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**The Council of Europe Project  
“Supporting Implementation of the European Human Rights Standards in Ukraine”**

**Report on the current status and further steps in  
the development of the Office of the Ukrainian Parliament  
Commissioner for Human Rights**

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*The views expressed herein can in no way be taken to reflect the official opinion of the Council of Europe.*

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## LIST OF ABBREVIATIONS

CM – Committee of Ministers of the Council of Europe

CoE – Council of Europe

CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

ENNHRI - European Network of National Human Rights Institutions

EU - European Union

GANHRI –Global Alliance of National Human Rights Institutions

ICC - International Criminal Court

NGO – Non-governmental organisation

NHRI – national human rights institution

NPM - National Preventive Mechanism

Ombudsperson – Ukrainian Parliament Commissioner for Human Rights

Ombudsperson Institution – institution of the Ukrainian Parliament Commissioner for Human Rights

PACE - Parliamentary Assembly of the Council of Europe

UN – United Nations

UN CAT – United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

UNDP - United Nations Development Programme

VC – European Commission for Democracy through Law, “Venice Commission”

## Introduction

This report has been prepared within the framework of the Council of Europe project "Supporting Implementation of the European Human Rights Standards in Ukraine". The project focuses on strengthening the capacity of the Office of the Ukrainian Parliament Commissioner for Human Rights ("Ombudsperson") to protect and implement human rights standards at the national level. As the Project is being launched in the context of the ongoing aggression of the Russian Federation's against Ukraine, as well as the appointment of a new Ombudsperson, there is a need to reassess the institution's needs to strengthen its capacity to implement its mandate as effectively as possible in the current circumstances.

Two international consultants, Mr Marek Antoni Nowicki, former member of the European Commission of Human Rights, former international Ombudsperson in Kosovo<sup>1</sup>, and Mr George Tugushi – former Public Defender of Georgia and Member of the CPT and Vice Chair of UN CAT, have been selected for this purpose. The assignment includes an extensive exchange with the CoE Project Team and the Ombudsperson Institution, an assessment of the existing legal framework and its application in practice, a review of the ongoing structural changes in the institution initiated by the newly appointed Ombudsperson, as well as the provision of recommendations to facilitate increased institutional effectiveness.

As mentioned above, the consultants held a dialogue with representatives of the Ombudsperson Institution in a hybrid format from Strasbourg. While two representatives of the Institution were present in Strasbourg, other colleagues participated in the meeting via an internet link. The consultants received a set of legal acts and documents produced in previous years, which contain several legal and institutional assessments related to the functioning of the Institution. The consultants also received documents describing the current structure of the Ombudsperson Institution and the priority areas of implemented activities.

For the purposes of this report, the consultants analysed the following documents:

- The UN Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights ("Paris Principles")<sup>2</sup>;
- Venice Commission Compilation of Opinions Concerning the Ombudsman Institution<sup>3</sup>;
- "The Venice Principles" on the Protection and Promotion of the Ombudsman Institution<sup>4</sup>;
- Parliamentary Assembly of the Council of Europe (PACE), Resolutions: 1959 (2013) on the Strengthening the Institution of Ombudsman in Europe, 4 October 2013<sup>5</sup>; 2301 (2019) on Ombudsman Institutions in Europe – The need for a set of common standards, 2 October 2019<sup>6</sup>;
- Recommendation of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe<sup>7</sup>;

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<sup>1</sup> \*This designation is without prejudice to positions on status and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence;

<sup>2</sup> Adopted by UN General Assembly Resolution 48/134 of 20 December 1993; <https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx>;

<sup>3</sup> Venice Commission, Compilation of Venice Commission Opinions Concerning the Ombudsman Institution, CDL-PI(2022)022, 6 May 2022; [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2022\)022-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2022)022-e);

<sup>4</sup> Venice Commission, Principles on the Protection and Promotion of the Ombudsman Institution ("The Venice Principles") 3 May 2019, CDL-AD(2019)005; [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)005-e);

<sup>5</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20232&lang=en>;

<sup>6</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28161&lang=en>;

<sup>7</sup> Adopted on 28 November 2018, CM/Rec (2018)11,

[https://search.coe.int/cm/pages/result\\_details.aspx?objectid=09000016808fd8b9](https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016808fd8b9)

- Recommendation of the Committee of Ministers to member States on the development of the Ombudsman Institution<sup>8</sup>;
- Recommendation of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions<sup>9</sup>;
- Conclusions of the European Ombudsmen Conference, Vilnius, Lithuania, 5 – 6 April 2002, CommDH(2002)3<sup>10</sup>;
- The UN General Assembly Resolution on “The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law”, 16 December 2020<sup>11</sup>;
- GANHRI General Observations<sup>12</sup>;
- Guidelines on ENNHRI Support to NHRIs under Threat<sup>13</sup>;
- The Kyiv Declaration on the Role of National Human Rights Institutions in Conflict and Post-Conflict Situations<sup>14</sup>.

In the same process, the consultants considered in particular the following documents concerning specifically the Ombudsperson Institution:

- Constitution of Ukraine<sup>15</sup>;
- Law of Ukraine “On the Ukrainian Parliament Commissioner for Human Rights”<sup>16</sup>;
- Draft of the Law of Ukraine no. 5019 “On Amending Certain Legislative Acts of Ukraine to Improve the Legal Framework of the Ukrainian Parliament Commissioner for Human Rights with the Explanatory Note;
- Re-Assessment of the operational capacities and needs of the National Preventive Mechanism (NPM) of Ukraine<sup>17</sup>;
- 2017 Analytical Report on the Existing Regulatory and Legal Framework Governing the Activities of the Activities of the Ombudsperson, EU Twinning Project;
- 2017 Recommendations Aimed at Bringing the National Regulatory and Legal Framework in Accordance with the Best EU Practices in the Human Rights Area;
- Legal Opinion on the Draft Law of Ukraine no. 5019<sup>18</sup>

In view of the fact that the Institution, under the leadership of the new Ombudsperson and in the new war-induced conditions, is, for obvious reasons, only in the initial stages of its ongoing reform activity, we have chosen – recognizing that this is the most reasonable stance at this stage - to focus our analysis and assessments on those general areas of envisaged or already implemented activity that the Ombudsperson himself considered, at least in the foreseeable future and under wartime conditions, to be of general priority.

<sup>8</sup> Adopted on 16 October 2019, CM/Rec (2019)6, <https://rm.coe.int/090000168098392f>;

<sup>9</sup> Adopted on 31 March 2021, CM/Rec (2021)1,

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680a1f4da>

<sup>10</sup> <https://rm.coe.int/16806da7c9>;

<sup>11</sup> A/Res/75/186; <https://digitallibrary.un.org/record/3896442>;

<sup>12</sup> <https://www.ohchr.org/EN/Countries/NHRI/Pages/SCA-Rules-of-Procedures.aspx>;

<sup>13</sup> February 2020; <http://ennhri.org/wp-content/uploads/2020/02/Guidelines-on-ENNHRI-support-to-NHRIs-under-threat.pdf>;

<sup>14</sup> International Conference on the Role of National Human Rights Institutions in Conflict and Post-Conflict Situations, Kyiv, Ukraine, 21 – 22 October 2015, [http://ennhri.org/wp-content/uploads/2019/10/the\\_kyiv\\_declaration.pdf](http://ennhri.org/wp-content/uploads/2019/10/the_kyiv_declaration.pdf);

<sup>15</sup> <https://rm.coe.int/constitution-of-ukraine/168071f58b>;

<sup>16</sup> <https://zakon.rada.gov.ua/laws/show/en/776/97-%D0%B2%D1%80#Text>;

<sup>17</sup> <https://rm.coe.int/assessment-of-the-npm-in-ukraine-final-eng/16809e44ad>;

<sup>18</sup> <https://rm.coe.int/legal-opinion-on-draft-law-amendments-to-the-law-on-ombudsperson-no501/1680a4a4f7>

The time will come for more detailed assessment and conclusions, after a certain period of time, when the visible effects of the implemented adjustments will become apparent.

The starting point for our analysis and recommendations are therefore those areas identified by the Ombudsperson as being priorities as a result of the recent general internal audit of the Institution and with due reference to the current military context. All the measures - planned and implemented as part of the 'new strategy' - are intended to make the Institution more effective, especially under conditions of ongoing armed aggression, and to rebuild an expected level of trust in the Institution within Ukrainian society.

The consultants wish to express sincere gratitude to the CoE Project Team for the facilitation of their mission and work on this report.

## **Executive summary**

In Ukraine, the Ombudsperson Institution, like all other institutions, has to operate in the most difficult times in the modern history of the country. The ongoing war greatly affects safety, working environment, security and all other aspects important for the normal functioning of the office with its headquarters in Kyiv and twenty-four regional representations.

After analysing the existing legal framework and other applicable documents, and based on exchanges with representatives of the Institution, the report provides a number of recommendations that should help the Institution to further improve its original legal framework, increase its independence and efficiency, provide it with greater financial independence and resources, enabling it to hire people of the right calibre and increase its operational capacity.

The proposed changes should enable the Institution to make all regional branches operational and strengthen capacities of the central office. To this end, budgetary resources and foreign aid should be mobilised.

The staff should continue to benefit from ongoing education and training, making effective use of existing training tools and newly emerging opportunities.

The Institution should fill the vacancies with a primary focus on the NPM, enabling it to function fully and expand its mandate in line with the current and emerging needs, related to the ongoing war.

The Institution should expand its activities to promote and protect fundamental rights of Ukrainian citizens temporarily displaced from their permanent residence, strengthen its cooperation with the NHRIs and civil society groups in the countries concerned to better protect the rights of the Ukrainian refugees.

To the extent possible, the institution should maintain increased visibility and public outreach both in local and international media as well as in social networks. While the Ombudsperson remains active in the media and social networks, there should be clear instructions issued for the members of the staff who might appear in public and provide comments and information on the activities of the Institution. Special attention should be paid to the training of the staff who might be engaged with the media locally and internationally.

Efforts to reinforce protection of personal data, enhance monitoring capacity, amend and strengthen internal regulations, promote cooperation and partnership with the local civil society and international partners should be made in parallel with the implementation of the Institution's core mandate.

## General comments

Prior to 2014, in Europe, only Ombudsmen in Bosnia, Georgia and Kosovo had faced specific challenges related to or resulting from war, internal armed conflict or military intervention<sup>19</sup>.

Since 2014, i.e., the outbreak of the armed conflict in Eastern Ukraine caused by the Russian Federation's aggression, the Ombudsperson has had to deal with the most serious issues of fundamental rights arising from this situation, particularly those affecting civilians in the occupied territories<sup>20</sup>. The scale and complexity of the extremely difficult tasks of the Ombudsperson and his office has increased dramatically following the full – scale invasion of Ukraine by the Russian Federation which was launched on 24 February 2022.

For the first time in modern history in Europe, an Institution such as the Ombudsperson is faced with fulfilling its constitutional mandate during a period of full-scale defence war on national territory and war-related heavy emergency arrangements. As a result, it is difficult to find a role model among similar institutions which is directly applicable to the conditions existing in Ukraine today. The Institution must, therefore, rely heavily on its own specific experience gained since 2014.

The performance of the Ombudsperson Institution and efforts to reform and strengthen its capacity should therefore be seen as a particular challenge, as well as - due to the prevailing extremely difficult context - a kind of experimental effort for this type of institution in Europe, obliged to operate in conditions unprecedented in any other country in the past.

The Institution forced to operate in conditions so far unseen require not only a sufficiently general and flexible legal framework, but also imagination and experience to fill it with appropriate internal regulations and practices enabling adaptation of its priorities and activities to the current, dynamically changing needs to ensure the expected results in the discharge of its constitutional function within the State even in such extraordinary, extremely difficult circumstances.

At the same time, however, the activities of the Ombudsperson must be directed towards the future in order to prepare the Institution to operate at the level expected by the public and required by the Constitution in the period of post-war reconstruction and recovery in the perspective of Ukraine's European integration.

## Current structure of the Ombudsperson Institution

The current structure of the Ombudsperson Institution is formed of the Ombudsperson, his representatives, regional representations, secretariat, thematic departments, few thematic councils, and advisors. More specifically the Ombudsperson has 9 representatives

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<sup>19</sup> European Ombudsmen Conference co- organized by the Commissioner for Human Rights of the CoE and the Lithuanian Ombudsman, Vilnius, Lithuania, 5 – 6 April 2002, one of the main topics of which was the issue of “The Ombudsman and the protection of human rights in crisis situations”; Conclusions: CommDH(2002)3, <https://rm.coe.int/16806da7c9>;

<sup>20</sup> In this context, a significant development was the international conference on the Role of National Human Rights Institutions in Conflict and Post-Conflict Situations, organized in Kyiv by the then Commissioner and UNDP, 21 - 22 October 2015, and the Declaration adopted as the conclusions of this Conference calling for a stronger role of NHRIs in conflict and post-conflict settings: <https://www.undp.org/eurasia/publications/role-national-human-rights-institutions-conflict-and-post-conflict-situations>; [http://ennhri.org/wp-content/uploads/2019/10/the\\_kyiv\\_declaration.pdf](http://ennhri.org/wp-content/uploads/2019/10/the_kyiv_declaration.pdf)

responsible for the operation of the certain structural entities of the Institution as decided by the Ombudsperson. The office has 24 regional representatives, responsible for the respective regional entities. The Ombudsperson's secretariat consists of the Head and 2 Deputies. The office has 21 structural, thematic departments. Few councils are established to assist the Ombudsperson in certain areas of operation, which include Donors Council, Expert Council, expert councils under the Representatives of the Ombudsperson. There are 10 advisors included in the structure as well.

## **Institutional development of the office**

### ***a/ Budget***

Under normal conditions, without the exceptional turbulences caused by the economic crisis or war the adopted budget for the Ombudsperson Institution shall not be less than for the previous budgetary year. In the dramatic budgetary situation in which Ukraine is in as a result of the Russian Federation's aggression, general significant cuts in expenditure, including in the operation of public institutions, are entirely understandable and necessary<sup>21</sup>. However, even under such conditions the Ombudsperson should be able to make its own budget proposals without fear of any reduction in overall budget that is disproportionate to budgetary reductions incurred more generally by the Parliament or Government<sup>22</sup>.

In this context, it is crucial to adopt an appropriate financial policy and not to limit oneself to the - inherently limited - budgetary means. It may well be that the Institution will be able to fulfil its mission with considerable external resources, provided, of course, that they originate from appropriate sources and do not call its independence into question. In this regard, there should be clear and transparent regulations in place and proper public scrutiny. Donor resources that are made available and accepted shall not affect its entitlement to funds from the State budget<sup>23</sup>. In this respect, it is to be expected that the Donors Council will play an important helpful role.

There are various options for additional "safe" foreign funding, including funds that individual governments may offer as voluntary contributions or in other forms. Such assistance can most reasonably be expected, particularly in the face of the Russian Federation's aggression and with a view to rebuilding the state, including its institutions. This may be in the form of the general financial support but also the funding of specific projects to assist its activities during this extremely difficult period. Such forms of assistance should become the subject of discussions with the governments of friendly states but should also be urgently discussed and receive political backing from the international organisations, including the bodies of the Council of Europe. Efforts to obtain such additional funding require an active, strong commitment from the representatives of the Institution, including the Ombudsperson personally.

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<sup>21</sup> As it is already clear that the institution's budget for 2023 will be significantly reduced;

<sup>22</sup> The Venice Principles, Principle 21;

<sup>23</sup> See, e.g.: CDL-AD(2015)017 - Opinion on the Law on the People's Advocate (Ombudsman) of the Republic of Moldova, adopted by the Venice Commission at its 103rd Plenary Meeting (Venice, 19-20 June 2015), §§ 74,75; CDL-AD(2017)032 - Republic of Moldova - Proposed New Article 37 of the Law on the People's Advocate Finance Provisions, adopted by the Commission at its 113th Plenary Session (Venice, 8-9 December 2017), §§11, 12, 26, 34.



## ***b/ Regional Representatives***

An important initiative that, if successful, will undoubtedly strengthen the Ombudsperson Institution and confidence in it<sup>24</sup> is the creation of organisational structures of the Ombudsperson Representatives in all 24 regions (oblast) of the country, including the Representative for Rights and Residents in the Temporarily Occupied Territory in the Autonomous Republic of Crimea and the city of Sevastopol. Their activities will be supported by small, mostly two-person, offices as well as Experts Councils composed primarily of the local NGOs and university representatives or civic society activists.

In connection with this initiative, it is important to emphasise the importance of this type of the organisational step and the essential conditions that must be met for its objective to be attained.

In order for the Ombudsperson Institution to properly exercise its mandate, each person must be able, if required, to approach it and seek assistance in cases of human rights violations or an abuse of power. One of the ways to facilitate the fulfilment of this obligation is the establishment of the Ombudsman Institution's structures at the regional level. For obvious reasons, their establishment is particularly important in territorially large countries with a large population like Ukraine.

The regional office provides the possibility of easier, direct contacts with local authorities' structures, which naturally serves to streamline and accelerate activities enabling, among other things, informal dispute resolution and effective interventions without an unnecessary formal procedure. This is particularly important in urgent cases that require an immediate response from the Ombudsperson Institution and the competent local authorities.

Co-operation of the regional offices with the reliable and competent civil society organizations and the local structures of other independent institutions, professional associations, the Bar, and other groups operating at the local level plays a significant role.

The regional office may also be a creator or an active participant in the public debates about the most important current issues faced by people at the local level that falls within the scope of the Ombudsperson's competencies.

At the regional level, the Ombudsperson Institution has many opportunities to inform the public and specific communities about its existence, its role and to explain how to effectively use its services.

The role of the regional office is particularly important in the investigation of cases. A significant number of investigated cases usually refer to allegations related to the activities of the public administration at the local level. Consequently, it is primarily where the evidence and individuals who can provide the necessary information are located.

Due to its tangible presence at the local level, the Ombudsperson Institution is perceived by the general public as less bureaucratic, more friendly and closer to the people<sup>25</sup>.

To function effectively, the regional representatives' offices in Ukraine, even at their most modest and with minimal staff, require significant financial resources. This is all the more so given the need for appropriate office equipment, computers, and means of transportation, especially as their area of operation covers large territories of districts. The Institution should

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<sup>24</sup> See, e.g.: CDL-AD(2016)033 - Armenia - Opinion on the draft Constitutional Law on the Human Rights Defender, adopted by the Venice Commission at its 109th Plenary Session (Venice, 9-10 December 2016), §§19, 68

<sup>25</sup> See, Creutzfeldt, N., O'Brien, N. and Nowicki, M. 2021, A Comparative Review on Ombuds: Recommendations of Action for the Turkish Ombudsman and Guidelines for the Ombudsman and Public Authorities. online Council of Europe, p. 24: <https://rm.coe.int/oi-report-web-2790-3490-7908-1/1680a45112>.

seek support for funding the operation of these offices from external sources through special projects for this purpose.

The regional representatives should be persons with the relevant extensive experience and knowledge in the protection of fundamental rights and public affairs, who are familiar with and have authority in the region. As their job title suggests, they represent the Ombudsperson in a particular region and, in this sense, are the face of the Institution in that area. Their activities are therefore also of great importance for the way the Ombudsperson Institution is perceived on the ground and for restoring an appropriate level of trust in it. It is important to clearly define in the Law and the Institutions' internal regulations, regional representatives' relationship with the Institutions' central structures and the scope of authority for certain actions and decisions.

The activities of the Experts' Councils to the Regional Representatives, will undoubtedly be helpful, provided that they are not merely formal bodies but dynamic, active ones, providing real professional and social support.

### **c/ Staff issues**

According to the information available, number of positions in the Ombudsperson's office remain vacant, which is especially concerning given that the dramatic circumstances of the war pose additional and professionally demanding tasks for the Institution. Despite current challenges, recruitment and training of the staff should remain a priority.

The period of the Russian Federation's aggression and the resulting severe budgetary problems make it currently impossible to responsibly address the issue of competitive staff salaries. In the future, however, it should be called for their salary scales to be at least equivalent to that of the staff of the Supreme Court or the Constitutional Court<sup>26</sup>. Similarly, the Ombudsperson's remuneration should be commensurate with his/her constitutional rank in the state. As the Venice Commission stated in one of its opinions, "*the issue of setting the Ombudsman's remuneration is not only an issue of public respect but also of independence of the institution*"<sup>27</sup>.

Possible additional external funding, which we mention elsewhere, can be used, *inter alia*, for the provision of expert staff support, which may take a variety of forms, e.g. external contracts or special projects enabling staffing. In addition, support - especially during and immediately post-war – from experts or international advisors funded from various sources should not be ruled out in advance.

### **d/ Public outreach and external communication**

Public outreach by the Ombudsperson becomes even more important in emergency times, so consideration should be given to strengthening the media team in the Office, development

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<sup>26</sup> See, e.g.: CDL-AD(2021)035 - Opinion on the Legislation Related to the Ombudsman's Staff of Armenia adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15-16 December 2021), §§68, 69; CDL-AD(2021)049 - Opinion On the Draft Law "On the Commissioner for Human Rights" adopted by the Venice Commission at its 129th Plenary Session (Venice and online, 10-11 December 2021), §114, 117;

<sup>27</sup> See, e.g.: CDL-AD(2004)006 – Opinion on the status and rank of the human rights ombudsman of Bosnia and Herzegovina adopted by the Venice Commission at its 58th Plenary Session (Venice, 12-13 March 2004), §§9,10,16; see also e.g.: CDL-AD(2021)035 - Opinion on the Legislation Related to the Ombudsman's Staff of Armenia adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15-16 December 2021), §25-27.

of the new communication strategy of the Institution. The issue of an updated internal manual on this matter for the staff could also be envisaged.

Maintaining high level of visibility and presence in all parts of Ukraine to the extent possible should remain a priority. While the security requirements should be observed, the Ombudsperson's visits to different regions most seriously affected by the war and his and his staff's personal role in describing and documenting grave human rights violations committed by the Russian forces on the territory of Ukraine continues to play an important role.

Increased visibility of the Ombudsperson and his current activities in national and international media as well as on all social networks should be maintained and further increased.

The Ombudsperson's participation, together with his security representative, in meetings with representatives of the consultative centres established because of the war, as well as in special meetings with the regional administration (ODA), should be presented in the media as far as possible and continue to be published also on social media.

While it much depends on the Ombudsperson's approach and internal policies formulated for the Office, its staff members, who appear in the media should receive basic communication training with a focus on the current situation in the country.

#### ***e/ Confidentiality***

The confidentiality is the cornerstone of the Ombudsperson practice. The identity — and the matters people bring to his/her attention — must be protected. The Ombudsperson should hold all communications with those seeking assistance in confidence and take reasonable organizational or other steps to safeguard confidentiality. The Ombudsperson and its staff shall maintain the confidentiality of all information and data obtained, with a special attention being given to the protection of safety of the complainants, injured parties and witnesses<sup>28</sup>.

Strict statutory and internal regulations must ensure that, apart from clearly defined legal exceptions, any information provided in confidence or the person's identity is not voluntarily disclosed to anyone outside of the Ombudsperson' Institution unless express permission is granted.

The Law is limited only to stating in Article 14 that the Ombudsperson "*shall not disclose information obtained concerning the personal life of the petitioner and other persons connected with the petition, without their prior consent*".

#### ***f/ Cooperation with NGOs***

There is no doubt that proper extended cooperation, especially with the specialised NGOs, is crucial for any Ombudsperson to effectively carry out his/her constitutional mandate<sup>29</sup>. It is also essential for building public trust in this institution. This is all the more so given there are many professional, strong civil society organisations in Ukraine, as evidenced by the recent Nobel Peace Prize for the Center for Civil Liberties, among others. The planned participation of the NGO representatives in expert councils to operate both at the central level and at regional representatives' offices is an important step in this direction.

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<sup>28</sup> Recommendation CM/Rec (2021) 1, Appendix, III.14;

<sup>29</sup> Ibidem, Appendix IV 15b

However, potential forms of cooperation should not be limited to these activities. Reports and other materials prepared by recognised, credible NGOs and institutions, both national and international, should be an important source of information and the basis for assessments in ongoing cases. The results of the Ombudsperson's work, on the other hand, should be an important source for the NGOs, including international NGOs, in their reports and assessments presented to international forums within the framework of existing monitoring procedures of compliance with human rights standards, including before the ECtHR.

One of the important aspects of cooperation with the NGOs could be their participation as a kind of third party - in cases concerning systemic or structural problems or other serious violations of rights and freedoms - in proceedings conducted in the Ombudsperson Institution. In such cases, the Ombudsperson could invite specific NGOs or institutions to submit their opinion or comments on the subject matter of the case. In other cases, at the request of these organizations and institutions, the Ombudsperson could agree to their participation in the proceedings and taking a position on the subject matter of the case. This option should be expressly provided for in the Institution's internal rules of procedure.

To strengthen this cooperation and to guarantee its expected professional level, there is a need for training or joint seminars on the respective roles of the Ombudsperson and NGOs as well as the conditions, demands and expectations of their mutual relationship and cooperation.

The Ombudsperson should also consider assuming the role of a coordination mechanism for the civil society organizations and activists currently playing an important part in documenting human rights violations committed during the Russian Federation's aggression. This could provide a more systemic approach to documenting the crimes committed on the territory of Ukraine as well as better mobilize support for the organizations and individuals active in this process by providing them with appropriate guidance and training.

### ***g/ Overview of existing procedures***

It is encouraging to learn of the Ombudsperson's efforts to strengthen the operational capacity of the Institution, including a detailed review of the internal procedures in place to date. Their proper structuring is essential for the efficient handling of citizens' complaints and cases investigated by the Ombudsperson on his own initiative and for taking a position on these cases without undue delay. Further efforts should be made to simplify and deregulate internal procedures and to put in place arrangements to ensure a timely response to cases that require it.

From the point of view of proper case management, it is important, *inter alia*, to correctly classify the matters to be taken up in accordance with the priorities decided, in view of their seriousness, the urgency of the Ombudsperson's response, the need for in-depth research, etc. This concern should be reflected in the procedures in place, which should be adapted to the type and urgency of the case according to the classification in question. Where it is possible to do so without compromising the outcome of the Ombudsperson's actions, full and often time-consuming investigations should be abandoned in favour of simplified procedures such as less formal interventions or 'fast track' treatment of cases.

Furthermore, for cases of extreme urgency requiring immediate action, there must be specific separate organisational solutions tailored to the specific nature of the issues at stake. This appears to be especially important in the current exceptional period when conditions of warfare frequently require an urgent emergency response from the Ombudsperson.

### ***h/ Ex – officio investigations***

A very important and increasingly common instrument in any Ombudsperson's operation is his power to conduct investigations and inspections ex - officio. This is clearly stated in the Venice Principles indicating the Ombudsperson's discretionary power to investigate not only as a result of the complaint but also "on his or her own initiative"<sup>30</sup>. This option is also provided for in the Law (Article 16.3). Such a mechanism should be applied most frequently in the prevailing emergency situations in Ukraine as a result of the invasion of the Russian Federation, the occurrence of problems of rights protection affecting broad groups of people requiring an appropriate and immediate response and intervention with the authorities without waiting for any initiative on the part of the victims. Thus, acting "on his own initiative" should, at this exceptionally difficult time, be the main way in which the Ombudsperson Institution responds to emerging issues and challenges.

### ***i/ National Preventive Mechanism (NPM), monitoring activities and documenting of human rights violations***

During the war the Ombudsperson Institution in Ukraine has to operate in a very specific environment, under undue pressure. The war largely affects the working methods and operational capacities of the institution. With the war, new priorities emerge which shape the operational directions of the Ombudsperson and his apparatus.

The National Preventive Mechanism (NPM) of Ukraine is embedded in the Office of the Ombudsperson in accordance with Article 19-1 of the Law. The Ombudsperson is entrusted with functions of the national preventive mechanism pursuant to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. One of the main functions of the NPM is to regularly examine the treatment of the persons deprived of their liberty in places of detention, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman, or degrading treatment or punishment.

As we are informed, currently the NPM is undergoing the reforms process and has recently resumed its activities. Main challenges which remain are related to the existing vacancies, lack of sufficient resources and developments related to the war.

It goes without saying that the vacant posts within the NPM should be filled as a matter of urgency and newly recruited people should undergo appropriate training. The online training course developed with the support of the CoE could serve as an excellent starting point for the education of the newcomers to the NPM. The same applies to members of the civil society participating in the work of the NPM through the well-established cooperation scheme.

As the war has brought some new areas that the NPM may need to cover in addition to the traditional sites monitored under the mandate, it may be necessary to adapt working methods and special training.

As a result of war numerous prisoners of war and civilians will be captured and detained. The NPM can play a leading role in visiting places of their detention and as a minimum to assess their treatment, living conditions and access to medical care. This might involve visits to the "non-traditional" places of detention usually visited by the NPM. The NPM should be provided by the relevant authorities with a precise list of places of detention used for holding people captured/apprehended in the context of war.

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<sup>30</sup> The Venice Principles, Principle 16

Considering the context, the NPM staff as well as experts and civil society representatives involved in the work of the mechanism, along with tailored training, could also benefit from specific training on the related provisions and standards of the 1949 Geneva Convention (III) relative to the Treatment of Prisoners of War, and 1949 Convention (IV) relative to the Protection of Civilian Persons in Time of War.

The Ombudsperson should continue monitoring special institutions, including psychiatric hospitals, where victims of torture by the Russian forces and other people severely affected by the war undergo treatment.

***j/ Monitoring the human rights situation of the persons displaced from Ukraine due to the war***

Another important area of activities to be considered by the Ombudsperson is the monitoring of the human rights situation of Ukrainian citizens forced to leave the country as a result of the hostilities. There are several countries, including those bordering Ukraine, to which the majority of Ukrainian citizens have fled due to the war in search of refuge.

The Ombudsperson can establish effective communication and exchange with Ombudsperson Institutions of these countries and civil society organizations actively involved in monitoring of the human rights situation and providing assistance to the Ukrainian refugees with the aim to ensure better protection for citizens of Ukraine temporally residing abroad. This can greatly facilitate the resolution of human rights problems that Ukrainians may face in places of their current residence.

***k/ Focal points***

The efficiency of the proceedings and the effectiveness of the Ombudsperson's interventions and recommendations depend to a large extent on the level of cooperation with the Ombudsperson by all public institutions concerned. Their statutory duties in this respect are stated clearly enough in the Law.

However, in order to facilitate contacts and cooperation with the Ombudsperson, consideration should be given to establishing in the Prime Minister's Office, each ministry and other central state administrative bodies, as well as at the regional level (oblast) administrative offices, points of contact with the Ombudsperson Institution - units or designated officials responsible for such contacts and cooperation on matters within their competence. The existence of these focal contact points is of special importance particularly in urgent cases requiring the promptest response of the competent authorities to the Ombudsperson's interventions or requests.

***l/ Review meetings***

The Ombudsperson should, together with individual ministries and other governmental bodies, organise review meetings either regularly or ad hoc, as needed, to present information about their work, discuss problems revealed in the cases examined by the Ombudsperson Institution related to the areas falling within the competence of these ministries, discuss the state of implementation of recommendations and any difficulties or obstacles encountered in this process, etc.

Review meetings of this type serve not only the exchange of information and views and the search for improvements or solutions to issues that cause problems in practice but also serve to build an atmosphere of cooperation, better mutual knowledge and understanding and trust and, as a result, greater effectiveness of the Ombudsperson in his relations with the authorities and in performing their respective mandates.

## **Policies of the Ombudsperson Institution**

### ***a/ General issues***

There should be no dispute that in such extreme circumstances, as they exist in Ukraine today, it is necessary - due to the numerous new and serious threats - to strive to strengthen the existing protection of fundamental rights. Hence, the role of the Ombudsperson Institution should naturally grow.

Taking this into consideration, it is essential to find an appropriate place for the Ombudsperson, among the many other state bodies dealing - due to their constitutional and statutory duties - with various tasks arising from the current situation in which Ukraine finds itself.

It is equally important, also in the eyes of the public, to clearly demarcate the competences and tasks of different public structures, on the one hand, to avoid duplication of efforts and to ensure optimal effectiveness of the Ombudsperson's action and, on the other hand, to avoid confusion in the eyes of the public as to the essence of his role and related expectations.

People who have found themselves in the horrors of war, much more than in other circumstances, may expect and seek not only humanitarian or similar assistance, but also a strong sense of protection of their fundamental rights by an institution of trust, which the Ombudsperson should be.

Of utmost significance, especially given the limited - at least for the time being - resources and staff, are policy decisions that allow the Institution to focus on carefully identified areas where the Ombudsperson's role cannot be replaced by other institutions or organizations. The expectations of the Institution and its plans must, unfortunately, be adapted to the objectively available resources. Efforts should be concentrated on carefully selected key areas. Otherwise, there is a risk of fragmentation of forces and resources as well as a risk that the expected outcomes and fulfilment of the constitutional mandate are not satisfactorily met in areas of particular relevance. Compelled priorities must be explained to the public in order for it to understand the Institution's policy under the current circumstances relating to the war and to avoid raising unnecessary expectations and then facing negative societal reactions.

When identifying areas of particular concern, it is also important to be aware that, in general, during the periods of crisis or emergency, the authorities are, more often than in other, more normal circumstances, inclined to disregard existing rules and norms in their actions and to react negatively and reject even the most constructive criticism, including from the Ombudsperson.

It is also for this reason that, during periods such as the current one, the Ombudsperson should be extremely vigilant and able to react quickly and efficiently to the events that require it, as authorities at various levels, under the cover or pretext of exceptional circumstances, may resort to all sorts of abuses, including serious ones, at the level of regulation and practices on the ground. Any state of emergency and, as in this case, state of martial law,

allows for wide-ranging limitations on rights, but these must not be too far-reaching without substantial objective justification and must be in compliance, in particular with the ECHR under the conditions set out in its Article 15<sup>31</sup>.

According to the information received, it appears that, in general terms, in the foreseeable future, the Ombudsperson intends to focus its substantive activities primarily on two areas directly related to the consequences of the Russian Federation's aggression, while at the same time pursuing his mandate as broadly as possible.

**The first is the protection of those affected by the aggression**, including for the exchange of prisoners of war; the return of forcibly deported civilians and children from Russia, protection against torture, rights of internally displaced persons (IDPs), etc.

The Ombudsperson, despite the current difficult situation, should continue to play a leading monitoring role so that children continue to have access to basic education and healthcare, with a primary focus on displaced persons.

Unquestionably, the Ombudsperson can and should assume an important, and in some circumstances, a key role in these matters.

**The second is to cooperate with the law enforcement agencies on war crimes.** In this area the Ombudsperson sees the role of his office as that of an institution assisting in their efforts, working closely with them by transferring any relevant information received or accessible to the Institution. It also intends to assist in some way in the collection of evidence of such crimes. The Ombudsperson also envisages an important role for the Institution in the monitoring of criminal investigations into such crimes and their outcomes.

The issue of the Ombudsperson's involvement in assisting in the collection of evidence apparently requires further consideration and reflection. Such participation is not normally part of the Ombudsperson's mandate or even the nature of this type of institution. This should be a matter for the law enforcement authorities, in accordance with the applicable procedure for criminal investigations, including the collection of evidence of crimes. The role of the Ombudsperson in this context should be limited to documenting such crimes, as far as available limited resources allow the transmission of information or documents in the possession of the Institution and the previously mentioned and much-needed effective monitoring from the viewpoint of the exigencies of proper and lawful prosecution, ensuring that the fundamental rights of victims and perpetrators are respected. In this context, one must not ignore the fact that there is active engagement in documenting and collecting evidence of the crime on the part of competent international institutions and organisations working closely with Ukraine's law enforcement agencies, most notably the ICC.

The focus on issues and problems that fall within the Ombudsperson's mandate and are the result of the Russian Federation's aggression is obvious and understandable. However, the Ombudsperson must not lose sight of the need to protect and intervene in other spheres important to the fundamental rights of all those who find themselves, whatever the circumstances, even temporarily, under the jurisdiction of the Ukrainian authorities, e.g. as prisoners of war or in other contexts or, as it was already mentioned above, the large number

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<sup>31</sup> „Derogation in time of emergency; 1 March 2022; derogation of Ukraine with state of emergency and martial law through annex and addition supported by: Decree of the President of Ukraine No. 63/2022 About introduction of a state of emergency in separate regions of Ukraine, Law No. 2101-IX of Ukraine on approval of the Decree of the President of Ukraine No. 63/2022 “About introduction of a state of emergency in separate regions of Ukraine”, Decree of the President of Ukraine No. 64/2022 On the imposition of martial law in Ukraine, Law No. 2102-IX of Ukraine on approval of the Decree of the President of Ukraine No. 64/2022 “On the imposition of martial law in Ukraine”.



of Ukrainian citizens who left its territory after the outbreak of hostilities, taking refuge in various welcoming countries.

With severely constrained budgetary resources, and problems with adequate numbers of qualified personnel, fulfilling these other tasks while focusing on objectives directly related to the ongoing war may prove extremely challenging, particularly without external support.

### ***b/ International cooperation***

Working closely in all conceivable areas with international institutions and organisations, both intergovernmental and non-governmental, engaged in various ways in the current situation in Ukraine, should also be an essential component of the Institution's policy. In addition to the other benefits of such cooperation, these bodies can also play an important role in certain situations that require it, in supporting conclusions of the Ombudsperson's reports and recommendations and reinforcing their impact within national and international forums. Furthermore, the Ombudsperson Institution should be seen not only as part of the national system of rights protection, but as a leading instrument in the process of guaranteeing proper standards in this matter and as an essential component serving Ukraine's European integration. In this capacity, it is an observer and guardian of rights for both national and international purposes.

### **Legislative framework**

The 1996 Constitution of Ukraine<sup>32</sup> introduced the Ukrainian Parliament Commissioner for Human Rights (Ombudsperson), which, according to its Article 101 shall "*exercise parliamentary control over the observance of constitutional human and citizen's rights and freedoms*". The Constitution guarantees that everyone has the right to appeal to the Commissioner for protection of his/her rights (Article 55).

Following this constitutional provision, in 1997 the Parliament adopted Law "On the Ukrainian Parliament Commissioner for Human Rights" which, with the relevant amendments and supplements (as of 13 August 2014), remains in force today.

As a result of various criticisms, at national and international level, of both the legal framework and the effectiveness of this Institution, over the last few years international experts of the EU and the CoE prepared a comprehensive set of recommendations in this respect<sup>33 34 35</sup>. Until the Russian Federation's aggression against Ukraine in February 2022, even if certain draft amendments have been developed, there had been no significant progress in efforts to improve the existing law.

In the current dramatic situation of the state, the only reasonable interim solution for today would seem to be to amend on the initiative of the Ombudsperson the existing law to the extent required by today's situation of emergency. Other necessary changes should be left for after the war period.

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<sup>32</sup> with amendments; <https://rm.coe.int/constitution-of-ukraine/168071f58b>

<sup>33</sup> "Implementation of the best European practices with the aim of strengthening the institutional capacity of the Apparatus of Ukrainian Parliament Commissioner for Human Rights to protect human rights and freedoms (Apparatus)", report

<sup>34</sup> Implementation of the best European practices with the aim of strengthening the institutional capacity of the Apparatus of Ukrainian Parliament Commissioner for Human Rights to protect human rights and freedoms (Apparatus)", Recommendations aimed at the National Regulatory and Legal Framework in Accordance with the Best EU Practices in the Human Rights Area;

<sup>35</sup> <https://rm.coe.int/legal-opinion-on-draft-law-amendments-to-the-law-on-ombudsperson-no501/1680a4a4f7>

## Recommendations

### Institutional development

1. The Law should ensure that the independence of the Institution is protected from interference by use of the budgetary process and that the Ombudsperson has an ability to make its own budget proposals without fear of any reduction in overall budget that is disproportionate to budgetary reductions incurred more generally by the Parliament or Government.
2. Proper, realistic budget projections should be developed at a minimum level and at an optimal level to ensure the intended outcomes and satisfactory implementation of the constitutional mandate. These projections must enable an assessment to be made of the extent to which currently available budgetary resources will allow the planned activities to be financed, and the extent to which other – external - sources of funding should be explored. In the absence of such additional capacities and external financial resources, it is important to adopt a contingency plan considering the need to implement at least the most important actions identified as priorities.
3. The Institution should seek support for funding the operation of the regional representatives' offices from external sources through special projects for this purpose.
4. There is a need to extend and strengthen the statutory protection of confidential data collected, processed and shared by the Institution beyond what is provided for in Article 14 of the Law and the NPM related regulations as well as a need for strict and detailed internal regulations and guidelines covering these matters.
5. As a matter of priority, the vacant posts within the Institution should be filled, with a particular focus on the NP. In addition, efforts should be made to increase, with the help of external funding, professional staff in those departments and units which, under the current conditions, have the greatest human rights protection commitments, by reaching out to external contractors, including international ones.
6. Further efforts should be made to simplify and deregulate internal procedures and to put in place arrangements to ensure a timely response to cases that so require; where it is possible to do so without compromising the outcome of the Ombudsperson's actions, full and often time-consuming investigations should be abandoned in favour of simplified procedures such as less formal interventions or 'fast track' treatment of cases.
7. In the current situation in Ukraine the mechanism of investigations and inspections ex - officio should be the main way in which the Ombudsperson Institution responds to emerging issues and challenges.
8. The cooperation with the NGOs, especially those specialised in the field of the protection of fundamental rights, should be developed as widely as possible, which will not only strengthen the Ombudsman's capacity to effectively carry out his constitutional mandate, but it is also essential for building trust in the Institution of the general public.
9. The NPM should resume its operation in all parts of Ukraine to the extent possible. While focusing on "traditional" places under its mandate, the NPM should start visiting

detention placed used for detention of the prisoners of war and other individuals captured/apprehended as a result of the war.

10. The Institution should invest certain resources in the work related to the promotion and protection of rights of Ukrainian citizens forced to leave the country due to the war, establishing effective communication and exchange with the NHRIs of the countries concerned and their relevant authorities as well as the civil society groups active in the field.
11. To facilitate contacts and cooperation with the Ombudsperson, consideration should be given to establishing in the Prime Minister's Office, each ministry and other central state administrative bodies, as well as at regional level (oblast) administrative offices, points of contact with the Ombudsperson Institution - units or designated officials responsible for such contacts and cooperation on matters within their competence.
12. The Ombudsperson should, together with individual ministries and other governmental bodies, organise review meetings to discuss problems revealed in the cases examined by the Ombudsperson Institution related to the areas falling within their respective competences, discuss the state of implementation of recommendations and any difficulties or obstacles encountered in this process.

### **Policies of the Ombudsperson Institution**

13. In the context of war crimes investigations, the role of the Ombudsperson should be limited to documenting such crimes, the transmission of information or documents in the possession of the Institution and to monitoring the progress of such investigations from the viewpoint of the exigencies of proper and lawful prosecution, ensuring that the fundamental rights of victims and perpetrators are respected.
14. In addition to the spheres clearly identified by the Ombudsperson as the core, the Institution should try to be prepared, to the extent of its own capacities and resources, to act also in other fields important for the protection of fundamental rights.
15. The cooperation in various fields with international, intergovernmental, and non-governmental institutions and organisations concerned with the war in Ukraine should be strengthened as wide as possible.
16. Internal guidelines should be prepared and adopted on how to communicate with the public and cooperate with the media. The policy of the Ombudsperson Institution in this regard should be as open as possible, while ensuring the required protection of the rights of victims and other persons and other interests protected by law.
17. The Ombudsperson should establish effective communication and exchange with ombudsperson institutions and civil society organizations in countries where refugees from Ukraine are temporarily hosted with the aim to ensure their better human rights protection and humanitarian assistance.

### **Legislation**

18. The Ombudsperson should make a diligent effort to prepare and present to the Parliament a Draft law to amend the current Law in force to the extent required by today's emergency situation; other necessary changes should be left for after the war period.

## Training

19. The entire staff of the Ombudsperson Institution, including newcomers to the NPM should continue benefiting from the training and education, effectively applying online courses and training manuals developed for the Institution with the support of the CoE and other international organizations.
20. The staff of the NPM can also benefit from specific training on the international norms of the international humanitarian law, with a specific focus on Geneva Convention No.3 and No.4.
21. Regional Representatives and the staff of their offices should be given intensive, comprehensive training, especially on the most important questions of the fundamental rights that they may encounter in their operations.
22. The staff of the Ombudsperson Institution should receive training on communication skills and how to effectively cooperate with media especially in the current context of the war caused by the Russian Federation's aggression.
23. In addition, staff members of the Ombudsperson Institution should receive at least the following training to improve their knowledge and skills in the domain of human rights protection:
  - on interviewing victims of human rights violations, in particular victims of war crimes and other similar atrocities;
  - on interviewing war prisoners;
  - on human rights of members of the armed forces;
  - on analysis and managing interventions in genocidal and mass atrocity situations;
  - on documenting grave human rights violations;
  - on writing the reports and recommendations, especially in cases of grave and massive human rights violations;
  - on safety hazards that staff operating in the field may be exposed to;
    - o on the fundamentals of the international criminal law and policy;
    - o on rights and specific problems and needs of the IDPs and refugees, the role of the Ombudsperson Institution in this context;
    - o on communication (external and internal).