Council of Europe Project
"Supporting Implementation of the European Human Rights Standards in Ukraine"

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LEGAL REVIEW

ON THE DRAFT LAW OF UKRAINE "ON AMENDMENTS TO CERTAIN LEGISLATIVE ACTS OF UKRAINE ON IMPROVING THE LEGAL BASIS OF THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS" AND PROVISIONS OF OTHER RELEVANT LAWS

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INTRODUCTION AND SUMMARY

The Legal Review of the Draft amendments (as of 30.10.2023) to the Law on the Ukrainian Parliamentary Commissioner for Human Rights (the Law) was conducted with the goal of assisting Ukrainian authorities in further enhancing the legal framework for the functioning of the Ukrainian ombudsman institution, upon the request of the Council of Europe.

The Amendments are, in the vast majority of the changes they aim to introduce, in line with international standards and good practices. Several of the proposed changes do not contradict those standards and practices but fall short of achieving all desirable effects. Finally, very few of the proposed changes fail to align the relevant text of the Law with the applicable standards and should be either avoided or redrafted.

The meticulous nature of this review should not be misunderstood as an indication of the Law and the amendments prepared by the national drafters being of subpar quality. On the contrary, the comprehensive approach was motivated by a dedication to meeting the highest standards and utilizing the momentum to help establish the strongest possible legal foundation for the work of the Ukrainian Parliamentary Commissioner for Human Rights (the Commissioner, or the Ombudsman), in accordance with the best applicable international practices and recommendations.

The main sources of international standards and good practices used in this review were the Paris Principles ("Principles Relating to the Status of National Human Rights Institutions") as endorsed by the Vienna World Conference on Human Rights and the UN General Assembly in 1993, with having in mind the General Observations of the Sub-Committee on Accreditation (SCA), as adopted by the GANHRI (Global Alliance of National Human Rights Institutions) Bureau in 2018, and the Principles on the Protection and Promotion of the Ombudsman Institution ("The Venice Principles"), adopted by the Venice Commission in 2019, with having in mind the Compilation of Venice Commission Opinions Concerning The Ombudsman Institution, as of May 6, 2022.

The Review incorporated insights gained through two rounds of highly productive consultations with the Office of the Human Rights Commissioner of Ukraine, and took careful account of the comments on the Preliminary Review (the initial draft) provided by CoE's Sophio Tsakadze and Victoria Galperina.

When proposing changes, utmost care has been taken to respect, to the highest extent possible, the legal writing style and terminology of the original texts. Every effort has been made not to omit any vital issue in the legal norms under review, but standards are "soft" law, and a living, evolving matter. They are also subject to subjective interpretation and prioritization, so no guarantees are realistically possible to that effect.

In preparing the Review, the following international standards and relevant documents were consulted in particular:

- Principles relating to the Status of National Institutions ("The Paris Principles")[1]
- Principles on the Protection and Promotion of the Ombudsman Institution ("The Venice Principles")[2]
- General Observations of the Sub-Committee on Accreditation (SCA) on the Paris principles, as adopted by the GANHRI in 2018.[3] ("General Observations")
- Compilation of Venice Commission Opinions Concerning the Ombudsman Institution[4] ("The Compilation of VC Opinions")
- Parliamentary Assembly of the Council of Europe (PACE), Resolutions: 1959 (2013) on the Strengthening the Institution of Ombudsman in Europe, October 2013; 2301 (2019) on Ombudsman Institutions in Europe – The need for a set of common standards[5]
- Recommendation CM/Rec(2019)6 of the Committee of Ministers to member States on the development of the Ombudsman institution[6]
- Recommendation of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions[7]
- Legal Opinion on the Draft 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, prepared by Marek Antoni Nowicki in 2021[8] ("Opinion by Nowicki")
- Recommendations aimed at bringing the National Regulatory and Legal Framework in Accordance with the Best EU Practices in the Human Rights Area, by a group of 12 experts, 2017[9] ("Recommendations by a Group of Experts")

The author of the Review extends his respect to the Commissioner and the Ukrainian authorities for persisting in the institutional development of the Ukrainian Ombudsman institution despite the ongoing aggression of the Russian Federation against Ukraine and the resulting human suffering and other obstacles. The author expresses gratitude to the Council of Europe's Directorate General of Human Rights and Rule of Law - DG1, as well as the CoE Office in Ukraine, for entrusting him with this specific endeavour.

[1] https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris
[2] https://www.venice.coe.int/files/Publications/Venice_Principles_eng.pdf
[3] https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/EN_GeneralObservations_Revisions_adopted_21.02.2018_vf.pdf
[4] https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2022)022-e
[5] https://pace.coe.int/en/files/20232/html, https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28161
[6] https://rm.coe.int/090000168098392f
[7] https://rm.coe.int/0900001680a1f4da
[8] https://rm.coe.int/legal-opinion-on-draft-law-amendments-to-the-law-on-ombudsperson-no501/1680a4a4f8

Article 1

The Commissioner’s core mission is copied from the Constitution, thus properly ensuring the alignment with the highest national source of law.

To ensure a comprehensive interpretation of the Commissioner's mandate, as required by relevant international standards, incorporating the elements of "protection," "monitoring," and "promotion" of human rights and freedoms is crucial. While the existing Article 1, in conjunction with other provisions, indirectly accomplishes this objective, explicitly enumerating these three components of the Commissioner’s role would significantly enhance clarity and legal certainty.

The use of the term "individual's" could potentially lead to an unnecessary terminological debate regarding rights that some consider to be group or collective rights, such as the right to peaceful assembly, whereas others consider them individual’s rights that just need to be exercised collectively. For this reason, it is advised to reconsider the use of this term.

Additionally, is advisable to avoid the conjunction “and” in the phrase “… rights and freedoms and protection of …”, as it might be perceived as adding additional content to the constitutionally defined scope of the Commissioner’s mandate.

The independence of the ombudsman institution is essential and should be emphasised as early as possible in the Law.

Finally, the phrase “effective treaties” should be supplemented with the remaining sources of international human rights law.

An improved wording for Article 1, while retaining its present essence, legal writing style, and adhering to the limits set by the Constitution, could read as follows:

“Parliamentary observance of the citizens’ and human rights and freedoms on the territory of Ukraine and within its jurisdiction, is permanently conducted by the Ukrainian Parliament Commissioner for Human Rights (hereinafter: “the Commissioner”).

The Commissioner is an independent state authority entrusted with the mission of protecting, monitoring and promoting adherence to citizens’ and human rights and freedoms as outlined in the Constitution of Ukraine, its laws and regulations, as well as ratified treaties and other recognized sources of international human rights law (hereinafter: “rights and freedoms”).

The formulation above was made with an effort to respect the hierarchy of the sources of law in Ukraine as it was understood from the available translations of legal texts, but it should be corrected if that understanding was wrong.

International standards underscore the significance of incorporating the fight against maladministration and the provision of good governance into an Ombudsman's mandate. This inclusion underscores the protection of citizens from potential abuses committed by administrative bodies and authorities. Such abuses can take various forms, including but not limited to laziness and delays, lack of professionalism and fairness, flawed reasoning, inequity and disrespect, failure to meet legitimate expectations of citizens, and disregard for the intent and objectives of laws and regulations.

The interpretation of the term "citizens' rights" in the definition of the Commissioner's mandate in Article 1 of the Law (and Article 101 of the Constitution), allows the Commissioner to address instances of maladministration and oversee the provision of good governance to citizens, despite the absence of their explicit mention in the Law. This stems from the recognition that maladministration most often manifests through the breach of specific norms, usually procedural, the observance of which by authorities can be categorized as "citizens' rights". However, those rights do not necessarily belong to the universally recognized catalogue of human rights. The term "citizens' rights" is thus construed here as distinct from "human rights" in the sense that, while all human rights are citizens' rights, not all citizens' rights outlined in a country's laws and regulations are considered human rights. This distinction underscores the broad scope of the Commissioner's mandate, encompassing more than just internationally recognized human rights and allowing for his/her institutional role in suppressing maladministration and ensuring good governance.

For legal clarity, education, and prevention, it is advisable to explicitly articulate in the Law that the Commissioner's mandate includes protection against maladministration, encapsulating the right to good governance. As Article 1 aligns with the constitutional article on the Commissioner, it is recommended to provide this clarification later in the Law by adding a new paragraph to the existing Article 3:

"In the context of this Law, the term 'human rights and freedoms' pertains to the rights and freedoms explicitly guaranteed as such by the Constitution and/or international human rights law, whereas 'citizens' rights' encompass all other rights and legitimate expectations afforded to citizens as provided for by the Constitution, laws and regulations, including the assurances of good governance and the prevention of undesirable administrative practices commonly referred to as maladministration."

Having in mind the Ukraine’s pursuit of EU membership, it is noteworthy that the right to good governance is guaranteed by the EU Charter on Fundamental Rights and explicitly protected by the EU Ombudsman.

Standards:

“1. A national institution shall be vested with competence to promote and protect human rights” (Paris Principles, Chapter: Competence and responsibilities).

“The mandate of the Ombudsman shall cover prevention and correction of maladministration, and the protection and promotion of human rights and fundamental freedoms” (Venice Principles, no.12).

“An NHRI must be established in a constitutional or legislative text with sufficient detail to ensure the NHRI has a clear mandate and independence” (General Observation 1.1.).

“All NHRIs should be legislatively mandated with specific functions to both promote and protect human rights” (General Observation 1.2).

“In order to facilitate the necessary broad interpretation of the mandate of the Human Rights Defender, it would be of advantage to have the Law include not only the term «protection» but also «monitoring» and «promotion». However, the term «protection» does not stand alone in the text but is preceded by the verb «implement», which already has a wide connotation. At the same time, the function of monitoring the administration by way of being able to issue recommendations is so basic to the role of the Ombudsman institution as generally perceived among nations that it clearly must be seen to belong to the mandate of the Defender as now declared in the Armenian Constitution” (CDL-AD(2006)038 – Opinion on Amendments to the Law on the Human Rights Defender of Armenia adopted by the Venice Commission at its 69th Plenary Session, Venice, 15-16 December 2006).

“The mandate of the Ombudsman shall cover prevention and correction of maladministration, and the protection and promotion of human rights and fundamental freedoms” (Venice Principles, no. 12).

“States shall adopt models that fully comply with these Principles, strengthen the institution and enhance the level of protection and promotion of human rights and fundamental freedoms in the country” (Venice Principles, no. 5).

“… it is recommended to enhance the awareness of the right to good administration via legislative changes” (Point 14 of the Recommendations by a Group of Experts).

“To endow Ombudsman and mediator institutions, where they exist, with the necessary constitutional and legislative framework, as well as State support and protection, adequate financial allocation for staffing and other budgetary needs, a broad mandate across all public services, the powers necessary to ensure that they have the tools they need to select issues, resolve maladministration, investigate thoroughly and communicate results, and all other appropriate means, in order to ensure the efficient and independent exercise of their mandate and to strengthen the legitimacy and credibility of their actions as mechanisms for the promotion and protection of human rights and the promotion of good governance and respect for the rule of law;” (d) To provide for the clear mandate of Ombudsman and mediator institutions, where they exist, to enable the prevention and appropriate resolution of any unfairness and maladministration and the promotion and protection of human rights, and to report on their activities, as may be appropriate, both generally and on specific issues” (The UN Resolution A/RES/75/186 on the Role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law", point 2. b.).

Article 2

This Article is understood to constitute the Commissioner’s mandate on the following combination of personal and territorial criteria:

1. Persons holding the Ukrainian citizenship, whether being in country or abroad, without any reservations with regards to the origin of authorities which are relevant for the provision of their rights and freedoms in a particular case, and

2. all other persons (regardless of their citizenship status) who are on the territory of Ukraine, when their rights and freedoms are affected by the work of the Ukrainian authorities of all levels.

The existing formulations, at least in the provided English translation, appear not to allow for a power of the Commissioner's to safeguard the rights and freedoms of all (not limited to Ukrainian citizens), from potential misconduct by Ukrainian authorities - their officials and staff acting in their official capacity abroad, such as the Ukrainian diplomatic and consular service, or staff in the peacekeeping missions. Furthermore, the current wording appears to overlook legal entities and groups of individuals with collective rights and legitimate interests, despite the explicit assurances of protection for them outlined elsewhere in the law.

Is advised that the first paragraph is revised to ensure the application of the Law on the Ukrainian authorities abroad, and to make the overall text of the Law more consistent. The following formulation is cautious not to be overambitious with the mandate of the Commissioner to deal with the situations abroad, and therefore in this situation aims for the protection of only Ukrainian citizens, but not of legal entities, organizations or groups linked with Ukraine.

The revision of the Art. 2 par. 1 is suggested in three paragraphs, reading as follows:

“The scope of application of the Law shall extend to the protection of rights and freedoms of all Ukrainian citizens, in country and abroad.

The Law shall also be applicable to every natural person, legal person, or group of persons, regardless of their citizenship, registration or any

other status or characteristic, when their rights and freedoms are affected with the work of Ukrainian public authorities in country and abroad.

In the context of this Law, a public authority is an authority at the level of the state, local self-governance or any other existing level; enterprise, institution, body, organisation, legal or national person or any other kind of entity which is entrusted by law with public powers or vested with the provision of public services, irrespective of their legal and ownership form" (hereinafter: public authorities)".

The inclusion of natural persons in the wording of the proposed norm acknowledges that, apart from state organs and legal entities, natural persons also can be empowered by law to wield public authority or deliver public services. In many legal systems this is the case with public notaries or public enforcers (those responsible for executing decisions). The current legal landscape in Ukraine might already reflect this, or it can in the future. The wording of the Commissioner's mandate in the Constitution allows for this modern aspect of his/her powers and this opportunity should be used to ensure the widest possible coverage of the Law.

It is common that "the work of a public authority" implies not only actions of officials, but also of civil servants, staff members, employees and all other persons whose conduct can reasonably be attributed to the public authority in question. If this is not common understanding, the explanation above should easily be transformed into a norm. However, to avoid more restrictive interpretation which should improperly narrow the scope of application of the law, the words "… and their officials" should be excluded from the formulation of Article 2 and all similar instances.

Standards:

"Any individual or legal person, including NGOs, shall have the right to free, unhindered and free of charge access to the Ombudsman, and to file a complaint" (Venice Principles, no. 15).

"The mandate of the Ombudsman shall cover all general interest and public services provided to the public, whether delivered by the State, by the municipalities, by State bodies or by private entities" (Venice Principles, no. 13. par. 2.).

"The Venice Commission recommends providing for the jurisdiction of the Commissioner to applicants under the jurisdiction of all natural and legal persons within the jurisdiction of the Republic of Kazakhstan. Instead of the clause "in the territory of the Republic of Kazakhstan" it would be better to refer to any natural or legal person within the jurisdiction of the authorities of the Republic of Kazakhstan. Such a wording would then include for instance individuals under the jurisdiction of authorities such as Embassies and Consulates. It would also include individuals residing in other countries, but in need of, e.g., applying to domestic Kazakhstan authorities for certain permissions etc." (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).

"The Commissioner should, in principle, be competent to examine cases against 'bodies of state power and local self-government' but not 'their officials' as there is a presumption that these officials act on behalf of these authorities" (Opinion of Nowicki, a/ Complaints against public officials).

Article 3

Most of the subject matter of Article 3 will be already addressed if the proposals for the preceding articles are accepted and consequently implemented in the rest of the text. In this case, Article 3 can be articulated to read:

"The purpose of the parliamentary control exercised by the Commissioner is to ensure the proper functioning of the public authorities with regards to the provision of rights and freedoms, especially through:

1) *Providing protection by exercising control and oversight of the work of public authorities by conducting investigations in particular cases and in systemic issues, and by recommending measures aimed at restoration of violated rights and freedoms and avoiding the similar wrongdoings in the future;*
2) *Effectuating immediate termination of threats to, or violations of rights and freedoms of persons deprived of liberty, and of all acts of retribution against all who cooperate with the Commissioner in the exercise of his/her function, especially whistle-blowers and witnesses, as well as initiating applicable procedures against the perpetrators;*
3) *Monitoring the work of public authorities with regards to the respect of rights and freedoms in general, and recommending measures aimed at improving the situation;*
4) *Cooperating with judicial authorities in country and abroad, including acting as amicus curiae, initiating cases before them and facilitating the implementation of their decisions;*
5) *Reporting through annual and special reports on the issues within the mandate of the Commissioner;*
6) *Providing education and training, conducting research, sharing information and increasing public awareness; cooperating with individuals, civil society organizations, professional associations and trade unions, legal persons, other Ombuds institutions and other entities in Ukraine and abroad, all with a view on the protection, monitoring and promotion of rights and freedoms;*
7) *Facilitation in bringing the legislation of Ukraine on rights and freedoms in accordance with the Constitution of Ukraine and international standards and good practices in this field;*
8) *International cooperation in the field of protection of human and citizens' rights and freedoms;*
9) *Other ways as foreseen in this and other applicable laws.*

This includes the work in the fields of anti-discrimination, personal data protection and the rights of the child."

Note: An addendum to Article 3 is contained in the comment to Article 1.

Standards:

“The Ombudsman shall have discretionary power, on his or her own initiative or as a result of a complaint, to investigate cases with due regard to available administrative remedies …” (Venice Principles, no. 16).

“The Ombudsman shall have the power to address individual recommendations to any bodies or institutions within the competence of the Institution…” (Venice Principles, no. 17).

“Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner” (Paris principles, Chapter “Methods of operation, line /a/).

“… the Ombudsman shall have the power to interview or demand written explanations of officials and authorities and shall, furthermore, give particular attention and protection to whistle-blowers within the public sector” (Venice Principles, no. 16).

“Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence” (Paris principles, Chapter “Methods of operation, line /b/, and all other lines in this Chapter).

“A national institution may be authorized to hear and consider complaints and petitions concerning individual situations … /d/ Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights” (Paris principles - Additional principles concerning the status of commissions with quasi-jurisdictional competence).

“19. Following an investigation, the Ombudsman shall preferably have the power to challenge the constitutionality of laws and regulations or general administrative acts. The Ombudsman shall preferably be entitled to intervene before relevant adjudicatory bodies and courts” (The Venice Principles no. 19).

“(g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas” (Paris Principles, Chapter “Methods of Operation”).

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs (Paris Principles, Chapter “Competence and responsibilities”).

“9.5. promote an “ombudsman-friendly climate” in particular by guaranteeing easy and unhindered access to ombudsman institutions, providing sufficient financial and human resources to those institutions and allowing them to co-operate freely with their peers in other countries and with international associations of ombudspersons” (Resolution 2301 (2019) Ombudsman institutions in Europe – The need for a set of common standards).

Article 4

Independence is a vital and indispensable aspect of the Ombudsman institution. This implies, among other things, that the Ombudsman must operate without being subject to instructions or unwarranted influence from external entities, whether state authorities or not. This encompasses the body that appointed the Commissioner – Verkhovna Rada. Simultaneously, it is acknowledged that the Commissioner regularly considers various factors when shaping positions on issues, including insights from experts, academics, and public opinion. While these inputs undeniably influence the Commissioner, they do so within reasonable bounds. This ensures that the Ombudsman is not isolated from society but retains the freedom to form opinions and take actions based on their knowledge, experience, and a thorough evaluation of all relevant factors.
It is thus advised to expand the first sentence of the Art. 4. par. 2 to read:

“The Commissioner performs his/her duties independently, and shall not be given nor follow instructions from anybody, including from any authority or official.”

Standards:

“The Ombudsman shall not be given nor follow any instruction from any authorities” (Venice Principles, no 14).

Article 5

Proposed changes to Article 5, par. 1 elaborate the requirements for the position of the Commissioner. All the criteria/conditions here appear proportionate and reasonable, within the margins of legitimate discretion of the national parliament. Still, one aspect might be worth adding due

to the fact that the Ombudsman (Commissioner) is an official whose success decisively depends on his/her personal authority. In the words of the Venice Commission, the essential requirement for the Ombudsman is to enjoy high respect and trust in the community.

Therefore, in the Art. 5. par.1 it is advisable to, after "has high moral qualities" or instead of it, add: "…, enjoys high respect and trust of the citizens high authority owing to their moral qualities and social sensitivity…"

Also, at the end of the Art. 5. par. 1. paragraph it should be added: "… and has not been retired".

Standards:

"In general terms, however, it may be said that the main significance of having references such as those here deleted is to lend support to the essential requirement of the person of the Defender enjoying high respect and trust in the community, which is of extreme importance and is of course proclaimed in the Constitution as a primary condition for eligibility". CDL-AD(2006)038 - Opinion on Amendments to the Law on the human Rights Defender of Armenia adopted by the Venice Commission at its 69th Plenary Session (Venice, 15-16 December 2006).

"Therefore, it is the person's good reputation in the society and a recognized expertise in the field of human rights that should be essential for this position". CDL-AD(2015)034 - Opinion on the Draft Law on Ombudsman for Human Rights of Bosnia and Herzegovina, adopted by the Venice Commission at its 104th Plenary Session (Venice, 23-24 October 2015).

"The criteria for being appointed Ombudsman shall be sufficiently broad as to encourage a wide range of suitable candidates. The essential criteria are high moral character, integrity and appropriate professional expertise and experience, including in the field of human rights and fundamental freedoms" (Venice Principles, no. 8).

Article 6

The procedure for nomination of the candidates for the position of the Commissioner appears in line with international standards - it includes a public call and can be considered public, transparent, merit based, objective, and provided for by the law. It is commendable that the nomination rules are inclusive, including both political representatives and civil society. This positive assessment stands only if it is well understood from the context that the proposals are submitted "to" the speaker of the Parliament, and not, as it actually stands in the translation, "by" him/her. In the unlikely case that the proposals are really to be submitted "by" the Chairman of the Verkhovna Rada, then civic associations, scientific institutions and professional organisations in the field of human rights' protection would serve only as initiators for the discretionary decision of the Chairman on whom to designate as a candidate, in which case the opinion on this norm would be negative. Some experts suggest as an optimal solution to ensure that anyone can apply directly for the office of the Commissioner, without being proposed by any particular entity. That opinion is not fully shared here, as the post of the Commissioner requires high degree of personal authority in the society, an indicator of which may well be – being proposed for the post by a relevant human rights organisation.

Regarding the vetting and initial selection of candidates, it is welcome that the Competition Commission includes both members of the parliamentary Committee and external experts, coming from human rights organizations and academia, guaranteeing transparent, public and merit-based assessment.

However, it is advised that the announcement on the nomination of candidates for the Commissioner is made not only in the official website of the Verkhovna Rada.

The Art. 6. Par 3 is advised to be continued with: "…, and in other ways, especially through media."

As many aspects of the work of the Competition Commission remain to be further elaborated by the Regulation, which is approved by the Committee, it is vital that the Regulation keeps the spirit of this legal provision, calling for public, transparent, merit based, objective assessment of the candidates.

The law appears silent on what happens if the decision of the Competition Commission is not approved by the Committee. This situation is advised to be briefly regulated.

Standards:

"The Ombudsman shall be elected or appointed according to procedures strengthening to the highest possible extent the authority, impartiality, independence and legitimacy of the Institution" (Venice Principles, no. 6).

"The procedure for selection of candidates shall include a public call and be public, transparent, merit based, objective, and provided for by the law" (Venice Principles, no. 7).

"The Ombudsman shall be elected or appointed according to procedures strengthening to the highest possible extent the authority, impartiality, independence and legitimacy of the Institution" (Venice Principles, no. 6).

"To sum up, the Commission recommends revising the provisions concerning the election of the Commissioner in order to comply with those

enshrined in the Venice Principles, in particular providing for a public and transparent selection procedure, comprising public call, testing and shortlisting, an election by qualified majority, a longer term of office and preferably a non-renewable term of office". 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).

Article 6-1

The existing norm stipulates that the Commissioner can be elected only with a simple majority, with the additional condition that also a majority of members from the constitutional composition of the Verkhovna Rada of Ukraine votes for the successful candidate. This arrangement appears not entirely in line with relevant international recommendations, as the additional condition does not precisely require a "qualified" majority. Full compliance would necessitate more than a simple majority of votes from the members of the Parliament, such as two-thirds or three-fifths. However, given that the Constitution of Ukraine governs the election of officials in the Parliament, it is understood that the desired change toward a qualified majority cannot be achieved until the Constitution provides for it. This remark, therefore, should be revisited when (and if) the Constitution of the country undergoes the next revision.

The draft Law sets the length of the mandate at (5) years, with the possibility of one renewal. However, as the most recent standard the Venice Commission recommends one non-renewable mandate of seven or more years.

It is advisable to amend draft Article 6-1, paragraph 6, to read: "The Commissioner shall be appointed for the term of 9 years, commencing from the day of taking an oath. The term shall not be consecutively renewable."

If this or a similar formulation to the same effect is accepted, the Law will also need to address the application of that norm to the incumbent Commissioner. Some countries have resolved this by a provision stating that the mandate of the incumbent Ombudsman shall not be counted (effectively allowing the incumbent Ombudsman to assume the second term in office even though the positive law provides for only one). Although there are no specific recommendations from international bodies on how to resolve this particular dilemma, the mentioned solution is not advised, as it has the potential to compromise the integrity of the Ombudsman.

Regarding the matter of remaining in office after the expiration of his/her mandate, there is a concern: if the Commissioner whose term has expired were to remain on duty for a prolonged period, this could undermine the legitimacy of his/her office. Additionally, the current norm, as it stands, may de-prioritize the timely election of the (new) Commissioner.

Therefore, at the end of Art. 6-1. par. 7 (the last paragraph), is advised to add: "…but not longer than six months from the day of the expiry, unless the Parliament is unable to meet, in which case the extension of the mandate will last until the Parliament's next session".

Standards:

"The Ombudsman shall preferably be elected by Parliament by an appropriate qualified majority" (Venice Principles, no. 6).

"The term of office of the Ombudsman shall be longer than the mandate of the appointing body. The term of office shall preferably be limited to a single term, with no option for re-election; at any rate, the Ombudsman's mandate shall be renewable only once. The single term shall preferably not be stipulated below seven years" (Venice Principles, no. 10).

Article 7

The following light recommendation should be considered: in the text of the oath as found in the Art. 7 par. 1, a phrase could be inserted to underline the international aspect of human rights and their protection by the Commissioner:

"…the Constitution of Ukraine, laws of Ukraine and the international human rights law…".

Standards

"To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation" (Paris Principles, Chapter "Competence and responsibilities, par. 3 b).

Article 8

In Article 8, par. 1, the term "any other creative activity" can be (too) vague to serve as a legal standard, and also (incorrectly) implies that the activities which are banned are inherently non-creative. Incompatibility clauses exist to reduce chances for a conflict of interest and promote the Commissioner's objectivity and independence in every situation. However, it should be kept in mind that the life of the Commissioner does not end after the expiry of his/her mandate, and that he or her must not be deprived from the professional development and reasonable professional opportunities for future.

The Commissioner, his/her representatives and the staff in the Secretariat are expected to act not only lawfully (that is a bare minimum), but also to uphold highest ethical standards. This is especially due to the importance of high personal authority that the holder of this particular office needs to enjoy in the community.

The restriction of rights of the Commissioner would probably appear more proportional should Article 8 include the following:

"During the term in office, the Commissioner shall not exercise any activity that could jeopardize or reduce his or her independence, impartiality, results or the trust of the public, and particularly shall not hold or have any other political or professional function, position or job, with the exception of pro-bono educational or scientific activities in the country, and educational, scientific and human rights related activities abroad.

The Commissioner adopts the Code of Ethics to ensure the upholding of the highest ethical guidelines and standards for him/her and his/her staff in the Secretariat, and establishes, by an internal regulation, a mechanism to ensure that the code is binding, known and respected".

It should be noted though, that restrictions of the rights and legitimate interests of the Ombudsman need to be compensated with comparatively high salary and other work and career related compensations and guarantees. The level of salary is often set as equal to the salary of the another high-ranking official, such as the president of the Constitutional Court. Therefore, it is advisable at least to include this guarantee (on the salary of the Commissioner) in the text of the draft Law.

Lawful restrictions in civil rights also need to have a basis in the Constitution.

The formulation of the norm about the code of ethics is made to ensure the establishment of the whole ethical infrastructure, not simply an adoption of a code that otherwise might remain a still-born document.

Standards:

"The Ombudsman shall be elected or appointed according to procedures strengthening to the highest possible extent the authority, impartiality, independence and legitimacy of the Institution" (Venice Principles, no. 6).

"The Ombudsman shall not, during his or her term of office, engage in political, administrative or professional activities incompatible with his or her independence or impartiality. The Ombudsman and his or her staff shall be bound by self-regulatory codes of ethics" (Venice Principles, no. 9).

"The drafters might consider allowing the ombudsperson [and] his or her deputies to pursue teaching activities. However, it would be preferable to replace the list of public offices, which cannot be held by an ombudsperson, with a more comprehensive provision stating that the ombudsperson shall not hold any position which is incompatible with the proper performance of his or her official duties or with his or her impartiality and public confidence therein" (CDL-AD(2004)041 - Joint Opinion on the Draft Law on the Ombudsman of Serbia by the Venice Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe adopted by the Venice Commission at its 61st Plenary Session).

"The Public Attorney function should not be compatible with another function or profession, public or private, neither with the belonging to political parties or unions. It could eventually be compatible with lecturing but, even in that case, the activity should be exercised without compensation" (CDL-AD(2003)007 - Opinion on the Draft Law on the Public Attorney of "The former Yugoslav Republic of Macedonia", adopted by the Venice Commission at its 54th Plenary Session).

Article 9

The dismissal provisions appear to be largely, but not fully in line with international standards which require an exhaustive list of clear and reasonable reasons for removal, followed by the transparent and well-regulated procedure in the Parliament (which includes the possibility of the Commissioner to be heard), and the same type of parliamentary vote as with the appointment, or more difficult. Given the substandard majority required for the appointment, the Law can be improved by introducing a request for a qualified majority for the dismissal of the Commissioner, as the Constitution does not prevent it.

Therefore, Article 9 par. 3 of the draft Law is advised to amended as to introduce the following:
After the words "… of term to which he/she has been elected …" and before the words "… exclusively in case of" insert "with two thirds of all members of its members".

The norm enabling the Parliament to dismiss the Commissioner for the "breach of the oath" appears to be the weakest aspect of this article. It is too vague to meet the criteria set by international standards, and it is advised to be omitted. Only if a very high majority vote in the Parliament would be made required for this particular reason for dismissal (such as four-fifths) it could be considered appropriate for the Parliament to be able to dismiss the Commissioner for the reasons related to the content of the oath, which would still need to be more precisely defined, e.g. through the formulation *"continuous and grave disregard for the obligation to protect rights and freedoms, and/or to honour the Constitution, and after hearing the opinion of the Constitutional Court to this effect".* Of course, the dismissal would be possible only after providing the Commissioner with an opportunity to be heard in the Parliament and answer to the relevant accusations. Consequently, the law which regulates the work of the Constitutional court would need to accommodate to the duty of the Constitutional Court to provide a relevant opinion upon the request of the

Parliament.

It is presumed that the termination based on a "court verdict of guilty against him or her", in the original text refers to a final, legally enforceable court verdict. Only if this is so, no objections can be made to this particular reason for dismissal.

Standards:

"The Ombudsman shall be removed from office only according to an exhaustive list of clear and reasonable conditions established by law. These shall relate solely to the essential criteria of "incapacity" or "inability to perform the functions of office", "misbehaviour" or "misconduct", which shall be narrowly interpreted. The parliamentary majority required for removal – by Parliament itself or by a court on request of Parliament- shall be equal to, and preferably higher than, the one required for election. The procedure for removal shall be public, transparent and provided for by law" (Venice Principles, no. 11).

"The dismissal must be made in strict conformity with all the substantive and procedural requirements as prescribed by law. The grounds for dismissal must be clearly defined and appropriately confined to only those actions which impact adversely on the capacity of the member to fulfil their mandate. Where appropriate, the legislation should specify that the application of a particular ground must be supported by a decision of an independent body with appropriate jurisdiction. Dismissal should not be allowed based solely on the discretion of appointing authorities" (General Observation 2.1 of the Paris Principles).

Article 10

The Head of the Secretariat preferably should not have the power to appoint and dismiss employees of the Secretariat not even when the Commissioner is absent. Only in the circumstances decidedly prescribed by a relevant labour relations law (e.g. not attending to work in a period of 5 days without justification, as it is a case in labour laws of some other countries), retaining this power of the Head of the Secretariat in the lack of an appointed Commissioner could be justified.

Empowering the Head of the Secretariat to represent the Secretariat in relations with state and local authorities and other bodies in the country and abroad also appears excessive. In fact, the question is – why should the Secretariat even have "relations" of its own with state and local authorities, accept in commercial and, possibly, administrative issues? The function of the Ombudsman (the Commissioner) is vested by the Constitution and the Law with the person appointed to this high office. The Secretariat exists to support and facilitate the exercise of his/her function and it does not have a state function (mandate) of its own.

The Secretariat being a legal entity on its own, and consequently having its own bank account and seal may be understood as a result of the need for the Commissioner not to be concerned with (and legally responsible for) the kind of affairs that are not really about the protection of citizens' and human rights and freedoms (e.g. public procurements). Only in that sense, this could be appropriate. Unless the previously expressed concerns about the nature of the Secretariat are a result of imprecise translation, the relevant norms should be reconsidered.

The norms should not be phrased in a way that can lead to conclusion that the Head of the Secretariat is in a way replacing the Commissioner if the post is empty. A solution to the question of having a substitute if the office of the Commissioner is vacated or the Commissioner is temporarily incapacitated for office is a complex and important one, and should be regulated in a clear way. It appears (indecisively) that the intention of drafters was to not have a substitution for the Commissioner if the post is empty. Such a choice is (would be) justified for the reason that, except the Commissioner, no other official in the institution is appointed by the Parliament, which is a democratically elected body from which the legitimacy originates. Even the title "Ukrainian Parliamentary Commissioner" suggests that having someone in that post who is not appointed by the Parliament, even if only as "acting Commissioner" would be lacking in legitimacy which is fundamental for this post. Finally, if the parliament knows that no one can substitute a "missing" ombudsman, the priority of appointing one will reasonably be higher. Therefore, in the particular Ukrainian conditions, the reasons for not having a substitution appear to prevail over the need for the function of the ombudsman being exercised by someone at all times. In countries in which the parliament (still) appoints deputies of the Ombudsman, having one of them as a temporary substitute appears more justified.

The considerations above do not apply nor refer to cases when the Commissioner is simply absent, e.g. due to an official trip abroad, or prevented from physically attending to office due to an illness which otherwise does not incapacitate him/her, or does not last long. Having in mind the modern means of communication, those and similar obstacles can be overcome and the Commissioner can still perform his/her duties. Instead, the question was raised about the situation when the term of the office of the Commissioner was interrupted (e.g. the Vrkhovna Rada of Ukraine has dismissed him/her), or if the illness or similar reason renders the Commissioner temporarily unable to work at all, or worse.

Having all this in mind, it is recommended to completely re-think and change Article 10 to ensure that:

1. *There shall be a Secretariat of the Commissioner which supports and facilitates the activities of the Commissioner.*
2. *The Secretariat is headed and managed by the head of the Secretariat, (this post can also be titled "The Secretary General"), except that the Commissioner hires and fires all staff in the Secretariat, including the head of the Secretariat, and instructs them in all aspects of the work directly related to the mandate of the Commissioner. The Commissioner may also decide to establish regional offices of the Secretariat.*
3. *The Head of the Secretariat shall represent the Secretariat in civil-law relations, shall have the right to sign financial documents, orders and other documents on personnel, organisational, logistical and administrative issues within the scope of authority, except*

those reserved by this Law for the Commissioner. (Note that the Head of Secretariat will also be legally responsible for that, as the functional immunity applies only to actions and decisions taken as a part of the mandate of the Commissioner (prevention and protection of citizens' and human rights and freedoms).

4. *The structure of the Secretariat, distribution of duties and other issues concerning the organisation of its activity shall be regulated by the Regulations on the Secretariat of the Ukrainian Parliament Commissioner for Human Rights (hereinafter referred to as the "Regulations"), which the Commissioner adopts.*
5. *The Law of Ukraine "On Civil Service" shall apply to the Secretariat staff members (an alternative, increasingly preferable to this, is to create a comprehensive sui-generis status for the staff of the Secretariat, by regulating in the Law on the Commissioner all details of the labour relations - titles and rankings, salaries, all other aspects of the labour relations including all rights and responsibilities, disciplinary measures, etc. But this is massive work and probably not a priority at the moment).*
6. *The Regulations and the budget of the Secretariat shall be approved by the Commissioner within the scope of budget expenses allotted for the Commissioner's activity.*

Standards:

"NHRIs should be legislatively empowered to determine the staffing structure and the skills required to fulfil the NHRI's mandate, to set other appropriate criteria (for example, to increase diversity), and to select their staff in accordance with national law" (General Observation 2.4 of the Paris Principles).

"Through Principle 22, the Venice Principles refer to one of the essential elements of the Ombudsman's independence, namely that of recruiting his or her deputies and staff … . Therefore, the Commissioner should not only appoint and dismiss the Head of the Center, but the entire staff" (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).

"… arrangements should be in place so that the post of the head of any Ombudsman institution does not stay vacant for any significant period of time" (Recommendation CM/Rec(2019)6 of the Committee of Ministers to member States on the development of the Ombudsman institution, Appendix, par. 3).

Article 11

The position of the representatives of the Ukrainian Parliamentary Commissioner for Human Rights is of a nature of a deputy ombudsman. They can be appointed on criteria of both topical and territorial competence.

The formulation which stipulates that the Commissioner appoints representatives to have them "exercise powers of parliamentary control over observance of the constitutional human and citizen's rights and freedoms" (par. 1 of this article) is probably not the most fortunate one, as it might be understood as if the Commissioner is appointing other commissioners, not his/her representatives (deputies).

More simply put, representatives of the Commissioner cannot have the mandate and powers of the Commissioner on their own, given that the Constitution stipulates that the Commissioner is the person who is appointed by the Parliament to this office. Representatives are not appointed by the Parliament, nor sworn, and this must also be taken into account when understanding the origin and limits of their powers, and the strength of their legitimacy. Having that in mind, representatives can only be understood, and their function should be accordingly defined in the law, as officials who represent the Commissioner who delegates, entrusts them with his/her powers, to exercise them on his/her behalf. In practice, this will mean that they will factually use those powers, but the Law should be careful not to open space for interpretations which are not in line with the wording and spirit of the Constitution and the particular nature of the institution of ombudsman.

To improve the current draft amendments, a more accurate definition of the role of representatives, having also in mind the relevant arguments provided above for the office of the Head of the Secretariat, Article 11 par. 1 is advised to read:

"The Commissioner is authorised to appoint his/her representatives and entrust them with his/her powers in the part and in the way as decided by him/her. Representatives have the status of (state) officials at the level of …". Representatives work under guidance and abide by instructions of the Commissioner, and no one else.

It would not be inappropriate to reserve the right for the Parliament to approve the maximum number of Representatives, to ensure the mechanism of reasonable checks and balances with the Commissioner's powers. That can be done either through fixing the number in the Law, or by stipulating in the Law that the Commissioner decides on the number of representatives by means of an internal regulation, pending approval by the Parliament.

The draft amendments and the present law stipulate that the term in office of the representatives terminates by the day of the new Commissioner taking an oath, but appear to be silent on termination for other reasons.

It is advisable to fill in that blank with norms reading:

"Term of office of a representative of the Commissioner shall be terminated for the applicable reasons analogue to the reasons for the termination of office of the Commissioner.
The Commissioner may dismiss a representative in the case of the loss of trust due to the failure of the representative to uphold the Law and the

Code of Ethics, or the lack of results in a prolonged period, or for not acting in accordance to a lawful instruction of the Commissioner."

The proposed relatively easy dismissal of representatives by the Commissioner is a consequence of the relatively easy and discretionary appointment of representatives by the Commissioner, the nature of their office which requires the full trust of the Commissioner, and their status of officials, not public servants.

The incompatibility clause for representatives should be the same as for the Commissioner him/herself. It is hard to understand what objective criteria may justify singling out the practice of the medical profession and declare it compatible, unlike other professions. *This particular exclusion from incompatibility should be removed from the draft amendments.*

Granting representatives of the Commissioner the status of officials cannot be reconciled with the norm specifying the "time when they do not have to fulfil the representative's duties." While the purpose and practical reasons for such a solution can be inferred, the fundamental principle remains that someone is either a state official or not, and if they are, this designation applies 24 hours a day. Allowing a representative to wear two or more hats can lead to harmful confusion. It is advisable to avoid this scenario in the interest of preserving the integrity of the office of a representative and, consequently, of the Commissioner.

Standards:

"The Ombudsman Institution shall have sufficient staff and appropriate structural flexibility. The Institution may include one or more deputies, appointed by the Ombudsman. The Ombudsman shall be able to recruit his or her staff" (Venice Principles, no. 22).

"The possibility to establish organisational units in places other than the headquarters, foreseen in the amended Article 6, would strengthen the territorial organisation of the Protector's office and is to be welcomed. However, the Protector should have discretion whether to establish such additional units and in what form (including how many) in order to properly perform his or her mandate. There is no need to involve the legislature in such decisions" (CDL-AD(2009)043 – Opinion on the draft amendments to the Law on the Protector of Human Rights and Freedoms of Montenegro, adopted by the Venice Commission at its 80th Plenary Session).

"There may be valid reasons for having four deputy ombudspersons and to have only one of them who replaces the ombudsperson. While the distribution of work between the ombudsperson and his or her deputies is not specified in the draft, this could of course be provided for in the internal rules of the ombudsperson (Articles 34 and 36). In any case, the draft should reflect the pluralistic nature of Serbian society both as concerns gender and ethnic composition. Concerning Article 5.5, please refer to the comments related to Article 4 on requisites to become an Ombudsperson" (CDL-AD(2004)041 - Joint Opinion on the Draft Law on the Ombudsman of Serbia by the Venice Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe adopted by the Venice Commission at its 61st Plenary Session).

Article 11-1

More information is required to properly assess the notion of "representatives of the Commissioner on a voluntary basis." It is essential to clarify their role, the relationship between "regular" representatives and those on a "voluntary basis," as well as their powers and functions. If the only distinction between the status and powers of "regular" and voluntary representatives is pro-bono work, it raises concerns about excessive discretionary power granted to the Commissioner. The term "representative pro-bono" may draw comparisons to "honorary consul" in diplomacy, but the context is significantly different. While the intention and practical reasons may be inferred, such a solution cannot be endorsed if holders of such a title are meant to practically exercise the substantial state powers vested in the Commissioner. Instead, it is advisable to enhance the mobility of the Commissioner's team rather than risk compromising service standards.

Article 11-2

This article appears in line with the international standard requiring effective cooperation of a NHRI with civil society.

Standards:

"Regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates. NHRIs should develop, formalize and maintain working relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, thematic institutions, as well as civil society and non-governmental organizations" (General Observation 1.5 of the Paris Principles).

Article 12

This draft article does not fully guarantee the Commissioner's financial independence and is therefore not in line with international standards. The lack of full guarantees of fiscal and financial independence could severely hurt the independence of the Commissioner and therefore limit his/her capacity to ensure the respect of citizens' and human rights and freedoms.

The safeguard that the Commissioner's budget may not be smaller than in the previous year does not suffice, as inflation or other circumstances,

such as a substantial increase in budgets of the institutions that require to be under the most intensive oversight by the Commissioner, would render the budget from the previous year insufficient, even if is not reduced in absolute terms.

To ensure the Commissioner's financial independence, it is crucial to grant the Commissioner the power to independently develop a proposal for the budget of the institution. This proposal should reach the Parliament unchanged, and assurances for that must exist, especially if the draft budget needs to pass through the governmental authority responsible for presenting the overall draft national budget to the legislature. In essence, the Law should guarantee that the Commissioner's budget proposal shall be incorporated into the draft national budget without changes, particularly by the executive.

Practically, this can be achieved by including the draft institutional budget developed by the Commissioner in the overall draft state budget, without prior approvals or amendments by the Ministry of Finance, the Government, or any other entity. While the Ministry of Finance or a similar authority may assist the Commissioner's Secretariat in meeting methodological requirements, they must not be in a position to impose any solutions.

The procedure should mandate the Parliament to invite the Commissioner to defend his/her draft budget if it faces any challenges, especially in the case of formal amendments being submitted.

Equally important to the independent drafting of the budget is the power of the Commissioner to freely execute the allocated budget according to own needs and in own dynamics, without any interference from the Government or even the Parliament. Suspending the execution of the budget and/or creating administrative barriers in the use of otherwise available funds are among the easiest ways to influence the work of the Ombudsman. Therefore, guarantees of the independent use of the allocated budget should also be incorporated into the draft amendments to this Law.

Lastly, the Law should ensure that only the control (audit) of the legality of expenditures is possible, but not the evaluation of prioritization and other discretionary aspects of the Commissioner's spending, neither by the Parliament nor by the state audit institution or any other similar authority.

Combining all the above aspects constitutes proper guarantees for budgetary independence in practice.

The draft addition that provides that the Commissioner's activity can be financed from extra-budgetary sources has a twofold potential. It is commendable because it opens an additional source of funding, therefore it can increase the quantity and quality of activities. However, it can also have a detrimental effect if it is understood in the way that creates an expectation from the Commissioner to secure extrabudgetary funding for the full and effective operation of the institution. This may lead towards donor-oriented planning and a shift in activities that could result in meeting expectations and priorities of donors rather than the actual human rights' needs of the citizens and the independent Commissioner's assessment of those needs. In short, this is an additional chance for the institution to thrive, but the one which requires great care, specific skills and integrity. To better meet the international standards, it is advised to add the following norm to the draft text:

"The budget of the Commissioner shall provide for the state funds which are adequate to ensure full, independent and effective discharge of all aspects of the Commissioner's mandate."

The next norm, about the international financing, should be amended with one word, to read:

"The Commissioner's activity may be additionally financed with funds provided under the international treaties of Ukraine, international technical assistance projects (programmes) as well as funds from other sources consistent with the effective legislation of Ukraine."

Standards:

"Sufficient and independent budgetary resources shall be secured to the Ombudsman institution. The law shall provide that the budgetary allocation of funds to the Ombudsman institution must be adequate to the need to ensure full, independent and effective discharge of its responsibilities and functions. The Ombudsman shall be consulted and shall be asked to present a draft budget for the coming financial year. The adopted budget for the institution shall not be reduced during the financial year, unless the reduction generally applies to other State institutions. The independent financial audit of the Ombudsman's budget shall take into account only the legality of financial proceedings and not the choice of priorities in the execution of the mandate" (Venice Principles, no. 21).

"2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence (Paris Principles, Chapter: Composition and guarantees of independence and pluralism).

"To function effectively, an NHRI must be provided with an appropriate level of funding in order to guarantee its independence and its ability to freely determine its priorities and activities. It must also have the power to allocate funding according to its priorities. In particular, adequate funding should, to a reasonable degree, ensure the gradual and progressive realisation of the improvement of the NHRI's operations and the fulfilment of its mandate" (General Observation 1.10 of the Paris Principles).

"The required independence of the Ombudsman institution is measured by the independence of its head, its staff, and its budget, both in terms of amount and of management" (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).

“The budgetary independence provided for in Article 33 is a very positive element. In addition, explicit reference should be made in the first paragraph to adequate provision of funds for the effective and efficient functioning of the office. In addition, (this may be a question of translation,) it seems that the Government is obliged to include the ombudsperson draft proposal into the global draft budget submitted to Parliament without any change” (CDL-AD(2004)041 - Joint Opinion on the Draft Law on the Ombudsman of Serbia by the Venice Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe adopted by the Venice Commission at its 61st Plenary Session).

“The legislation on the Ombudsman should provide that the budgetary allocation should be adequate to the need to ensure full, independent and effective discharge of the responsibilities and functions of the institution taking into account such matters of reference as the number of complaints lodged with the institution in the previous year. The law or statute could also provide for a relative budgetary independence of the Ombudsman by prescribing that the institution itself should submit a proposal for its budget” (CDL-AD(2007)020 - Opinion on the possible reform of the Ombudsman Institution in Kazakhstan adopted by the Venice Commission at its 71st Plenary Session).

“Also, Article 37.5 of the Law provides that the PA’s Office may be financed from other sources than the State budget, on the sole condition of not being prohibited by law. While there are no International or European standards prohibiting the funding of Ombudsman institutions from sources other than the state budget, this may be seen as detrimental to the independence and the appearance of independence of the PA. It is strongly recommended that the Law explicitly stipulate that the budgetary allocation should be adequate to the need to ensure full, independent and effective discharge of the tasks of the institution, based on indicators such as the number of complaints lodged with the PA in the previous period of reference. The Law should also provide for the autonomous management, by the Office, of the budgetary allocation at its disposal” (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).

“The law should also expressly provide for the autonomous management, by the Ombudsman Institution, of its budget” (CDL-AD(2015)034 - Opinion on the Draft Law on Ombudsman for Human Rights of Bosnia and Herzegovina, adopted by the Venice Commission at its 104th Plenary Session).

“The Defender should also be able to defend, in person, the adoption of his or her budget in Parliament (Article 8.4). = budgetary independence” (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).

Article 13

For the points 3, 14 and 15, it is advisable to add that the relevant state authorities are obliged not only to consider initiatives/proposals of the Commissioner, but to do it promptly, and to provide a deadline measured in time or in sessions of the body *(e.g. “at the first, or at latest the second next session”* of the body in question.

It should be made clear if the Commissioner has the power to formally propose a law or a regulation to the competent legislative/regulatory body, or only a power to initiate a normative change, or both. (The power of formal proposal results with an obligatory vote (a decision) of the body to whom the proposal is addressed to accept or dismiss the proposal, whereas the initiative prompts a decision of the body to begin the process of the legislative change in the direction indicated by the Commissioner in the initiative, or not.) It is advisable to grant the Commissioner with both powers, which he/she will use at own discretion.

Very powerful prerogatives of the Commissioner to access all documents, or to enter premises without hindrance and without prior notification, including documents and premises of private entities (note that that the term “organizations” includes associations of citizens, even those which are not registered nor those that chose to have the status of legal entities; note that these powers should extend also to natural persons entrusted with public powers, such as public notaries) are drafted without necessary safeguards against wrong interpretation or even abuse. The norm should clearly indicate that those powers exist only within the formal case inquiry of the Commissioner, or for the fulfilment of his/her preventive or monitoring functions. To achieve that,

Article 13 par. 1. line 4 should be continued after the word “establish”, with “… when it is necessary for the exercise of his/her protective, monitoring or preventive role.

In the list of potential places of detention (line 8), after “This list is not exhaustive” it should be added “and includes any known or potential place of detention”.

After “where persons are detained”, it is advisable to add “or the Commissioner has a reason to believe that persons may be kept detained …”.

Line 10) paragraph 2 would provide more accessible protection when in need should the norm read only “unable to independently protect their rights and freedoms …”, the conditionality of “being underage” or any other being erased. In that way, the Commissioner could decide to extend protection to anyone who is underprivileged, regardless of the cause.

Regarding the line which reads: “to enter into cases in which the proceedings are opened based on claims (statements, petitions (submissions)) of other persons, at any stage of their judicial proceedings” in the line 10), it is understood as enabling the Commissioner to act as an *amicus curiae* or a third party – a valuable and commendable mandate.

This norm could be improved by adding "... in country and abroad, as well in procedures in relation to these proceedings." at the end of the sentence, to confirm that the Commissioner has a mandate to appear as a third party before international human rights bodies, such as the European Court of Human Rights, as well as to cooperate internationally with a view to the full implementation of relevant decisions of international bodies related to Ukraine and its citizens.

As for the line 10-2, the international standards require that an ombudsman's competence regarding the judiciary be confined to ensuring procedural efficiency and good governance. The newly proposed text appears to overstep that line if the norm, as it appears from the translation to English language, truly empowers the Commissioner to assess if a judge has, in his/her judicial function, violated human and/or citizens' rights, ad to initiate a prosecution against him/her for that. Even though this was amongst the crucial functions of the Supreme Ombudsman – a royal predecessor to the Swedish Parliamentary Ombudsman which then served as a model for the ombudsman institutions around the world, the prevailing modern interpretation of the judicial independence considers this power of the ombudsman excessive and the standards call for its removal. (Aware of this, a minority opinion of the consultant is still that, particularly if the situation in the judiciary necessitates strong oversight, empowering the Ombudsman to initiate disciplinary proceedings against judges for apparent violations of human rights norms and standards in the exercise of their judicial function, is in fact necessary, appropriate and proportional, as long as the final decision on the culpability of the judge lies on the inherently judicial authority such as the supreme judicial council or similar top-level judicial body. Of course, it is advisable to adhere to the generally accepted standards, not this opinion.)

The proposed lines 14, 16, 16, 17 and 18 are commendable for several reasons, including for explicitly enabling the Commissioner him/her not only to investigate concrete cases, but also to exercise monitoring of the work of authorities, and also confirms the role of the institution in the documenting of war crimes and gross human rights violations.

Given that the recommendations of the Commissioner are not legally binding but carry moral and political weight, and recognizing the necessity to ensure the highest level of efficiency for the Commissioner in providing protection of rights and freedoms under these circumstances, it is useful to examine and utilize every opportunity to increase the impact of the Commissioner's findings. However, necessary safeguards should be in place to maintain a balance with the relatively informal procedure that the Commissioner leads in order to identify violations and wrongdoings of authorities within his/her mandate. Having that in mind, it is advisable to consider the following addition to the powers of the Commissioner:

"The Commissioner is entitled to make recommendations to suspend the execution of the administrative or disciplinary decision in exceptional cases and for a specified period, or until the completion of his/her investigations, where its execution may result in irreparable damage for the rights and freedoms of a person or entity within the Commissioners mandate".

Also, the law which regulates the administrative procedure could be amended to ensure *that "findings of the Commissioner in a case constitute a reason for an extraordinary revision of a judgement or decision of administrative or disciplinary nature."*

Standards:

"The investigative powers of the Ombudsman are exhaustive and include, for example, the right to request all necessary information from any state or municipal body and officials (par. 2.2), to be received without delay by heads and other officials of state and municipal bodies (par. 2.7) and "may on his/her own initiative investigate the cases of special public importance or where the interests of persons who are unable to protect their rights themselves had been affected" (CDL(2001)083 - Consolidated Opinion On the Law on Ombudsman in the Republic of Azerbaijan).

"- contribute to an effective justice system for all, through awareness-raising measures and facilitating access to rights and remedies and, as applicable, by providing legal assistance, being a party before the courts or, when applicable, receiving individual complaints;
- encourage the signature, ratification of and accession to international human rights treaties and contribute to the effective implementation of such treaties, as well as related judgments, decisions and recommendations as well as to monitor States' compliance with them" (Extract from Article 3 of the APPENDIX to Recommendation CM/Rec(2021)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions).

"The competence of the Ombudsman relating to the judiciary shall be confined to ensuring procedural efficiency and administrative functioning of that system" (Venice Principles, no. 13 par. 3.).

"It would be worth considering introducing into the Law an explicit possibility for the Commissioner to make recommendations to suspend the execution of the administrative or disciplinary decision in exceptional cases and for a specified period …" (Opinion by Nowicki).

Article 14

Tasking the Commissioner with the responsibility to protect, monitor, and promote the implementation of the right to information of public importance is a significant competence that demands substantial resources and specialized knowledge.

The Law should offer more detailed regulations for the exercise of this function and provide the Commissioner with additional powers to meet European standards in this specific field. However, the elaboration of these details would significantly exceed the original scope of this analysis.

The same would apply should the Commissioner be considered as the body to ensure the protection of personal data.

Articles 15 and 16

It is strongly advised to conduct a general overhaul of Section V, which regulates the "response" of the Commissioner to "reports" from citizens and information from other sources about possible violations of citizen's and human rights. The objective is to achieve clarity, simplicity, and consistency. At present state of the Section, even providing comments and suggesting improvements to specific articles is challenging.

In summary, the procedure should be regulated as to ensure that:

- *The commissioner wields discretionary power to open an inquiry upon complaints from citizens and other entities entitled to the protection of their rights and freedoms by the Commissioner. This also extends to information from any other sources that indicate that a violation of citizens' and human rights might have occurred, or may reasonably be expected to occur.*

The Commissioner must retain discretion in deciding whether to initiate or abstain from opening an inquiry. This decision should be guided by the Commissioner's evaluation of criteria that the Law should delineate in this section. These criteria should ensure that a complaint or information qualifies for an inquiry only if it meets certain thresholds: it possesses sufficient initial merits, is not trivial, is not obsolete, has not already been adequately addressed (according to the Commissioner's findings), or is not currently being dealt with, in all relevant aspects, by the Commissioner or another authority, such as a court.

It should be noted that the mandate of the Commissioner differ from that of a court. In many jurisdictions, the fact that a case has already been dealt with by a court or is currently before a court does not constitute an absolute prohibition for an Ombudsman to address it. However, the Ombudsman should handle such cases in a manner that ensures their findings do not conflict with the relevant court judgment, if one exists.

Given that the Ombudsman focuses on maladministration and good governance, working preventively as well, there may be instances where a court finds no basis for intervention through a judgment, but the Ombudsman identifies a need to utilize one or more of the numerous powers and methods of intervention available to him/her to influence that particular situation and similar ones in the future. This flexibility is facilitated by recognizing that the Ombudsman's inquiry is not deemed an effective legal remedy in the classical sense. When used appropriately, it complements rather than clashes with the work of courts, providing a supplementary and complementary role in the overall justice system.

A re-evaluation is warranted regarding whether members of Parliament should possess the authority to instigate an inquiry by the Ombudsman. The Parliament already has established its own mechanisms to address citizen grievances, and members of Parliament might be better served by utilizing these existing parliamentary avenues rather than functioning as intermediaries for the Commissioner. Furthermore, the inclusion of this provision should be reconsidered to prevent any perception that the Commissioner lacks independence from the Parliament, a potential misconception that could arise from the title of the office and from the way of appointing the Ombudsman.

Certainly, any parliamentarian or the Parliament as a collective entity retains the right to submit information to the Commissioner if they believe it serves the protection and promotion of citizens' and human rights and freedoms. The Commissioner would treat such information with due respect; however, there should be no obligation to take further action if it does not meet the standard objective criteria for initiating an inquiry or utilizing other powers within the Commissioner's purview.

The second paragraph of Article 15 is thus advised to read:

"The Commissioner may also decide to open an inquiry at own initiative, upon information on a possible violation of human rights received from the media, whistle-blower's report, anonymous complaint or any other source of information."

Alternatively, if the close link to the Parliament is considered particularly beneficial to the efficiency of the Commissioner, the same paragraph might read:

"The Commissioner may also decide to open an inquiry at own initiative, upon information on a possible violation of human rights received from the Parliament, media, whistle-blower's report, anonymous complaint or any other source of information."

It is also advised that the terms "submission" or "appeal" (there is a concern here about the accuracy of the translation) be replaced with the term "recommendation" to enhance clarity.

Standards:

"Any individual or legal person, including NGOs, shall have the right to free, unhindered and free of charge access to the Ombudsman, and to file a complaint" (Venice Principles, no. 15).

"The Ombudsman shall not be given nor follow any instruction from any authorities" (Venice Principles, no. 14).

"The Ombudsman shall have discretionary power, on his or her own initiative or as a result of a complaint, to investigate cases with due regard to available administrative remedies" (Venice Principles, no. 16).

"… The Ombudsman shall also report [to the Parliament] on specific issues, as the Ombudsman sees appropriate…" (Venice Principles, no. 20).

"The People's Advocate should have the discretion to continue the investigation of a case even if the complainant shows lack of interest, if he or she deems that it is in the general interest to do so. In this case, however, the case should not be treated as an individual one and the original complainant should no longer be required to appear" (CDL-AD(2007)024 – Opinion on the draft law on the People's Advocate of Kosovo adopted by the Venice Commission at its 71st Plenary Meeting).

Article 17

This Article appears generally in line with comparative practice. (Please note that the lack of consistency in the translation, e.g., the use of the term "appeal" in this article and the term "report" in Article 15 for what appears to be the same item makes it difficult to follow the nuances of the Law. The recommended term is "complaint".

The requirement for the complaint sent electronically to contain a signature may lack precision and could be unnecessary. Does it mean that the signature must be handwritten and the document scanned before sending, or the signature needs to be electronically certified? In fact, it is proposed that the request for a signature on electronically sent complaints be removed, and a paragraph is added to read:

"If a complaint is sent electronically, the Secretariat of the Commissioner for a justified reasons may require the sender to confirm his/her identity in the most convenient way, under the threat of declaring the complaint inadmissible if the identity is not confirmed.

However, if the necessity for a digital complaint to bear a signature arises from the Commissioner grappling with an overwhelming influx of dubious or meritless complaints, fuelled by the ease of electronic communication and resulting in a strain on the Secretariat to respond to hastily submitted and trivial grievances, then the preceding comment should be disregarded.

Article 17-1

This Article appears in line with comparative practice.

A note regarding the provision that the Commissioner shall refuse to consider the appeal if it is impossible to identify the person whose rights have been violated: indeed, ombudsman institutions, in general, do not launch inquiries upon anonymous complaints (appeals), but it is not entirely and completely true.

It is advisable to add a provision along the following lines: Exceptionally, if the Commissioner considers that an anonymous complaint provides grounds for his/her acting, he/she may initiate an inquiry on his/her own initiative (ex-officio), in accordance with Art. 15, line 5.

This is useful in cases when the complaint indicates gross violations of human rights or of the principles of good governance, or the complainant could reasonably be presumed as having a legitimate fear from being identified, etc.

Article 18

This Article is mostly in line with international standards. However, Article fails to obligate the Verkhovna Rada of Ukraine to consider (but not "adopt") the Commissioner's annual report.

While procedural details can be regulated by the Law of Ukraine "On the Regulations of the Verkhovna Rada of Ukraine", this law should provide for a general obligation of the national parliament to consider the annual report.

Good practices also include obliging the Government to periodically report on the Resolution of the Parliament based on the Ombudsman's annual report. Thus, it is advisable to add a provision to that effect after the one stating: "The Verkhovna Rada of Ukraine shall adopt a resolution based on Annual and Special report(s) presented by the Commissioner".

Obliging the Parliament to consider annual reports and to follow-up on the recommendations issued by the Ombudsman should actually be understood as an essential part of the Parliament's oversight function over the executive. Making sure that the Parliament substantively discusses the Ombudsman's annual reports and binds the Government to report back on the compliance with Ombudsman's recommendations becomes even more important in cases of severe human rights violations determined by the Ombudsman.

Finally, it is strongly recommended to include a provision stipulating that *the Commissioner is authorised to submit reports also to international and regional human rights bodies, in the capacity of a national human rights institution.*

Standards:

The Ombudsman shall report to Parliament on the activities of the Institution at least once a year. In this report, the Ombudsman may inform Parliament on lack of compliance by the public administration. The Ombudsman shall also report on specific issues, as the Ombudsman sees appropriate. The Ombudsman's reports shall be made public. They shall be duly taken into account by the authorities (Venice Principles, no. 20).

"The SCA considers it important that the enabling laws of an NHRI establish a process whereby its reports are required to be widely circulated, discussed and considered by the legislature. It is preferable for the NHRI to have an explicit power to table reports directly in the legislature rather than through the Executive and, in so doing, to promote action on them" (General Observation 1.11 of the Paris Principles).

"The Paris Principles recognise that monitoring and engaging with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures and Universal Periodic Review) and the United Nations Human Rights Treaty Bodies, can be an effective tool for NHRIs in the promotion and protection of human rights domestically" (General Observation 1.4 of the Paris Principles).

Article 19

In addition to the "specific" cooperation related to the protection of the rights of Ukrainian citizens abroad, *it is advisable to add "general" international cooperation in the field of human rights and freedoms, especially within the international human rights system, as well as cooperation with the similar national human rights institutions and organisations abroad.*

Wide and intensive international cooperation is essential for ombudsman institutions and national human rights institutions, and as such highly regarded.

Standards:

"The Paris Principles recognise that monitoring and engaging with the international human rights system, in particular the Human Rights Council and its mechanisms (Special Procedures and Universal Periodic Review) and the United Nations Human Rights Treaty Bodies, can be an effective tool for NHRIs in the promotion and protection of human rights domestically. In considering their engagement with the international human rights system, NHRIs are encouraged to actively engage with the Office of the United Nations High Commissioner for Human Rights (OHCHR), GANHRI, their Regional Network and other NHRIs, as well as international and national NGOs and civil society organizations" (General Observation 1.4 of the Paris Principles).

Article 19-1

These provisions appear fully in line with international standards that regulate the work of National Preventive Mechanisms (NPMs). Clearly stating the authority to use photo, video, IT, and other similar and necessary equipment, as well as access to official recordings, enhances legal certainty and avoids doubts with officials and staff under oversight. It should be noted here that the Commissioner's Secretariat needs to be able to ensure the integrity and confidentiality of this material if stored in the offices of the Commissioner.
Standards:

"Member States should take effective measures to enable Ombudsman institutions to require all administrative authorities and other relevant entities to co-operate with their activities, to have unfettered access to all relevant premises, including places of detention, and to all relevant individuals, in order to be able to carry out a credible examination of complaints received or other issues covered by their mandate. Ombudsman institutions should also have access to all pieces of information needed for such examination, subject to possible restrictions stemming from the protection of other rights and legitimate interests, and to guarantee the confidentiality of the data in its possession" (Recommendation CM/Rec(2019)6 of the Committee of Ministers to member States on the development of the Ombudsman institution, Appendix, par. 5).

Article 19-2

This article appears in line with particular international standards in this field but might require a more detailed review by a sub-specialized pair of lenses.

Still, it would be preferable if the wording is changed in paragraph 2 of this article, and the Commissioner is granted the power to "order" temporary protective measures for persons who suffered or are in threat of suffering oppression or repression, rather than having the power to "demand" it, as found in the draft. Again, this might only be an issue of less than perfect translation.

Article 20

The provision of the immunity to the Commissioner lacks a major aspect – the immunity should extend after the expiry of the Commissioner's term in office, for all acts performed in official capacity, including words spoken or written.

The standards also require that the similar immunity is awarded also to representatives of the Commissioner and staff members, except that their immunity may be waived by the Commissioner.

Finaly, the Law should include the protection for official documents and the premises of the Institution in the scope of the above protection. This should extend to all documents of the institution, including correspondence and internal notes, as well as to the baggage and means of communication belonging to the Ombudsman.

Standards:

“Members and staff of an NHRI should be protected from both criminal and civil liability for acts undertaken in good faith in their official capacity” (General Observation 2.3 of the Paris Principles).

“The Ombudsman, the deputies and the decision-making staff shall be immune from legal process in respect of activities and words, spoken or written, carried out in their official capacity for the Institution (functional immunity). Such functional immunity shall apply also after the Ombudsman, the deputies or the decision-making staff-member leave the Institution” (Venice Principles, no. 23).

“The ombudsperson, his or her deputies and the staff of the secretariat should be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity and within the limit of their authority (functional immunity)” (CDL-AD(2004)041 - Joint Opinion on the Draft Law on the Ombudsman of Serbia by the Venice Commission, the Commissioner for Human Rights and the Directorate General of Human Rights of the Council of Europe adopted by the Venice Commission at its 61st Plenary Session; also CDL-AD(2008)028 – Opinion on draft amendments to Article 23(5) of the law on the Human Rights Defender of Armenia).

“In order to enhance the independence of the Defender, guarantees as to the inviolability of the institution’s possessions, documents and premises, etc. are also very important. An example could be UNMIK Regulation 2006/06 on the Ombudsperson Institution in Kosovo, which in Section 12.2 provides that «The archives, files documents, communications, property, funds and assets […], wherever located and by whomsoever held, shall be inviolable and immune from search, seizure, requisition, confiscation, expropriation or any other form of interference, whether by executive, administrative, judicial or legislative action” (CDL-AD(2006)038 – Opinion on Amendments to the Law on the Human Rights Defender of Armenia adopted by the Venice Commission at its 69th Plenary Session).

“According to Article 17 of the draft law, the Ombudsman and the staff of the Institution “shall not be prosecuted, arrested or detained in custody, nor tried in civil proceedings” for opinions expressed or decisions taken within their official duties. This provision is in line with international standards and the best practices in the field. In particular, it is positive that this functional immunity granted to the Ombudsman is extended to the staff and that it continues to be accorded after the end of the Ombudsman’s mandate or after the staff cease their employment with the Ombudsman Institution. Also, the draft law rightly includes the official documents and the premises of the Institution in the scope of the above protection. It is suggested to make it clear that this protection applies to all documents of the Institution, including correspondence and internal notes, as well as to the baggage and means of communication belonging to the Ombudsman. More generally, the immunities provided should also include protection from any administrative action. At the same time, the law should also provide for the possibility (and specific modalities) of withdrawal of the immunity of the Ombudsman, as well as of his/her staff, in specific cases” (CDL-AD(2015)034 - Opinion on the Draft Law on Ombudsman for Human Rights of Bosnia and Herzegovina, adopted by the Venice Commission at its 104th Plenary Session).

Article 21

This provision is in line with good practices.

For improved precision, in Article 21. par. 3 consider *adding “also” between “…or her Representatives…” and “… in writing”.* At the end of the sentence “Correspondence from this individual shall be dispatched to the Commissioner within the period of twenty-four hours”, it is advisable to add *“free of charge”* or *“at the expense of the authority which holds the person deprived of liberty”.*

Standards:

“Consequently, a detained person should have the opportunity to freely communicate, without any supervision, with the Protector or his/her representatives. The law should clearly state that this is not limited to conversations, but that it also covers all other means of communication, e.g. telephone or electronic communications, where applicable. A statement that “individuals deprived of their liberty shall be entitled to file their complaint in a sealed envelope” is not sufficient in this respect” (CDL-AD(2009)043 – Opinion on the draft amendments to the law on the Protector of Human Rights and Freedoms of Montenegro, adopted by the Venice Commission at its 80th Plenary Session).

Article 22

This provision appears in line with international standards and best practices regarding the duty of public authorities to cooperate with the ombudsman. However, it is advisable to remove the words "with the purpose of counteraction" from the norm "with the purpose of counteraction shall incur liability in accordance with effective legislation," as proving purpose can be notoriously difficult. The effect is what matters, and the effect is an obstruction of justice and the rule of law.

Standards:

“The Ombudsman shall have the power to address individual recommendations to any bodies or institutions within the competence of the Institution. The Ombudsman shall have the legally enforceable right to demand that officials and authorities respond within a reasonable time set by the Ombudsman” (Venice Principles, no. 17).

"States shall refrain from taking any action aiming at or resulting in the suppression of the Ombudsman Institution or in any hurdles to its effective functioning, and shall effectively protect it from any such threats" (Venice Principles, no. 24).

"Article 18 of the existing law speaks of the liability for the "intervention into activities of the Defender". However, the law contains no specific sanctions for hindering the Defender's work. In particular, it does not specify what happens if the Defender or a competent member of his/her office is not given a reply within the time-limits set in Article 13, or not given access to the prison, or if confidentiality of his/her exchanges is violated by the authorities. Probably, the most important powers of the Defender should be supported by the specific sanctions, directly specified in the law. Those sanctions should also be applicable when the Defender's work within the NPM mandate is hindered. Indeed, those sanctions should be adequate: not excessive and, at the same time, serious enough to deter State officials from ignoring the Defender's requests. It may also prove useful to revise other legislation (in particular the legislation establishing the regime of the places of detention and describing the duties of the State officials running them) in order to include corresponding provisions in those other laws" (CDL-AD(2015)035 - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Draft Amendments to the Law on the Human Rights Defender of the Republic of Armenia, adopted by the Venice Commission at its 104th Plenary Session).

Article 27 of the Law of Ukraine "On State Secret" No. 3855-XII of 21.01.1994

This provision appears in line with international standards and best practices.

Standards:

"The Ombudsman shall have a legally enforceable right to unrestricted access to all relevant documents, databases and materials, including those which might otherwise be legally privileged or confidential" (Venice Principles, no. 16).

Article 12 of the Law of Ukraine "On Appeals of Citizens" No. 393/96-BP of 02.10.1996

No comments.

Article 2-1 of the Law of Ukraine "On Protection of Childhood" No. 2402-III of 26.04.2001

The last paragraph, with regards to the representative being "appointed to carry out parliamentary control", should be reconsidered and aligned with the comments on Article 11 of the Law on the Commissioner above, which defines the role of the representatives.

On the Submitted Norms of the Law of Ukraine "On the International Agreements of Ukraine" No. 1906-IV of 29.06.2004

This provision appears in line with best practices and international standards.

Standards:

"Encouraging ratification of, or accession to international human rights instruments, and the effective implementation of international human rights instruments to which the state is a party, is a key function of an NHRI. The Paris Principles further prescribe that NHRIs should promote and encourage the harmonization of national legislation, regulations and practices with these instruments" (General Observation 1.3 of the Paris Principles).

Article 6. of the Law of Ukraine "On Basic Principles of State Supervision (Control) in the Economic Activity" No. 877-V of 05.04.2007

The word "appeal" should be reconsidered and amended to read "recommendation", as for the reasons explained above.

The proposed changes to the Law on Law of Ukraine "On the Regulations of the Verkhovna Rada of Ukraine" No. 1861-VI of 10.02.2010

Provisions of Article 208. copy those of the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Improving the Legal Basis of the Ukrainian Parliament Commissioner for Human Rights". Therefore, the corresponding comments apply.

New draft provisions of Article 111 are commendable for providing an important role of the Commissioner in the legislation process. It would be advisable to set a deadline for the Commissioner to submit its opinion. Also, given the volume of laws which contain human rights-relevant provisions, it is vital that the Commissioner is allocated a sufficient budget to hire an optimal number of experts in the Secretariat to fulfil this important task.

Article 5 of the Law of Ukraine "On the Court Fee" No. 3674-VI of 08.07.2011

If the amendments are well understood (given the lack of the context), they are commendable for ensuring that interventions of the Commissioner before a court do not require paying a court fee.

Article 32 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" No. 794-VII of 27.02.2014

The amendment appears well-minded, but the word "approved" (if the translation is right) causes some surprise (not necessarily negative). Does it really mean that the Commissioner can impose a veto to the acts of the Government? Or the Commissioner is to provide an opinion on the drafts? In any case, the norm is commendable and provides for an important role of the Commissioner in prevention of degradation of human rights and prevention of their violations. It would be advisable to set a deadline for the Government to send the draft acts to the Commissioner in advance, and for the Commissioner to submit his/her opinion. Also, given the volume of acts which contain human rights-relevant provisions, it is vital that the Commissioner is allocated a sufficient budget to hire an optimal number of experts in the Secretariat to fulfil this important task.

Article 22 of the Budget Code of Ukraine No. 2456-VI of 08.07.2010

The draft amendment is commendable for including the Commissioner in the list of the "Key spending units", therefore (presumably, given the lack of the full understanding of the term) strengthening the financial independence of the Ombudsman institution.

Article 4 of the Code of Administrative Judiciary of Ukraine No. 2747-IV of 06.07.2005

The proposed change aims to ensure the procedural position of the Commissioner in the proceedings before the administrative court and therefore appears commendable.

Article 364 and the newly proposed article 366-4 in the Criminal Code of Ukraine No. 2341-III of 05.04.2001

New provisions appear to strengthen the obligation of authorities and officials to cooperate with the Commissioner and therefore are commendable.

Standards:

"The Ombudsman shall have discretionary power, on his or her own initiative or as a result of a complaint, to investigate cases with due regard to available administrative remedies. The Ombudsman shall be entitled to request the co-operation of any individuals or organisations who may be able to assist in his or her investigations. The Ombudsman shall have a legally enforceable right to unrestricted access to all relevant documents, databases and materials, including those which might otherwise be legally privileged or confidential. This includes the right to unhindered access to buildings, institutions and persons, including those deprived of their liberty. The Ombudsman shall have the power to interview, or demand written explanations of officials and authorities and shall, furthermore, give particular attention and protection to whistle-blowers within the public sector" (Venice Principles, no. 16).

Article 27 as per the draft law "On Amending the Criminal Procedure Code regarding the Improvement of the Legal Framework of the Ukrainian Parliament Commissioner for Human Rights in Criminal Proceedings" No. 4651-VI of 13.04.2012

Ensuring the power of the Commissioner to attend sessions of a court even when held in camera is commendable as it enables the Commissioner to have more direct information on issues of relevance to his/her work. It also and strengthens the position and authority of the Commissioner in the judiciary.

Article 10 as per the draft Law of Ukraine "On Amending the Code of Administrative Judiciary of Ukraine regarding the Improvement of the Legal Framework of the Ukrainian Parliament Commissioner for Human Rights"

Same as in the comment above.

Article 7 as per the draft Law of Ukraine "On Amending the Civil Procedure Code regarding the Improvement of the Legal Framework of the Ukrainian Parliament Commissioner for Human Rights"

Same as in the comment above.