

V.S. Issabekova\* 

*Buketov Karaganda University, Karaganda, Kazakhstan  
(E-mail: visabekova@mail.ru)*

ORCID ID: 0009-0006-4430-9482

## **The Institute of the Commissioner for Human Rights: history, modernity, prospects**

The article is devoted to the study of topical issues of functioning of the institution of the Ombudsman for Human Rights in the context of its historical development from the moment of its creation to the modern period. The scientific research reveals historical prerequisites for the emergence and peculiarities of the formation of the institution of the Ombudsman in the territory of Kazakhstan. Its role and essence from the position of different points of view of scientists is revealed. The author conducts a detailed analysis of the modern period of activity of the Ombudsman, paying special attention to the transformation of the institution and strengthening of its significant positions in the legal field of our statehood. The purpose of this article is a historical study of the development of the institution of the Commissioner for Human Rights in the Republic of Kazakhstan and foreign countries, its modern interpretation and prospects for its further development. To reveal the purpose of scientific research, various methods of scientific cognition were used, mainly: historical, comparative-legal, empirical. As a result of the study, the author identified the main stages of development of the institution of the Commissioner for the Protection of Human Rights. Positive trends in the development of the institution of the Ombudsman are outlined. Recommendations aimed at rationalization of the national legislation of the Republic of Kazakhstan, with the purpose of further prospects of strengthening the effectiveness of the Commissioner for Human Rights and its human rights functions are given.

*Keywords:* history of ombudsman development, human rights protection, Commissioner for Human Rights, ombudsman institution, defender, state, transformation of the ombudsman.

### *Introduction*

The establishment concept of the institution about the Commissioner for Human Rights emerged in the late 20th century and has undergone a prolonged evolutionary process. The historical transformation of this institution has been directly tied to societal development and its social needs. Notably, one of the primary needs of contemporary society is recognized as the protection of human rights and freedoms by the state, along with protection from unlawful actions and decisions by government bodies. State policy in democratic countries is focused on ensuring human rights protection, and this remains a priority direction in national development.

According to Article 1 from the Constitution of the Republic of Kazakhstan, “the highest values are human life, rights and freedoms” [1]. Accordingly, the state assumes the constitutional responsibility to create conditions, guarantees, and mechanisms for human rights protection. The state's system for protecting human rights includes institutional guarantees based primarily on state bodies and various human rights institutions at international, national, and regional levels. A significant role among these human rights institutions belongs to the institution of the Commissioner for Human Rights (Ombudsman) whose key functions underpin the strengthening of democracy, the rule of law, quality governance, and the protection and restoration of violated human rights from encroachments by government bodies and their officials.

The relevance of this research is due to the need for a comprehensive legal examination of the contemporary interpretation of the institution of the Commissioner for Human Rights through a historical lens, considering positive international experience and legal challenges related to its adaptation in the future development of the Republic of Kazakhstan.

The purpose of this article is to explore the historical development of the Commissioner for Human Rights in the Republic of Kazakhstan and foreign countries, its current interpretation, and the prospects for its further evolution. To achieve this goal, the following objectives were set:

---

\* Corresponding author. E-mail: [visabekova@mail.ru](mailto:visabekova@mail.ru)

- to identify the historical prerequisites for establishing the institution of the Ombudsman in Kazakhstan and other foreign countries;
- to determine the historical stages of its development in Kazakhstan and globally;
- based on an analysis of foreign legislation and international acts, to develop practical recommendations for improving national legislation in the Republic of Kazakhstan regulating the legal status of the Ombudsman.

The analysis of foreign and domestic legal literature in the field of research of the institute of the defender of human rights showed the presence of monographs, periodicals, special literature, dissertations and abstracts devoted to the topic of research. Among them are the works of: A.S. Avtonomov, V.V. Boytsova, Zh.D. Bussurmanov, M.S. Bashimov, G. Zhangaliyeva, B.A. Zhetpisbayev, E.N. Mukhitdinov, A.B. Uzakbayeva, G.S. Kaliyeva, G.B. Karzhassova, S.S. Karzhaubayev, A.O. Shakirov and others.

However, the presence of research in this area does not diminish the importance and relevance of the issues under consideration. Since, in our opinion, the realities of the current stage of modernization of the ombudsman's institution in the Republic of Kazakhstan have not been sufficiently studied and require a greater degree of scientific understanding for further popularization of the use of this mechanism in the field of human rights protection.

#### *Methods and Materials*

In conducting this comprehensive scientific study, the author employed general and specific methods of scientific inquiry, including historical, comparative legal, formal legal, empirical, and other approaches.

The historical method allowed for an examination of the historical stages and periods of the Ombudsman's establishment and development in the context of global experience and within Kazakhstan. This method enabled a comparative analysis over time, demonstrating changes and continuity, as well as the influence of these changes on existing legislation, thereby explaining the underlying reasons for the institution's establishment. Comparative legal analysis and formal legal methods enabled a parallel examination of contemporary models of the Ombudsman institution around the world with the one currently functioning in Kazakhstan. Empirical and statistical methods were applied in analyzing the practical experience and statistical data from the reports of the Ombudsman to summarize specific results on the effectiveness of the national human rights defender's activities.

The legal framework of the study includes the Constitution of the Republic of Kazakhstan, constitutional laws, legislative acts, presidential decrees of the Republic of Kazakhstan, subordinate regulatory acts, legislative acts of foreign countries, and international acts that regulate the peculiarities of the legal status of ombudsmen and human rights organizations. The empirical foundation of the study consists of materials and information contained in the annual reports of the Commissioner for Human Rights in the Republic of Kazakhstan.

#### *Results*

The results of the study on the genesis and evolution of the Ombudsman institution in foreign countries highlight the following stages of its development: 1) The creation of the Ombudsman as an independent parliamentary oversight body; 2) The expansion of the number and types of Ombudsmen in global practice; 3) The diversification of the Ombudsman's functions and activities to address issues ranging from providing assistance in legal disputes to resolving systemic issues and proposing changes to legislation and practices; 4) The formation of Ombudsman communities and associations at national and regional levels; 5) The adaptation of the Ombudsman's scope and activities according to the specifics of each sector.

The author concluded that the institution was initially intended to focus on identifying government administrative failures rather than on protecting citizens' rights. As society evolved towards a more liberal order, the realization of constitutional principles balancing power between the monarchy and parliament enabled the Ombudsman to assume the role of a rights protector and mediator. This office became a crucial tool and bridge between individuals and the state.

Despite its relatively short history in Kazakhstan, the institution has its brief past and a progressive present. A review of available academic and monographic literature on the history of the Commissioner's development in Kazakhstan has led the author to conclude that the primary reasons for establishing the Ombudsman included the enhancement of alternative rights protection mechanisms based on gratuity, accessibility, and independence from bureaucracy and influence by government bodies.

The formation of the Ombudsman institution in Kazakhstan, from its inception to the present, has undergone five main stages. The initial stage marked the inception of the idea of establishing the Commissioner's institution, which laid the foundation for the core principles and tenets of the Ombudsman's activity (1993–1996). The second stage involved coordination and organizational efforts to prepare and develop the regulatory legal framework (1997–2000). The third stage saw the adoption of the Presidential Decree establishing the office of the Commissioner for Human Rights (2001–2002). The fourth, and longest, stage was dedicated to finding Kazakhstan's model for the institution, improving the regulatory framework, addressing legal inconsistencies, eliminating shortcomings in the Commissioner's enforcement practices, and aligning standards with international requirements, culminating in constitutional status recognition (2003–2021). Now, a new stage has commenced, characterized by transformations, updates, and the introduction of new competencies in the Commissioner's activities, marking a shift in human rights mechanisms through constitutional reforms and the adoption of the Constitutional Law "On the Commissioner for Human Rights" in 2022 [2].

For the further development of legislation regulating the status of the Ombudsman, we propose the following: First, in Article 2 of the Constitutional Law "On the Commissioner for Human Rights" [2] it is suggested to add one of the most significant principles of the Ombudsman's activities, namely "gratuitousness", as stated in para. 15 of the "Venice Principles" [3], which indicates the free provision of services by the Ombudsman, i.e., upon the appeal of any physical, legal person, or non-governmental organization, they should have free access to the Ombudsman and the ability to file a complaint without charge, for example, in the Law of the Kyrgyz Republic "On the Ombudsman (Akyikatchy) of the Kyrgyz Republic", Articles 10 and 11, para. 12 directly refer to the gratuitousness of the services provided, stating that an application or complaint addressed to the state official bears no cost [4]. Polish legislation also stipulates in Article 10 that complaints filed to the Commissioner are free of charge, and no fees are required for their submission [5]. This provision is absent in the laws of the Republic of Kazakhstan, which, in our opinion, might mislead or discourage potential complainants.

Secondly, the current constitutional law does not clearly specify the range of subjects eligible to approach the Ombudsman. Since para. 13 of the "Venice Principles" states that the Ombudsman should respond to "all general interest issues and public services, provided whether by the state, municipalities, state bodies, or private organizations" [3], it would be reasonable, in our view, to amend Article 1 of the constitutional law with such provisions. We believe that clarifying the range of entities will contribute to a better understanding of the sphere of the Ombudsman's activity.

Thus, the presented results contain specific proposals for improving the status of the Ombudsman, previously unpublished and aimed at modernizing the national legal framework governing the activities of the Commissioner for Human Rights in the Republic of Kazakhstan.

#### *Discussion*

The institution of the Commissioner for Human Rights (Ombudsman) worldwide emerged as a tool to combat ineffective governance and has since become one of the distinctive features of a modern democratic state. In legal literature, the legal nature and essence of the people's defender institution are explained from various perspectives. Foreign scholar Martin U. in his research notes that the primary role of the Ombudsman lies in investigating violations by the administrative justice system and monitoring the fulfillment of duties by government representatives in relation to the public [6; 17]. Renowned Russian scholar N.Yu. Khamaneva emphasizes that the Ombudsman plays a crucial role among the bodies tasked with overseeing administrative functions and preventing potential abuses of power by state officials [7; 89]. D.E. Feoktistov offers an interesting view, suggesting that the essence of the institution be explained through both classical and contemporary interpretations. According to Feoktistov, the classical concept reveals the Ombudsman's affiliation with parliament and the exercise of indirect parliamentary oversight, focusing on enhancing government accountability and ensuring the protection of rights [8; 15]. The modern interpretation broadens the Ombudsman's appointment authority beyond parliament to include senior officials, adding greater scope for addressing rights violations and monitoring compliance.

The similarities among scholars' viewpoints establish a scientific concept highlighting the Ombudsman's key role in protecting and restoring violated rights from encroachments by state authorities, utilizing all legally prescribed functions and tools.

To understand contemporary trends in the development of the institution of the Commissioner for Human Rights, it is essential to analyze the historical foundation of its formation. Some researchers suggest that

the origins of rights protection institutions similar to the Ombudsman date back to ancient societies. For example, in the Roman Empire, comparable positions included prosecutors, censors, and tribunes. In Ancient Greece, there were officials known as archons-eponyms, while in ancient China, a position called the Censorate was established. In the Ottoman Empire, “muhatasibs” held responsibilities analogous to those of the modern Ombudsman [9; 22].

The prototype of the modern Ombudsman is considered the classical model that took shape in medieval Europe, shaped by unique needs due to revolutions, reforms, and political changes in various countries.

In 1809 Swedish King Charles IX, in response to a deteriorating political climate and the unchecked authority of officials, voluntarily relinquished some of his privileges and established Europe’s first Ombudsman institution, known as the Parliamentary Ombudsman. The King empowered the Ombudsman to oversee law enforcement by administrative structures and to review complaints from Swedish citizens against government actions.

The King empowers him to supervise the execution of laws by administrative structures, as well as to consider complaints from Swedish citizens about the actions of the authorities. However, it is important to note that scholars studying the formation of the ombudsman institution disagree on the factors that prompted its creation. For example, Professor A. Sungurov argues in his research that when the King of Sweden appointed the ombudsman, his main concern was not the protection of human rights, but rather improving the efficiency of executive officials. Since with the help of complaints and reports from citizens, it became possible to evaluate their professional activities [10; 28]. We share and agree with the opinion of N. Yu Khamaneva, who suggests that an important factor in the establishment of the ombudsman position was the liberalization of social conditions in the early 19th century, which contributed to the introduction of constitutional principles in Sweden. These principles were aimed at creating a balance of power between the monarchy and parliament, and the ombudsman served as one of the mechanisms for achieving this balance [11; 158].

After the break of century the institution continued to develop, spreading to other Nordic countries like Finland (1919), Norway (1952), Denmark (1953), and Iceland (1988), adopting tasks and powers similar to those of the Swedish model. Consequently, the Scandinavian countries are recognized as pioneers in establishing the modern Ombudsman institution. Among non-European countries, New Zealand was the first to adopt this institution in 1962, followed by Poland in 1987 as the first socialist country. In the United States, the Ombudsman Committee was established by the American Bar Association in 1967, with the first Ombudsman elected in 1969. In Germany, a military Ombudsman was instituted in 1957, while in Canada and the United Kingdom, the Ombudsman institution was legislated simultaneously in 1967. In France, the *Médiateur* law was adopted in 1973.

The Ombudsman role also gained popularity in post-authoritarian and post-colonial countries, such as Spain with its “Justice Trustee” in 1975 and the “Defender of the People of Spain” in 1981, and in Argentina with its “People’s Defender” in 1994. In Asian countries, Pakistan established the “Wafaqi Mohtasib” in 1983, Japan introduced the role in 1981, Taiwan implemented the “Control Yuan” in 1992, and South Korea introduced its Ombudsman in 1994. Georgia was the first among CIS countries to establish this institution in 1996.

Thus, it can be confidently stated that although the concept originated in Sweden and became a part of the evolutionary progress of effective human rights protection mechanisms, it has transcended national borders and taken root in many countries, symbolizing a unique structural addition to liberal democracy. The Republic of Kazakhstan was no exception, establishing the office of the Commissioner for Human Rights in 2002.

The historical prerequisites for the establishment of the current institution of the Commissioner in Kazakhstan, as suggested by E.N. Mukhitdinov, were shaped by the demands of the era when Kazakhstan gained independence after the collapse of the Soviet Union and the emergence of new independent CIS countries. The evolving relationships between society and the state required a compromise and new tools of mutual understanding, leading to the establishment of a human rights institution that would serve as a link between government bodies and individuals [12; 16]. From a scientific perspective, A.B. Uzakbayeva, who studied the formation of the Commissioner’s office in Kazakhstan and Russia, argued that its creation was driven by the reorganization and restructuring of government mechanisms during “Perestroika” to find optimal ways for interaction and distribution of authority among branches of government [13; 9]. M.S. Bashimov holds a similar view, emphasizing that the institution’s establishment expanded and strengthened mechanisms for protecting citizens from bureaucratic excesses [14; 28]. We agree with the

point of view of the Russian scientist N.Yu. Khamaneva, who considers the emergence of the ombudsman institution in the world to be a consequence of mistrust of the authorities, the constant interference and influence of the authorities on the social processes of society [15; 115].

The historical development of the Commissioner for Human Rights in the Republic of Kazakhstan began with the ratification of the Paris Principles in 1993, recognized as international standards that outline the fundamental principles national human rights institutions should follow [16]. Although the Paris Principles do not carry legal obligations, they serve as a roadmap for national institutions to maintain fundamental international standards, ensuring trust both domestically and internationally.

The following period was marked by significant political and social changes, culminating in the constitutional recognition of human rights as the state's highest value [17; 29]. The official institutionalization of the Commissioner for Human Rights in Kazakhstan occurred in 2002 with the adoption of the "Regulation on the Commissioner for Human Rights" [18]. However, Kazakhstani researcher M.S. Bashimov conducted a detailed analysis of this Regulation and noted that regulating the status of the Ombudsman through a regulation rather than a law raises concerns regarding adherence to international standards [14; 10]. International frameworks recommend that the legal status of the Ombudsman institution is clearly defined either in the Constitution or in legislation adopted by legislative bodies.

Despite existing inconsistencies, the activities of the Kazakh Ombudsman were regulated by this regulation for an extended period. As society's need for effective rights protection mechanisms grew, it became necessary to further strengthen the Ombudsman's position. Following extensive discussions and negotiations, on April 20, 2019, the "Principles on the Protection and Strengthening of the Ombudsman Institution" (Venice Principles) were adopted at the plenary session of the 130th meeting of the European Commission for Democracy through Law [3]. Unlike the Paris Principles of 1993, the Venice Principles provide a specific focus and set out fundamental standards, principles, and norms that the Ombudsman institution should adhere to in various contexts. In our view, the adoption of the Venice Principles provided a strong impetus for further development of the Ombudsman institution.

The subsequent rationalization of the Ombudsman's institution in Kazakhstan was marked by the adoption of the law "On the Commissioner for Human Rights" on December 29, 2021 [19], which acted as a "transitional" law and was in force for less than a year. Later, within the framework of democratic transformations, the head of state made an important decision to conduct a national referendum, a key task of which was addressing urgent social issues and identifying a new path for the "New Kazakhstan". On June 5, 2022, the referendum took place, with a majority voting in favor of amendments to the state's primary act. One significant issue on the referendum aimed at elevating the constitutional status and role of the Commissioner for Human Rights in Kazakhstan. Thus, a new constitutional provision, Article 83-1 [1], was introduced to regulate the nature, guarantees, and immunities of the national Ombudsman. The head of state, adhering to principles of aligning national legislation with international standards, subsequently decided to strengthen the legislative framework by adopting a separate constitutional law "On the Commissioner for Human Rights" on November 5, 2022 [2].

With this updated legislative base, the Ombudsman's powers have been substantially expanded. First, the Ombudsman now has the right to appeal to the Constitutional Court on matters regarding the compliance of regulatory legal acts with the Constitution, which significantly enhances the operational potential of the Commissioner for Human Rights. Second, the process of enhancing the Ombudsman's status has focused on strengthening fundamental immunities, offering protection from both criminal and administrative liability, except in cases of detention at the scene of a crime or the commission of serious or especially grave offenses. Third, provisions exempting the Ombudsman from the obligation to testify underline the inviolability of this position. Fourth, legislative measures have been taken to define accountability for any interference or obstruction in fulfilling the Ombudsman's lawful duties. Fifth, the Ombudsman has been granted legislative initiative, allowing the submission of proposals to relevant state bodies for the development of draft laws in the field of human rights protection. A crucial innovation is the appointment of the Ombudsman's representatives in every region, city of republican significance, and the capital, aimed at strengthening citizens' legal protections across these territories.

In our view, this initiative has enhanced the Ombudsman's ability to fulfill duties effectively and expanded citizens' opportunities to defend their rights.

The 2022 constitutional reform and transformation of the Commissioner for Human Rights have yielded positive results. Measurable indicators of the Commissioner's activity and effectiveness include quantitative (numerical) data on the resolution of complaints and citizen appeals, as reflected in the annual report.

The published report for 2023 notes a record number of requests, in our opinion, this is explained by the establishment of regional representatives in the regions, cities of republican significance and the capital. Thus, the quantitative and qualitative indicators for 2022 and 2023 are as follows: Total requests received 2023 — 5776, 2022 — 3948; Explanations given 2023 — 4057, 2022 — 2801; Sent to competent authorities 2023 — 814, 2022 — 475; Applicants' demands and requests were satisfied 2023 — 902, 2022 — 321 requests, a significant increase in the number of requests and positive decisions is observed in dynamics. Regarding the essence of citizens' appeals, in 2023 and 2022 the key provisions remain unchanged and are as follows: the leading position in the number of appeals is occupied by complaints: against the actions of investigative bodies — 2023 (12630), 2022 (1152); disagreement with the court decision — 2023 (1149), 2022 (689); the rights of convicts — 2023 (838), 2022 (204); torture and cruel treatment — 2023 (165), 2022 (447); Next come appeals regarding the social rights and freedoms of citizens: the right to social security — 2023 (153), 2022 (104); the right to adequate housing — 2023 (121), 2022 (116); the rights of persons with disabilities — 2023 (120), 2022 (27); the right to health protection — 2023 (47), 2022 (212); the right to work — 2023 (288), 2022 (284); the rights of minors — 2023 (92), 2022 (79); women's rights — 2023 (11), 2022 (0); education — 2023 (38), 2022 (13); freedom of religion — 2023 (12), 2022 (18) [20].

Based on the statistical data of the report, we can come to the conclusion about the growing demand for a human rights institute, despite its insignificant popularity among Kazakhstanis, since not everyone understands the specifics of the institute's activities. In this regard, in the era of popularization of the use of digital technologies and opportunities for disseminating information, we consider it extremely important to regularly conduct explanatory work and disseminate information about the possibilities for citizens to seek help from a national, regional or specialized ombudsman. However, despite the positive trends in improving the status of the Commissioner and updating the legislative framework, there are still conflicts and gaps that require attention and elaboration. Proposals for further improvement of the legislative framework regulating the activities of the ombudsman are reflected in the results of the study.

### *Conclusions*

In conclusion, it is essential to recognize that the evolution of the Commissioner for Human Rights is ongoing and represents a shift in the quality and extent of response to societal needs. Historically, the Ombudsman position, initially established as a personal supervisory role, has evolved into a distinct institution focused on protecting and restoring violated human rights against state arbitrariness and abuse of power. It is critically important to ensure that this continuous development remains aligned with the core purpose of the Ombudsman.

Through the historical analysis of the institution's development in the Republic of Kazakhstan, five main stages of its formation were identified. The first three stages, spanning from 1993 to 2002, laid the groundwork for the inception, preparation, and adoption of the institution's legislative foundation. The fourth stage (2003–2021) was characterized by the search for a unique model that incorporated positive international practices, while adapting to Kazakhstan's own national, cultural, and historical traditions. Since 2022, a modern phase of institutional modernization has begun, strengthening the legal foundation, enhancing the Commissioner's status, updating competencies, and expanding the organization.

Each stage has contributed to positive development trends within the institution, fostering new opportunities for its improvement.

Analyzing the research findings, it is evident that further development of the Commissioner for Human Rights requires enhancements in national legislation to align with international standards. To achieve these goals, it may be feasible to supplement Articles 1 and 2 of the Constitutional Law of the Republic of Kazakhstan "On the Commissioner for Human Rights" with clarifications that specify the gratuity of the Ombudsman's services and define the participants within the legal relationships governed by the law, as outlined below:

1) Article 1: "The Commissioner for Human Rights in the Republic of Kazakhstan is an official who occupies a responsible state position established by the Constitution of the Republic of Kazakhstan to ensure state guarantees for the protection of human and civil rights and freedoms, as well as their observance and respect by state bodies, local governments, officials, and private organizations".

2) Article 2: "The Commissioner for Human Rights in the Republic of Kazakhstan, in the course of their activities, adheres to the principles of legality, justice, impartiality, objectivity, transparency, gratuity, openness, and other principles enshrined in the Constitution of the Republic of Kazakhstan".

To enhance the productivity of the Ombudsman's activities, it is vital to develop a monitoring system for citizens' rights observance and complaints processing at the national and regional levels; to ensure greater transparency and accessibility of the Ombudsman's work for citizens, including through various informational resources and public consultations on human rights protection issues; and to continuously enhance the qualifications of Ombudsman staff and expand cooperation with governmental, non-governmental structures, and public organizations.

## References

- 1 Конституция Республики Казахстан от 30 августа 1995 г. — [Электронный ресурс]. — Режим доступа: [https://adilet.zan.kz/rus/docs/K950001000\\_](https://adilet.zan.kz/rus/docs/K950001000_)
- 2 Конституционный закон «Об Уполномоченном по правам человека» от 5 ноября 2022 г. № 154–VII ЗПК (в действ. ред.). — [Электронный ресурс]. — Режим доступа: <https://adilet.zan.kz/rus/docs/Z2200000154>.
- 3 Принципы защиты и укрепления института омбудсмана. («Венецианские принципы») от 15–16 марта 2019 г. (в действ. ред.). — [Электронный ресурс] — Режим доступа: <https://www.venice.coe.int/webforms/>.
- 4 Закон Кыргызской Республики «Об Омбудсмене Кыргызской Республики» от 31 июля 2002 года № 136 (в действ. ред.). — [Электронный ресурс]. — Режим доступа: <https://platforma.kg/wp-content/uploads/2016/10>.
- 5 Закон Республики Польша «Об Уполномоченном по правам человека» от 15 июля 1987 года (в действ. ред.). — [Электронный ресурс]. — Режим доступа: <https://bip.brpo.gov.pl/pl/content/ustawa-o-rzeczniku-praw-obywatelskich>
- 6 Oosting M. Protecting the Integrity and Independence of the Ombudsman Institution: The Global Perspective [Electronic resource] / M. Oosting // The International Ombudsman Yearbook. — 2001. — Vol. 5. — P. 13–33 — Access mode: <https://brill.com/edcollchap/book/>
- 7 Хаманева Н.Ю. Место и роль института омбудсмана в системе правового контроля / Н.Ю. Хаманева // Изв. вузов. Правоведение. — 2013. — № 2. — С. 85–93.
- 8 Феоктистов Д.Е. Конституционно-правовой статус Уполномоченного по правам человека в Российской Федерации (сравнительно-правовое исследование): автореф. дисс. ... канд. юрид. наук: спец.12.00.02 — «Конституционно право; муниципальное право» / Д.Е. Феоктистов. — Саратов, 2012. — 24 с.
- 9 Мешкова А.В. Становление и развитие института омбудсмана в зарубежных странах / А.В. Мешкова // Вестн. МГОУ. — 2014. — № 2. — С. 19–26. — [Электронный ресурс]. — Режим доступа: <https://www.evestnik-mgou.ru/jour/article/view/888/885>
- 10 Сунгуров А.Ю. Омбудсмен и другие государственные институты защиты прав человека / А.Ю. Сунгуров // Приложение к журналу «Северная Пальмира». — СПб. гуманитар.-политол. центр «Стратегия». — СПб.: Норма, 2004. — С. 23–54.
- 11 Хаманева Н.Ю. Защита прав граждан в сфере исполнительной власти: учеб. пос. / Н.Ю. Хаманева. — М.: Институт государства и права РАН, 1997. — 216 с.
- 12 Мухитдинов Е.Н. Правовые основы формирования и функционирования института омбудсмана (уполномоченного по правам человека) в Казахстане и за рубежом: международно-правовые аспекты: автореф. дисс. ... д-ра философии (PhD). Спец. 12.00.10 — «Международное право» / Е.Н. Мухитдинов. — Алматы, 2009. — 34 с.
- 13 Узакбаева А.Б. Уполномоченный по правам человека в Республике Казахстан и Российской Федерации: институциональный и сравнительно-правовой анализ: автореф. дисс. ... канд. юрид. наук. Спец. 12.00.02 — «Конституционное право; административное право; муниципальное право; финансовое право» / А.Б. Узакбаева. — Алматы, 2010. — 25 с.
- 14 Башимов М.С. Институт омбудсмана в Республике Казахстан и зарубежных странах (сравнительно-правовой анализ): автореф. дис. ... д-ра юрид. наук: спец.12.00.02 — «Конституционное право; административное право; муниципальное право; финансовое право» / М.С. Башимов. — Астана, 2008. — 48 с.
- 15 Хаманева Н.Ю. Охрана прав граждан зарубежных стран: институт омбудсмана (сравнительный аспект): учеб. пос. / Н.Ю. Хаманева. — Саратов: Омега-Л, 1997. — 160 с.
- 16 Принципы, касающиеся статуса национальных учреждений, занимающихся поощрением и защитой прав человека [Парижские принципы] от 20 декабря 1993 г. (в действ. ред.). — [Электронный ресурс]. — Режим доступа: <https://adilet.zan.kz/rus/docs/O9300000005>
- 17 Issabekova V.S. Formation of a new model of election to the post of Commissioner for Human Rights in the Republic of Kazakhstan: problems and prospects / Issabekova V.S., Zalesny J. // Bulletin of the Karagandy University. Law Series. — 2024. — No 2 (114). — P. 25–33.
- 18 Указ Президента Республики Казахстан «Об учреждении должности Уполномоченного по правам человека» от 19 сентября 2002 г. № 947 (утрат. силу). — [Электронный ресурс]. — Режим доступа: [https://adilet.zan.kz/rus/docs/U020000947\\_](https://adilet.zan.kz/rus/docs/U020000947_)
- 19 Закон Республики Казахстан «Об Уполномоченном по правам человека» от 29 декабря 2021 г. № 90–VII ЗПК (утрат. силу). — [Электронный ресурс]. — Режим доступа: <https://adilet.zan.kz/rus/docs/Z2100000090>.
- 20 Доклад о деятельности Уполномоченного по правам человека в РК за 2023 г. — [Электронный ресурс]. — Режим доступа: <https://www.gov.kz/memleket/entities/ombudsman/documents/>

В.С. Исабекова

## Адам құқықтары жөніндегі Уәкіл институты: тарихы, қазіргі заманы, перспективасы

Мақала адам құқықтары жөніндегі Уәкіл институтының құрылғанынан бастап қазіргі кезеңге дейінгі тарихи дамуы тұрғысынан жұмыс істеуінің өзекті мәселелерін зерттеуге арналған. Ғылыми зерттеуде Қазақстан аумағында омбудсмен институтының пайда болуының тарихи алғышарттары мен қалыптасу ерекшеліктері қарастырылған. Ғалымдардың әртүрлі көзқарастары тұрғысынан оның рөлі мен мәні ашылған. Автор мемлекеттің құқықтық саласы тұрғысынан институтты трансформациялауға және оның маңызды ұстанымдарын нығайтуға ерекше назар аудара отырып, омбудсмен қызметінің қазіргі кезеңіне егжей-тегжейлі талдау жүргізеді. Мақаланың мақсаты — ҚР және шет елдердегі адам құқықтары жөніндегі Уәкіл институтының дамуын тарихи зерттеу, оны заманауи түсіндіру және оны одан әрі дамыту перспективаларын анықтау. Ғылыми зерттеудің мақсатын ашу үшін ғылыми танымның әртүрлі: тарихи, салыстырмалы-құқықтық, эмпирикалық әдістері қолданылды. Зерттеу нәтижесінде автор адам құқықтарын қорғау жөніндегі Уәкіл институтын дамытудың негізгі кезеңдерін анықтады. Омбудсмен институтының дамуындағы оң үрдістер көрсетілген. Адам құқықтары жөніндегі Уәкіл қызметінің және оның құқық қорғау функцияларының тиімділігін одан әрі күшейту мақсатында Қазақстан Республикасының ұлттық заңнамасын ұтымды етуге бағытталған ұсынымдар берілді.

*Кілт сөздер:* омбудсменнің даму тарихы, адам құқықтарын қорғау, Адам құқықтары жөніндегі уәкіл, омбудсмен институты, қорғаушы, мемлекет, омбудсмен трансформациясы.

В.С. Исабекова

## Институт Уполномоченного по правам человека: история, современность, перспективы

Статья посвящена исследованию актуальных вопросов функционирования института Уполномоченного по правам человека в контексте его исторического развития с момента создания до современного периода. В научном исследовании раскрываются исторические предпосылки возникновения и особенности формирования института омбудсмена на территории Казахстана. Раскрываются его роль и сущность с позиции разных точек зрения ученых. Автор проводит подробный анализ современного периода деятельности омбудсмена, уделяя особое внимание трансформации института и укреплению его значимых позиций в правовом поле нашего государства. Целью данной статьи является историческое исследование развития института Уполномоченного по правам человека в Республике Казахстан и зарубежных странах, его современное трактование и перспективы его дальнейшего развития. Для раскрытия цели научного исследования использовались различные методы научного познания, преимущественно исторический, сравнительно-правовой, эмпирический. В результате исследования автором выявлены основные этапы развития института Уполномоченного по защите прав человека. Обозначены положительные тенденции в развитии института омбудсмена. Даны рекомендации, направленные на рационализацию национального законодательства Республики Казахстан, с целью дальнейших перспектив усиления эффективности деятельности Уполномоченного по правам человека и его правозащитных функций.

*Ключевые слова:* история развития омбудсмена, защита прав человека, Уполномоченный по правам человека, институт омбудсмена, защитник, государство, трансформация омбудсмена.

### References

- 1 Konstitutsia Respubliki Kazakhstan ot 30 avgusta 1995 g. [Constitution of the Republic of Kazakhstan dated August 30, 1995]. Retrieved from [https://adilet.zan.kz/rus/docs/K950001000\\_](https://adilet.zan.kz/rus/docs/K950001000_) [in Russian].
- 2 Konstitutsionnyi zakon «Ob Upolnomochennom po pravam cheloveka» ot 5 noiabria 2022 goda N 154–VII ZRK (v deistvuiushchei redaktsii) [Constitutional Law “On the Commissioner for Human Rights” dated November 5, 2022, No. 154–VII LRK]. Retrieved from <https://adilet.zan.kz/rus/docs/Z2200000154> [in Russian].
- 3 Printsipy zashchity i ukrepleniia instituta ombudsmena («Venetsianskie printsipy») ot 15–16 marta 2019 goda (v deistvuiushchei redaktsii) [Principles for the Protection and Strengthening of the Ombudsman Institution (“Venice Principles”) dated March 15-16, 2019 (effective version)]. Retrieved from <https://www.venice.coe.int/webforms/> [in Russian].

- 4 Zakon Kyrgyzskoi Respubliki «Ob Ombudsmene Kyrgyzskoi Respubliki» ot 31 iulia 2002 goda N 136 (v deistvuiushchei redaktsii) [Law of the Kyrgyz Republic “On the Ombudsman of the Kyrgyz Republic” dated July 31, 2002, No. 136 (effective version)]. Retrieved from <https://platforma.kg/wp-content/uploads/2016/10> [in Russian].
- 5 Zakon Respubliki Polsha «Ob Upolnomochennom po pravam cheloveka» ot 15 iulia 1987 goda (v deistvuiushchei redaktsii) [The Law of the Republic of Poland “On the Commissioner for Human Rights” of July 15, 1987 (effective version). Retrieved from <https://bip.brpo.gov.pl/pl/content/ustawa-o-rzeczniku-praw-obywatelskich> [in Russian].
- 6 Oosting, M. (2001). Protecting the Integrity and Independence of the Ombudsman Institution: The Global Perspective. *The International Ombudsman Yearbook*, 5, 13–33. Retrieved from <https://brill.com/edcollchap/book/>
- 7 Khamaneva, N.Yu. (2013). Mesto i rol instituta ombudsmena v sisteme pravovogo kontroliia [The place and role of the Ombudsman institution in the system of legal control]. *Izvestiia vysshikh uchebnykh zavedenii. Pravovedenie — News of higher educational institutions. Legal studies*, 2, 85–93 [in Russian].
- 8 Feoktistov, D.Ye. (2012). Konstitutsionno-pravovoi status Upolnomochennogo po pravam cheloveka v Rossiiskoi Federatsii (sravnitelno-pravovoe issledovanie) [Constitutional and legal status of the Commissioner for Human Rights in the Russian Federation]. *Extended abstract of candidate's thesis*. Saratov [in Russian].
- 9 Meshkova, A.V. (2014). Stanovlenie i razvitie instituta ombudsmena v zarubezhnykh stranakh [Establishment and Development of the Ombudsman Institution in Foreign Countries]. *Vestnik Moskovskogo gosudarstvennogo oblastnogo universiteta — Bulletin of the Moscow State Regional University*, 2, 19–26. Retrieved from <https://www.evestnik-mgou.ru/jour/article/view/888/885> [in Russian].
- 10 Sungurov, A.Yu. (2004). Ombudsmen i drugie gosudarstvennye instituty zashchiti prav cheloveka [Ombudsman and other state institutions for the protection of human rights]. *Prilozhenie k zhurnalu «Severnaia Palmira» — Appendix to the journal “Northern Palmyra”*. Sankt-Peterburgskii gumanitarno-politologicheskii tsentr «Strategiia», 23–54 [in Russian].
- 11 Khamaneva, N.Yu. (1997). *Zashchita prav grazhdan v sfere ispolnitelnoi vlasti [Protection of citizens' rights in the field of executive power]*. Moscow: Institut gosudarstva i prava Rossiiskoi akademii nauk [in Russian].
- 12 Mukhitdinov, E.N. (2009). Pravovye osnovy formirovaniia i funktsionirovaniia instituta ombudsmena (Upolnomochennogo po pravam cheloveka) v Kazakhstane i za rubezhom: mezhdunarodno-pravovye aspekty [Legal bases for the formation and functioning of the Ombudsman institution (Commissioner for Human Rights) in Kazakhstan and abroad: international legal aspects]. *Extended abstract of Doctor's thesis*. Almaty [in Russian].
- 13 Uzakbayeva, A.B. (2010). Upolnomochennyi po pravam cheloveka v Respublike Kazakhstan i Rossiiskoi Federatsii: institutsionalnyi i sravnitelno-pravovoi analiz [The Commissioner for Human Rights in the Republic of Kazakhstan and the Russian Federation: institutional and comparative legal analysis]. *Extended abstract of candidate's thesis*. Almaty [in Russian].
- 14 Bashimov, M.S. (2008). Institut ombudsmena v Respublike Kazakhstan i zarubezhnykh stranakh (sravnitelno-pravovoi analiz) [The Ombudsman Institution in the Republic of Kazakhstan and Foreign Countries (Comparative Legal Analysis)]. *Extended abstract of candidate's thesis*. Astana [in Russian].
- 15 Khamaneva, N.Yu. (1997). *Okhrana prav grazhdan zarubezhnykh stran: institut ombudsmena (sravnitelnyi aspekt) [Protection of the rights of citizens of foreign countries: The Institution of the Ombudsman (comparative aspect)]*. Saratov: Omega-L [in Russian].
- 16 Printsipy, kasaiushchiesia statusa natsionalnykh uchrezhdenii, zanimaiushchikhsia pooshchreniem i zashchitoi prav cheloveka [Parizhskie printsipy] ot 20 dekabria 1993 g. (v deistvuiushchei redaktsii) [Principles relating to the status of national institutions for the promotion and protection of human rights [Paris Principles] of December 20, 1993 (effective version)]. Retrieved from <https://adilet.zan.kz/rus/docs/O9300000005> [in Russian].
- 17 Issabekova, V.S., & Zalesny, J. (2024) Formation of a new model of election to the post of Commissioner for Human Rights in the Republic of Kazakhstan: problems and prospects. *Bulletin of the Karagandy University. Law Series*, 2 (114), 25–33.
- 18 Ukaz Prezidenta Respubliki Kazakhstan: «Ob uchrezhdenii dolzhnosti Upolnomochennogo po pravam cheloveka» ot 19 sentiabria 2002 goda N 947 (utratil silu) [Decree of the President of the Republic of Kazakhstan “On the Establishment of the Position of the Commissioner for Human Rights” dated September 19, 2002, No. 947 (repealed). Retrieved from [https://adilet.zan.kz/rus/docs/U020000947\\_](https://adilet.zan.kz/rus/docs/U020000947_) [in Russian].
- 19 Zakon Respubliki Kazakhstan «Ob Upolnomochennom po pravam cheloveka» ot 29 dekabria 2021 g. N 90–VII ZRK (utratil silu) [Law of the Republic of Kazakhstan “On the Commissioner for Human Rights” dated December 29, 2021, No. 90–VII LRK (repealed)]. Retrieved from <https://adilet.zan.kz/rus/docs/Z2100000090> [in Russian].
- 20 Doklad o deiatelnosti Upolnomochennogo po pravam cheloveka v Respublike Kazakhstan [Report on the activities of the Commissioner for Human Rights in the Republic of Kazakhstan for 2023]. Retrieved from <https://www.gov.kz/memleket/entities/ombudsman/> [in Russian].

### Information about the authors

**Issabekova, Venera** — 3rd year PhD student, Department of Constitutional and International Law, Karaganda Buketov University, Karaganda, Kazakhstan.