others act as an advocate for the interests of all children. However, they share one common feature in seeking recognition and protection of children's rights by the State. –

In order to effectively monitor and protect children's rights, the Ombudsman should be able to influence legislation, policy formulation and implementation in order to improve respect for children's

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<sup>15</sup> Decree Of the President of the Republic of Uzbekistan "On additional measures to improve the system of protection of the rights of the child" NoPP-4736 of 29.05.2020 National Legislation Database, 29.05.2020, No. 07/20/4736/0680

<sup>16</sup> Epistle President of the Republic of Uzbekistan Shavkat Mirziyoyev Oley Majlisu from 29.12.2020 <https://president.uz/ru/lists/view/4057>

<sup>17</sup> Documents sent to the Australia Future Tax Review Team in 2008 and various Press releases on the Treasury Ministers Portal, the website of the Australian Department of Finance (accessed 31 August 2012).

<sup>18</sup> Doek, J. E., 'Independent Human Rights Institutions for Children', рабочий доклад центра «Инноченти» № 2008-06, Исследовательский центр ЮНИСЕФ «Инноченти», Флоренция, 2008 г

rights, to challenge specific cases of violations of children's rights, to conduct or facilitate research, and to raise awareness of these rights among the public and official bodies. All these functions are interrelated.

In the study of N.Y. Khamaneva, an analysis of the modern institution of the children's ombudsman is given, in which the author classifies the work of the ombudsman in this area into three main areas: protection mainly of the rights of a particular child and representation of his interests; protection of the interests of individual children and children as a whole; activities for all children that do not represent the interests of a particular child.<sup>19</sup>

An important factor in guaranteeing the independence of the Ombudsman in the exercise of his functions. He should be able to make the voice of children heard, be accessible to children, his activities should be focused exclusively on the rights of children. The appointment of the Ombudsman should not depend on the decision of any one particular official. Such an appointment should be made in broad consultation with independent organizations defending children's rights. –

Also, the analysis of foreign experience gives grounds to draw the following conclusion that the official position of the ombudsman should be guaranteed by law. He should be appointed for a fixed term and dismissed from his post only in case of malicious misconduct on his part or failure to perform his duties. Ombudsmen should be able to independently determine the direction of work of their office. The powers of the Ombudsmen should be supported by effective safeguards, such as liability for obstructing its activities.

The establishment of the institution of the ombudsman is a confirmation of State priorities that correspond to the needs of the Republic of Uzbekistan and international standards in the field of protecting the rights of the child. We believe that the institution will become the main form of independent monitoring of the observance of children's rights, the closest of the state institutions in relation to the family and to children. An important issue is the form of establishment of the institution of the Ombudsman for the Rights of the Child.

Also, within the framework of the material studied, it can be concluded that the creation of a new institution of the Commissioner for Children's Rights is an important and noble task and for the successful functioning of this institution it is necessary to concentrate the efforts of specialists in various fields, primarily lawyers, who should provide a regulatory framework for the activities of this human rights mechanism.

Foreign experience shows that this institution should be developed and improved. Its tasks are to solve problems that are significant for children, to ensure guarantees of the rights and interests of minors in the Republic of Uzbekistan.

In particular, the material and report submitted by the Commissioner for Children's Rights A. Yunusova, as of January 1, 2021, one of the topical issues at present is the provision of housing for minor orphans and children deprived of parental care, and graduates of orphanages, also in the period of 2020, about 20 complaints were received by the Commissioner for Children's Rights regarding the lack of housing or non-compliance of housing with social norms.

It should be noted that in accordance with the provisions of the legislation of the Republic of Uzbekistan, housing provided in accordance with established standards must be empty, separate, comfortable and cozy, comply with established sanitary and technical standards and other requirements of the legislation. Moreover, the Commissioner for Children's Rights stressed the problem of local authorities, in this regard, we consider it expedient to emphasize the importance of interaction between the prosecutor's office and the Commissioner for Children's Rights, in particular, strengthening supervision over the implementation of legislation in the field of protecting the rights and interests of orphans and children deprived of parental care. Since in order to implement the guarantees of children's rights, in particular the provision of housing for the above category of minors, it is taken into account in the Order of the Minister of Finance of the Republic of Uzbekistan dated October 11, 2010 No. 86 "On Approval of the Regulation on Targeted Transfers for the Purchase of Housing for Orphans and Children Left Without Parental Care, Including from Budgetary Funds".

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<sup>19</sup> N.Y.Khamaneva Journal proceedings of the Institute of State and Law of the Russian Academy of Sciences. Institution of the Ombudsman for Children's Rights: Problems of Development and Improvement. 2012 <https://cyberleninka.ru/article/n/institut-upolnomochennogo-po-pravam-rebenka-problemy-razvitiya-i-sovershenstvovaniya>

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Moreover, in order to strengthen supervision and eliminate shortcomings in the sphere of ensuring the rights and legitimate interests of children, a joint document "On measures to further strengthen the social protection of orphans and children left without parental care" was developed and adopted.<sup>20</sup>

On the basis of the foregoing, it is proposed the following: first, the Commissioner for Children's Rights and the procuratorial bodies to conclude an Agreement on Interaction and Cooperation, within the framework of which joint measures will be organized to ensure the rights and legitimate interests of minors, the prevention of offenses by state bodies and their territorial divisions. Within the framework of this interaction, the parties can use the available legal, informational, scientific, analytical, methodological and organizational resources in order to implement the tasks set.

We also consider it important to note that the parties, within the limits of their competence and powers, should unite efforts to ensure the protection of the rights and freedoms of minors, to improve legislation in this area, on issues of mutual information, information interaction in the field of observance of the rights and interests of children.

The interaction can be implemented in the following forms:

- Exchange of information on violations of the rights, freedoms and legally protected interests of children, as well as measures taken to restore them;
- Conducting joint checks on information about violations of children's rights, in the commission of serious and especially serious crimes against them, as well as crimes that have a great public resonance;
- Cooperation on participation in law-making activities with a view to improving legislation aimed at establishing, observing and implementing the rights, guarantees of the rights and legitimate interests of the child and families with minor children, bringing it into line with the generally recognized principles and norms of international law;
- Holding joint scientific and practical conferences, round tables, seminars and other events on the protection of the family, motherhood, fatherhood and childhood, protection of the rights, freedoms and legally protected interests of the child.

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<sup>20</sup> Decree The Cabinet of Ministers "On measures to further strengthen the social protection of orphans and children left without parental care" dated 21.11.2020 No. [739](#) Collected Legislation of the Republic of Uzbekistan, 2010, No. 42-43, Art. 375; 2015, No 21, p. 284