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The Ombudsman Institution – as an Alternative Grievance Mechanism in Relation to Matters of Public Administration

In a democracy, human rights are guaranteed by the constitution of a state and protected by the judiciary. At the same time, alternative and/or quasi-judicial systems have an important role in the protection of human rights. The ombudsman institution is considered to be one of such alternative mechanisms in public law.

This article is the first attempt in the Georgian scientific literature to discuss, in the context of the practices of other countries and the Public Defender of Georgia, the characteristics of the mandate of the ombudsman as an alternative institution for the restoration of rights and its authority to examine the legality of the decisions made by the public institutions in relation to matters of public administration.

Keywords: *Public Defender of Georgia, ombudsman, public administration, alternative rights protection mechanism, public institutions, oversight of the protection of rights.*

1. Introduction

A legitimate public interest in the lawful and effective implementation of public administration has been growing in Georgia since the 90s of the 20th century when Georgia gained independence and bureaucratic mechanisms started to gradually develop in the country. At the same time, a judicial system based on the rule of law and democratic values is even more demanding in terms of transparent, effective and law-abiding public administration.

In a democracy, human rights are guaranteed by the constitution of a state and protected by the judiciary. However, in new democracies, it is vital to have a non- or quasi-judicial system of human rights supervision.¹ The ombudsman institution is considered to be such an alternative mechanism with constitutional legitimacy, independence, easy accessibility, “soft” power and high reputation, which today represents an integral part of the rule of law and democracy and is directly linked to the oversight of public administration in the country.²

The ombudsman has been regarded as an alternative mechanism for the protection of human rights in the field of public administration in the documents of international organizations since the 1970s. In the summer of 1977, the Committee of Ministers of the Council of Europe discussed the text

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¹ *Manatt Ch., Manatt K., The Institution of the Ombudsman in the Former Communist Countries, International Foundation for Election Systems, 2005, 10, <https://ifes.org/sites/default/files/08_08_02_manatt_ulzzibayar_vangansuren.pdf> [28.09.2020].*

² *Batalli B., Role of Ombudsman Institution Over the Administration, SSRN Electronic Journal, 10.2139/ssrn.2699061, 235, <https://www.researchgate.net/publication/314539863_Role_of_Ombudsman_Institution_Over_the_Administration> [08.10.2020].*

of the first and most important resolution of that time. By adopting the resolution, the Council set out five key principles that shall be observed and taken into account in the relations between administrations and citizens during the exercise of public administration in the member states of the Council of Europe.³ These five principles addressed the important and fundamental issues that are still of particular importance in the exercise of public administration. In particular, these principles are the right to be heard, access to information, assistance and representation, statement of reasons and indication of remedies.⁴ The explanatory note of this important resolution clarifies the importance of granting the persons concerned the right to appeal, but it also states that, given the different models in different countries, the right to appeal implies the protection of the right through traditional mechanisms, be it judicial or administrative appeal, while the non-traditional, alternative mechanisms, such as constitutional court or parliamentary ombudsman, are not implied in this principle.⁵

Restriction of and interference with the field protected by human rights is a characteristic consequence of public administration, considering its development, diversity and complexity. Given this, it is clear that over time, the role of the ombudsman institution as an alternative mechanism for the protection of human rights has been growing significantly.

Interestingly, the problem of objectivity and impartiality of public administrators in the transitional systems, as well as less trust in state institutions and less access to legal aid, is considered to be one of the preconditions for the rapid development of the ombudsman institution in the former Soviet Union countries. Accordingly, a demand for an independent, impartial and easily accessible institution that would have high legitimacy has emerged.⁶

Poland was the first country in the bloc of former Soviet Union countries to establish the ombudsman institution. Later such institutions started to emerge in other countries as well. It is noteworthy that in most of the former Soviet countries, the ombudsman institutions also have the status of the national human rights institution.⁷ This status gives the ombudsman an additional function and mandate to promote the rule of law, human rights and democratic development.

In the parliamentary democracies, the ombudsman is seen as a parliamentary oversight mechanism, through which the legislature creates an additional tool for limiting and controlling

³ Council of Europe, Committee of Ministers, Final Activity Report, Submitted to the Committee of Ministers, Strasbourg, 3 August, 1977, 12-19, <<https://rm.coe.int/native/090000168051651e>> [15.10.2020].

⁴ Resolution (77) 31, On the Protection of the Individual in Relation to the Acts of Administrative Authorities, Council of Europe, Committee of Ministers, 1977, <<https://rm.coe.int/09000016804dec56>> [15.10.2020].

⁵ Council of Europe, Committee of Ministers, Final activity Report, Submitted to the Committee of Ministers, Strasbourg, 3 August, 1977, 12-19, <<https://rm.coe.int/native/090000168051651e>> [15.10.2020].

⁶ *Manatt Ch., Manatt K.*, The Institution of the Ombudsman in the Former Communist Countries, International Foundation for Election Systems, 2005, 17, <https://ifes.org/sites/default/files/08_08_02_manatt_ulzzibayar_vangansuren.pdf> [28.09.2020].

⁷ The status of the National Human Rights Institutions and the core principles for their activities are established by the UN Resolution, adopted 20 December, 1993, see Principles relating to the Status of National Institutions (The Paris Principles), Adopted by General Assembly Resolution, #48/134, 20 December, 1993, <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>> [20.10.2020].

administrations.⁸ Therefore, as already mentioned, such institutions are considered in the scientific literature as an external mechanism overseeing the implementation of public administration.⁹

Because of the above reasoning, given the very high public interest in the lawful, effective and transparent public administration, it is valuable and important to consider and evaluate not only the traditional human rights mechanisms but also alternatives. The Public Defender of Georgia, as an ombudsman institution, is considered to be one of such alternatives in Georgia, which has been existed for only about three decades.

Unlike the administrative justice and administrative grievance mechanisms, this article is the first attempt in the Georgian scientific literature to discuss the characteristics of the ombudsman's mandate, which are related to the authority to examine the legality of the decisions made by the institutions, in the context of the examples of other countries and the Public Defender of Georgia. This is a model outside the justice system that is one of the alternatives and means of protecting human rights concerning matters of public administration.

The status, rules of the establishment and general authority of the Public Defender of Georgia as a constitutional body have been repeatedly discussed in the context of the constitutional law in Georgian scientific literature, although no research can be found in the publicly available Georgian sources about the Public Defender of Georgia as an alternative to the administrative grievance and administrative justice, which increases the scientific value of the present article. At the same time, this research will allow interested researchers to study this issue in-depth in the future, which may be done within the framework of the theme of their thesis.

The article initially presents a general overview of the ombudsman institution, its general characteristics and variety. It also offers a general description of the multi-mandate ombudsman institutions, although it is not the aim of this research to study the issue in-depth in this direction. The first chapter also reviews international standards relating to the ombudsman and presents a general description of the institution of the Public Defender of Georgia.

The next chapter discusses issues related to the oversight of public service delivery considering the practices the Public Defender of Georgia and other countries. The scope of the mandate, the powers relating to the examination of the issue and the forms of response are discussed as well. Certain problematic issues relating to the implementation of the mandate of the Public Defender of Georgia as the ombudsman are also identified. Given the aims and format of the article, the research does not evaluate in depth the results of statistical or empirical observations relating to the practical work of the Public Defender of Georgia, nor does it discuss some specific mandates of the institution, which, as already mentioned, maybe a matter of more in-depth and extensive research. Both general scientific (historical) and special research methods – normative, dogmatic, systemic and comparative-legal methods – are used as a methodological basis for the research.

⁸ *Batalli M.*, Role of Ombudsman Institution Over the Administration, SSRN Electronic Journal, 10.2139/ssrn.2699061, 235, <https://www.researchgate.net/publication/314539863_Role_of_Ombudsman_Institution_Over_the_Administration> [10.10.2020].

⁹ *Ibid.*

The models of various European countries are discussed by using a comparative law method. Apart from European countries, the example of New Zealand is also interesting. New Zealand is a republic with a governance system based on the Westminster parliamentary democracy model, which was the first country outside Scandinavia to adopt the modern ombudsman institution in 1962. The institution has many years of diverse expertise.¹⁰

2. Ombudsman – an Important Element of Modern Democracy

2.1. International Standards

The word “Ombudsman” is of Swedish origin and means a representative.¹¹ Today, there are about 140 ombudsman institutions around the world, and as mentioned in the introduction to this article, they are an integral part of modern democratic system and society. In a state that recognizes the rule of law, in which the government not only creates the law but is itself subject to it, the existence of the ombudsman institution carries special importance.¹² Such an institution is one of the major obstacles to the abuse of power in the states.¹³

Interestingly, ombudsmen have special importance in the former Soviet countries, where in some cases they are more often applied to with a request to review the legality of decisions made by the state agencies than in some Western democracies.¹⁴ A prerequisite for high public confidence in such institutions is usually the observance of principles of transparency, independence and impartiality in their activities.¹⁵

¹⁰ *Elwood B.*, The Ombudsman and Good Governance, Occasional Paper, International Ombudsman Institute, №74, 2000, 2, <https://www.theioi.org/downloads/1249h/IOI%20Canada_Occasional%20paper%2074_Brian%20Elwood_The%20Ombudsman%20and%20Good%20Governance%20_2000.pdf> [12.09.2020].

¹¹ *Batalli M.*, Role of Ombudsman Institution Over the Administration, SSRN Electronic Journal, 10.2139/ssrn.2699061, 235, <https://www.researchgate.net/publication/314539863_Role_of_Ombudsman_Institution_Over_the_Administration> [10.10.2020].

¹² *Oosting M.*, The Concept and Role of the Ombudsman Throughout the World, Occasional Paper, International Ombudsman Institute, №70, May, 1999, 2, <https://www.theioi.org/downloads/32c8h/IOI%20Canada_Occasional%20paper%2070_Marten%20Oosting_The%20Concept%20and%20Role%20of%20the%20Ombudsman%20Throughout%20the%20World_1999.pdf> [12.09.2020].

¹³ Ibid.

¹⁴ The increasing number of received and resolved complaints by Ombudsman of Slovenia in 1995-2000 was higher than in Ireland. This can be considered as an indicator of the high demand for the activities of these institutions in the emerging democracies and the need for a link between the administrations and the citizen in these countries. See: *Manatt Ch., Manatt K.*, The Institution of the Ombudsman in the Former Communist Countries, International Foundation for Election Systems, 2005, 19, <https://ifes.org/sites/default/files/08_08_02_manatt_ulzzibayar_yangansuren.pdf> [26.09.2020].

¹⁵ *Oosting M.*, The Concept and Role of the Ombudsman Throughout the World, Occasional Paper, International Ombudsman Institute, №70, May, 1999, 3, <https://www.theioi.org/downloads/32c8h/IOI%20Canada_Occasional%20paper%2070_Marten%20Oosting_The%20Concept%20and%20Role%20of%20the%20Ombudsman%20Throughout%20the%20World_1999.pdf> [12.09.2020].

Numerous international documents deal with the role and importance of the ombudsman in a democratic society, as well as its creation and characteristics of activities.¹⁶ For this article, several of them are interesting: In 1985, the Committee of Ministers of the Council of Europe adopted the first Recommendation NR (85) 13 on the Institution of the Ombudsman.¹⁷ The Committee of Ministers indicated in its recommendation that considering the complexities of modern administration, it was desirable to supplement the usual procedures of judicial control with additional alternative mechanisms. In particular, the document recommended considering the possibility of appointing the ombudsmen or empowering them in countries that already had such an institution.¹⁸ 35 years later, the Committee of Ministers adopted a new recommendation¹⁹ that replaced the 1985 document. An analysis of the text of the updated recommendation shows how significantly the ombudsman institution had evolved over the 35 years, how its role had grown in a democratic society in terms of protection of human rights and the rule of law. Compared to the previous recommendation, the Council of Ministers covered much more issues in Recommendation CM/Rec(2019)6 and defined the

¹⁶ Various international documents identify activities, principles and peculiarities of ombudsmen. See Recommendations of the Committee of Ministers of the Council of Europe R (85) 13 on the institution of the Ombudsman; R (97)14 on the establishment of independent national institutions for the promotion and protection of human rights; R (2000)10 on codes of conduct for public officials, CM/Rec(2007)7 on good administration, CM/Rec(2014)7 on the protection of whistle-blowers and CM/Rec(2016)3 on human rights and business <<https://www.coe.int/en/web/cm/adopted-texts>> [21.10.2020]; Recommendations of the Parliamentary Assembly of the Council of Europe 757 (1975) and 1615 (2003) and in particular its Resolution 1959 (2013), <<http://semantic-pace.net/?search=KjoqfGNhdGVnb3J5X3N0cl9lbjoiQWRvcHRIZCB0ZXh0Ig==&lang=en>> [21.10.2020]; as well as Recommendations 61(1999), 159 (2004), 309(2011) and Resolution 327 (2011) of the Congress of Local and Regional Authorities of the Council of Europe, <<https://www.coe.int/en/web/congress/adopted-texts-by-type-of-documents>> [21.10.2020]; ECRI General Policy Recommendation No. 2: Equality bodies to combat racism and intolerance at national level, adopted on 7 December 2017, <<https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.2>> [21.10.2020]; United Nations General Assembly Resolution 48/134 on the principles relating to the status of national institutions for the promotion and protection of human rights (“the Paris Principles”) of 20 December 1993, Resolution 69/168 of 18 December 2014 and Resolution 72/186 of 19 December 2017 on the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights, Resolution 72/181 of 19 December 2017 on National institutions for the promotion and protection of human rights, the Optional Protocol to the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 18 December 2002, the Convention on the Rights of Persons with Disabilities adopted by the General Assembly on 13 December 2006, <<https://www.un.org/en/sections/general/documents/>> [21.10.2020].

¹⁷ Recommendation of the Committee of Ministers to Member States on the Institution of the Ombudsman, Adopted by the Committee of Ministers, 23 September, 1985, at the 388th meeting of the Ministers' Deputies, (Recommendation replaced by CM/Rec (2019) 6), <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680506bee> [17.10.2020].

¹⁸ Ibid.

¹⁹ Recommendation CM/Rec(2019)6 of the Committee of Ministers to Member States on the Development of the Ombudsman institution, Adopted by the Committee of Ministers, 16 October, 2019 at the 1357th meeting of the Ministers' Deputies, <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168098392f> [17.10.2020].

important principles that should serve as the basis for the activities of such institutions, namely: 1) independence, 2) impartiality, objectivity and fairness; 3) high moral authority; 4) comprehensive mandate; 5) accessibility 6) effectiveness.²⁰ The main message of the Recommendation of the Council of Europe to its member states was to support the ombudsmen and their work by adhering to the above principles.

Obviously, during the 35 years, the Council of Europe had adopted a number of other important documents that directly addressed the role of the ombudsman and the promotion of their work. For example, Resolution N1959 of the Parliamentary Assembly of the Council of Europe (2013) on the strengthening of the institution of ombudsman in Europe,²¹ which reiterates the need of establishing an institution based on a constitutional or other act of high legal hierarchy, as well as the need for ensuring its independence and strong powers.

The recommendations made over the years by the European Commission for Democracy through Law (Venice Commission) relating to the ombudsman institution are also particularly important.²² The most important of these numerous documents is the Principles on the Protection and Promotion of the Ombudsman Institution (Venice Principles).²³ The Venice Commission emphasizes in this document that the ombudsman is an important element in a state based on democracy, the rule of law, respect for human rights and fundamental freedoms and good administration.²⁴ The Venice Commission also points out that the ombudsman is an institution taking action independently against maladministration and alleged violations of human rights and fundamental freedoms and an addition to the right of access to justice through the courts.²⁵

It is noteworthy that in general the competence and mandate of the ombudsman is linked to the history of the establishment and further development of this institution, although it is important to understand that the modern democratic states not only create but also promote the existence of such institutions since an objective and critical assessment of public administration by independent institutions helps to increase public confidence towards bureaucracy and public authorities.²⁶

²⁰ Ibid.

²¹ Resolution 1959 (2013), Strengthening the Institution of Ombudsman in Europe, Adopted by Parliamentary Assembly, 4 October, 2013, <<https://pace.coe.int/en/files/20232/html>> [17.10.2020].

²² See detailed list of the recommendations and conclusions adopted by the European Commission for Democracy through Law since 1991 regarding the ombudsman institutions, <<https://www.venice.coe.int/webforms/documents/?topic=24&year=all>> [17.10.2020].

²³ CDL-AD(2019)005-e, Principles on the Protection and Promotion of the Ombudsman Institution (The Venice Principles), Adopted by the Venice Commission at its 118th Plenary Session, Venice, 15-16 March, 2019, <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)005-e)> [17.10.2020].

²⁴ Ibid.

²⁵ Ibid.

²⁶ *Jamieson O.C. R.*, Ombudsman Institutions Around the World: Analysis and Comparison of a Plurality and Practice, International Ombudsman Institute, №59, January, 1997, 2, <https://www.theioi.org/downloads/cbhdl/ioi-canada_occasional-paper-59_roberta-jamieson_om-institutions-around-the-world-analysis-and-comparision_1997-1.pdf> [26.09.2020].

2.2. Development of the Ombudsman Institution and its Variety

The creation of the ombudsman institution in the literature is linked to the idea, according to which, the transfer of power by people to state institutions in democratic systems always creates the danger of abuse of power, and one of the protective mechanisms against the above is considered to be the ombudsman.²⁷ The above became the basis for the establishment of this institution in the Scandinavian countries and later it spread throughout the world, including New Zealand in 1962.²⁸ The development of this institution continued in Asia in the 80s of the last century and later in Latin America in the 90s, as well as on the African continent. The development of the ombudsman institution in Central and Eastern European countries is related to the 90s.²⁹

According to the periods of foundation, the researchers differentiate between two categories of ombudsmen. Initially, the Scandinavian model was established, which was considered to be an institution overseeing public administration carried out by public institutions, the so-called classic ombudsman. Later, after World War II, new institutions were created with additional powers to respond to the historical context and human rights challenges, such as the Spanish model, in which the ombudsman was given the right to apply to the court on behalf of people relating the constitutionality of the regulations established by the governing bodies, etc.³⁰

Due to a number of international standards and broad discretion of states, ombudsman institutions differ not only according to the periods of their creation. For example, researchers differentiate between ombudsman institutions that function in old, traditional democracies and the ombudsman institutions that function in young democracies; institutions that exist in economically developed countries and those operating in countries with weak economies.³¹

The level of democratic development, economic strength and stability of the countries affect the activities of the ombudsman and significantly differentiate the challenges that such institutions have to overcome in countries with different systems. The frequency and nature of human rights abuses in developed and strong economies, as well as the implementation of public administration and the

²⁷ *Elwood B.*, The Classical Ombudsman – an Effective Reviewer of Administrative Decisions by Government Agencies – A New Zealand Perspective, International Ombudsman Institute, #76, 2001, 2, <https://www.theioi.org/downloads/72sah/IOI%20Canada_Occasional%20paper%2076_Brian%20Elwood_The%20Classical%20Ombudsman%20-%20An%20Effective%20Reviewer%20of%20Administrative%20Decisions%20By%20Government%20Agencies%20-%20A%20New%20Zealand%20Perspective_2001.pdf> [13.09.2020].

²⁸ Ibid.

²⁹ The Role of Ombudsman Institutions in Open Government, OECD Working Paper on Public Governance, No. 29, 2018, 6, <<http://www.oecd.org/gov/the-role-of-ombudsman-institutions-in-open-government.htm>> [07.10.2020].

³⁰ *Abedin N.*, Conceptual and Functional Diversity of the Ombudsman Institution: A Classification, Administration and Society, №43 (8), SAGE Publications, 2011, 899-903, <<http://aas.sagepub.com>> [11.10.2020].

³¹ *Oosting M.*, The Concept and Role of the Ombudsman Throughout the World, Occasional Paper, International Ombudsman Institute, №70, May, 1999, 3, <https://www.theioi.org/downloads/32c8h/IOI%20Canada_Occasional%20paper%2070_Marten%20Oosting_The%20Concept%20and%20Role%20of%20the%20Ombudsman%20Throughout%20the%20World_1999.pdf> [12.09.2020].

effectiveness of administrations, differ significantly from those in developing countries.³² Such a different reality also changes the environment of the ombudsman's activities and researchers consider different types of ombudsman institutions according to the above as well.³³

The ombudsman institutions also differ from each other according to their legal regulation, organization, functions, procedures and enforcement mechanisms. The ombudsman may have a fairly broad mandate and functions in many areas or may oversee the exercise of public authority only in one area. In some countries, the ombudsman has quite powerful mechanisms when examining a case, although the implementation of the ombudsman's recommendations may be quite weak. Some systems have ombudsman with stronger enforcement and response mechanisms. As relatively young democracies, Central and Eastern Europe have stronger ombudsman institutions, which also serve as national human rights institutions, giving them even more leverage to oversee public administration.³⁴

In literature, models of the ombudsman are distinguished from each other according to the forms of response. For example, the Swedish and Finnish ombudsman models are characterized by punitive-disciplinary functions, while the Danish and Norwegian models have quasi-judicial functions. In the first case, the ombudsman may apply to the court with charges against officials or demand criminal persecution, while in the second case, the ombudsman aims to oversee and control the lawfulness of administration.³⁵

Scholars distinguish between the public and private sector ombudsman. The latter may function within the framework of certain directions of the private sector. There are also executive and parliamentary ombudsman. The main difference between them is the source of legitimacy and degree of independence. Typically, an executive ombudsman is appointed by a representative of the executive branch and he/she does not have the high legitimacy granted by the legislature to oversee the administration.³⁶ Only the parliamentary ombudsman and his/her oversight function are discussed in the present research.

As already mentioned, the researchers link the classical model of ombudsman to the Swedish and Finnish models, where the ombudsman oversees public institutions as well as the administration of the courts and the protection of procedural rights, while the Danish model only assesses the legitimacy of public administration and does not cover judicial issues.³⁷

³² Ibid.

³³ Ibid, 3-6.

³⁴ *Batalli M.*, Role of Ombudsman Institution Over the Administration, SSRN Electronic Journal, 10.2139/ssrn.2699061, 236, <https://www.researchgate.net/publication/314539863_Role_of_Ombudsman_Institution_Over_the_Administration> [10.10.2020].

³⁵ *Langen S. M.*, The Global Ombudsman, Presented at the 12th Winelands Conference on Public Leadership for Added Citizen Value, Stellenbosch, South Africa, 15-19 March, 2010, 7, <<https://ssrn.com/abstract=2926147>> [07.10.2020].

³⁶ *Abedin N.*, Conceptual and Functional Diversity of the Ombudsman Institution: A Classification, Administration and Society, №43(8), SAGE Publications, 2011, 918-922, <<http://aas.sagepub.com>> [11.10.2020].

³⁷ *Manatt Ch., Manatt K.*, The Institution of the Ombudsman in the Former Communist Countries, International Foundation for Election Systems, 2005, 6-7, <https://ifes.org/sites/default/files/08_08_02_manatt_ulzzibayar_vangansuren.pdf> [26.09.2020].

There is also the so-called French model -Francophone (also common in some countries in Africa and Asia), in which the ombudsman institution acts as a mediator between public administration and citizens and helps them solve problems.³⁸

In some countries, ombudsmen function at different levels according to the territorial arrangement of the country, and in certain cases, their activities are of a specialized nature.³⁹

Thus, in the modern world, the word “ombudsman” has a much broader meaning than the one it had when it was first created and is used to denote institutions with different functions and purposes around the world.

According to the study of the International Organization for Economic Co-operation and Development (OECD), the practices of 94 countries studied by them shows that in most cases (96%) ombudsmen examine the legitimacy of decisions made by public authorities and administrative agencies, although the same institutions have special, additional mandates in the direction of child’s rights, equality mechanism, oversight of the prohibition of torture, control of access to information, protection of the rights of whistleblowers, etc.⁴⁰ They may also act as a special commissioner.

It is noteworthy that in the direction of public governance and administration, the role of the ombudsman, as a support institution as well as one of the addressees, is being more and more actively considered in the process of establishment of open government and open state, which includes the enhancement of the transparency of its activities, the degree of its accountability and the promotion of stakeholder participation in its activities.⁴¹

It should also be noted that despite meeting the international requirements of the parliamentary ombudsman, such institutions are not referred to as ombudsmen in some systems. For example, they are called mediators, people's representatives, parliamentary or human rights commissioners, chancellors of justice, etc.⁴² The case of Georgia is an example of this. The institution that meets the

³⁸ *Diaw M. Ch.*, *The Ombudsman Story: A Case Study in Public Oversight, Natural Justice and State Transformation*, 2007, 13, <https://www.researchgate.net/publication/312341186_The_Ombudsman_story_A_case_study_in_public_oversight_natural_justice_and_State_transformation> [11.10.2020].

³⁹ *Manatt Ch., Manatt K.*, *The Institution of the Ombudsman in the Former Communist Countries*, International Foundation for Election Systems, 2005, 8, <https://ifes.org/sites/default/files/08_08_02_manatt_ulzzibayar_yangansuren.pdf> [26.09.2020].

⁴⁰ *The Role of Ombudsman Institutions in Open Government*, OECD Working Paper on Public Governance №29, 2018, 7-9, <<http://www.oecd.org/gov/the-role-of-ombudsman-institutions-in-open-government.htm>> [07.10.2020], Additionally see, *Elwood B.*, *The Classical Ombudsman – an Effective Reviewer of Administrative Decisions by Government Agencies – A New Zealand Perspective*, International Ombudsman Institute, #76, 2001, 12, <https://www.theioi.org/downloads/72sah/IOI%20Canada_Occasional%20paper%2076_Brian%20Elwood_The%20Classical%20Ombudsman%20-%20An%20Effective%20Reviewer%20of%20Administrative%20Decisions%20By%20Government%20Agencies%20-%20A%20New%20Zealand%20Perspective_2001.pdf> [13.09.2020].

⁴¹ *The Role of Ombudsman Institutions in Open Government*, OECD Working Paper on Public Governance No. 29, 2018, 7-9, <<http://www.oecd.org/gov/the-role-of-ombudsman-institutions-in-open-government.htm>> [07.10.2020].

⁴² *Jamieson O.C. R.*, *Ombudsman Institutions Around the World: Analysis and Comparison of a Plurality and Practice*, International Ombudsman Institute, №59, January, 1997, 5, <<https://www.theioi.org/downloads/>

international standards established for the ombudsman is the Public Defender of Georgia, the name of which does not mention the ombudsman at all. At the same time, there is only a business ombudsman in Georgia⁴³ and according to the classification discussed in the article, he/she may belong to the category of executive ombudsman and not to the Parliamentary control mechanism.

It should also be noted that there are no legal restrictions on the use of the term “ombudsman” in Georgia, unlike the United Kingdom and Ireland, which set out certain criteria to be met by an institution to be referred to as an ombudsman. Relevant procedures are also in place in New Zealand, where prior written consent is required from the New Zealand ombudsman relating to the name of a newly established institution.⁴⁴

2.3. Public Defender of Georgia

The modern human rights mechanisms of Georgia, the embryo of which can be considered in the context of the Constitution of February 21, 1921,⁴⁵ are diverse, but given that the purpose of the article is to discuss the ombudsman as an alternative mechanism for overseeing the legality of public administration, these various issues are not discussed in depth.

In 1992, the Presidium of the State Council of the Republic of Georgia adopted a resolution on the establishment of the State Committee for Interethnic Relations and Human Rights of the Republic of Georgia. Later its name was changed to the Committee for Human Rights and Interethnic Relations of the Republic of Georgia. Under the legislation of the Republic, the Committee, within its competence, had been making decisions and developing regulations, instructions, methodological recommendations and other normative acts, the implementation of which was mandatory for the ministries, committees, departments, agencies, as well as enterprises and organizations, regardless of their legal-organizational form. The currently operating Georgian ombudsman institution was established based on this Committee.⁴⁶

The Public Defender of Georgia is a constitutional institution that oversees the protection of human rights and freedoms on the territory of Georgia. The Public Defender of Georgia is independent in his/her activities and does not belong to any branch of government.⁴⁷

On December 12, 1996, the Organic Law of Georgia on the Public Defender was adopted, which defines the powers and mandate of the Public Defender.⁴⁸

cbhdl/loi-canada_occasional-paper-59_roberta-jamieson_om-institutions-around-the-world-analysis-and-comparision_1997-1.pdf> [26.09.2020].

⁴³ Law of Georgia, “On Business Ombudsman of Georgia”, Website of LEPL Legislative Herald of Georgia, 28.05.2015.

⁴⁴ *Gottehrer M., Hostina M.*, Essential Characteristics of a Classical Ombudsman, <<https://www.usombudsman.org/essential-characteristics-of-a-classical-ombudsman/>> [21.10.2020].

⁴⁵ Constitution of Georgia, adopted by the Constituent Assembly of Georgia, 21 February, 1921.

⁴⁶ *Jibghashvili Z.*, Ombudsman – Legal-Institutional Guarantor of Human Rights Protection, Journal: Almanac №6 Human Rights Law (1), *Sesiashvili Ir. (ed.)*, Georgian Young Lawyers Association, Tbilisi, 1998.

⁴⁷ Constitution of Georgia, Article 35, Departments of the Parliament of Georgia, 31-33, 24/08/1995.

⁴⁸ Organic Law of Georgia “On the Public Defender of Georgia”, Departments of the Parliament of Georgia, 13, 07.06.1996.

According to the systemic analysis of the law of Georgia on the constitutional norm and the organic law, the Public Defender of Georgia can be assessed as an ombudsman institution acting following the standards set by the Council of Europe and the Venice Commission. However, the analysis also shows that the Public Defender of Georgia does not only has the status of an alternative mechanism overseeing public administration but is also an example of a multifaceted institution. In particular, the Public Defender of Georgia has been performing the functions of the National Preventive Mechanism under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since 2009. Within the framework of this authority, the Public Defender of Georgia regularly inspects the situation and treatment of detainees, prisoners and other persons deprived of their liberty, as well as persons placed in psychiatric institutions, old people's homes and children's homes, and this is the special mandate of the Public Defender.⁴⁹

After the adoption of the Law of Georgia on the Elimination of All Forms of Discrimination⁵⁰ on May 2, 2014, the Public Defender was designated as a body overseeing the elimination of discrimination and ensuring equality. The above is the second special mandate of the institution, which has a number of characteristics. For example, the extension of powers to private individuals and a completely different mechanism for enforcing decisions, which is not characteristic of the typical ombudsman institution.

The United Nations Convention on the Rights of Persons with Disabilities of 31 December 2006 has been ratified by Georgia since 26 December 2013. The Convention obliges States Parties to establish or strengthen one or more independent mechanisms for promoting, protecting and monitoring the implementation of the Convention. Since October 2014, the Public Defender of Georgia has been designated as a structure promoting, protecting and monitoring the implementation of the UN Convention on the Rights of Persons with Disabilities, which is also another special mandate of the Public Defender.⁵¹

In 2019, the Law of Georgia on the Code of the Rights of the Child was adopted, which additionally designated the Public Defender as a body monitoring and evaluating the protection of children's rights and freedoms in Georgia.⁵²

One of the important functions of the Public Defender of Georgia is also educational activities in the field of human rights and freedoms.⁵³

⁴⁹ Ibid, Article 19.

⁵⁰ Law of Georgia “on the Elimination of All Forms of Discrimination”, Website of LEPL Legislative Herald of Georgia, 07.05.2014.

⁵¹ See Information on the Monitoring Mechanism, On October 27, 2014, at the №6 meeting of the Coordination Council for the Disabled under the Prime Minister of Georgia, the Public Defender of Georgia was nominated as the structure to monitor the promotion, protection and implementation of the UN Convention on the Rights of Persons with Disabilities, <<http://www.ombudsman.ge/geo/mekanizmisshesakheb>> [21.10.2020].

⁵² The Code “On The Rights of the Child”, Article 83, paragraph 2, article 97, Website of LEPL Legislative Herald of Georgia, 27.09.2019.

⁵³ Organic Law of Georgia “On the Public Defender of Georgia”, article 3 paragraph 3, Departments of the Parliament of Georgia, 13, 07.06.1996.

Along with the ombudsman's general mandate and the above-mentioned specific authorities, the ombudsman of Georgia is the national human rights institution, which has been granted “A” status,⁵⁴ which implies full compliance of the Public Defender of Georgia with principles set by the United Nations (hereinafter UN). As a result, the Public Defender of Georgia may participate in the work of national human rights institutions with the right to vote at international and regional levels, hold a position in the Bureau/Subcommittee of the International Coordinating Committee and participate in the UN Human Rights Council sessions. Thus, the Public Defender of Georgia represents the so-called hybrid model, which along with exercising the typical powers of the ombudsman and several special mandates, is also responsible for performing the functions of the national human rights institution, like the models of many Eastern European countries.

Although the Public Defender of Georgia performs several mandates and each of them is extremely interesting and important, each of them is a subject of independent research. Accordingly, for this article, when discussing the Public Defender in the next chapter, only the specifics of the oversight of public administration by an ombudsman will be considered and reviewed.

3. Peculiarities of Consideration of Complaints Relating to Public Administration

3.1. The Scope of the Ombudsman's Mandate Concerning Public Administration

One of the key issues in terms of the oversight of public administration by the ombudsman is which activities and what categories of entities this mandate covers.

As a rule, the purpose of the ombudsman, along with the restoration of the violated right, is to facilitate the effective, transparent and responsible exercise of public administration. Any person who considers that any action or decision of the central or local authorities, or a person empowered to exercise public administration, violated his or her rights, may apply to the ombudsman. However, the definition of public administration is not uniform for all systems and the scope of the ombudsman's mandate also varies.⁵⁵

For example, the mandate of the Ombudsman of the European Union is to review the complaints of citizens or companies relating to the legitimacy of the decisions and actions of various bodies of the European Council, the European Parliament and the European Commission.⁵⁶

In New Zealand, a special legislative act sets out a list of institutions, the decisions of which can be reviewed by the ombudsman. This list includes institutions that carry out public administration.⁵⁷

⁵⁴ See information regarding “A” Status of the Public Defender of Georgia, <<http://www.ombudsman.ge/geo/mandati>> [21.10.2020].

⁵⁵ *Batalli M.*, Role of Ombudsman Institution Over the Administration. SSRN Electronic Journal, 10.2139/ssrn.2699061, 237, <https://www.researchgate.net/publication/314539863_Role_of_Ombudsman_Institution_Over_the_Administration> [10.10.2020].

⁵⁶ *Ibid.*

⁵⁷ *Elwood B.*, The Classical Ombudsman – an Effective Reviewer of Administrative Decisions by Government Agencies – A New Zealand Perspective, International Ombudsman Institute, №76, 2001, 9, <https://www.theioi.org/downloads/72sah/IOI%20Canada_Occasional%20paper%2076_Brian%20Elwood_The%20Classical%20Ombudsman%20%20An%20Effective%20Reviewer%20of%20Administrative%20Decis>

Moreover, there are some limits established for the jurisdiction of the ombudsman. These are: where the merits of the complaint are subject to a statutory appeal right to a court, actions of the police, in respect of which a separate statutory body exists, any matters relating to the terms and conditions of service or any operational matters of the military.⁵⁸ Interestingly, should any questions about an ombudsman's jurisdiction arise, the ombudsman may seek a declaratory order about the matter from the court.⁵⁹ The mandate of New Zealand's ombudsman is to examine the issues of public administration and does not involve evaluating the performance of the legislature or overseeing the judiciary.⁶⁰

Resolution N1959 of the Parliamentary Assembly of the Council of Europe (2013) indicates that the mandate of the ombudsman shall be extended to the activities of entities carrying out public administration, shall have access to information and shall have broad powers to examine an issue.⁶¹

According to the principles approved by the Venice Commission, the institutional competence of the ombudsman includes all levels of government. The mandate of the ombudsman covers all public interests, as well as the public services provided to the public by the state, municipalities, state agencies and private organizations.⁶²

According to the Council of Europe Recommendation CM/Rec (2019) 6, the ombudsman has the power to review and evaluate the decisions relating to public administration.⁶³

The Supreme Court of Canada clarifies that "the ombudsman represents society's response to problems of potential [administrative] abuse."⁶⁴ Ombudsman is entitled to address many of the concerns left untouched by the traditional bureaucratic control mechanisms.⁶⁵

ions%20By%20Government%20Agencies%20-%20A%20New%20Zealand%20Perspective_2001.pdf> [13.09.2020].

⁵⁸ *Elwood B.*, The Classical Ombudsman – an Effective Reviewer of Administrative Decisions by Government Agencies – A New Zeland Perspective, International Ombudsman Institute, №76, 2001, 9, <https://www.theioi.org/downloads/72sah/IOI%20Canada_Occasional%20paper%2076_Brian%20Elwood_The%20Classical%20Ombudsman%20-%20An%20Effective%20Reviewer%20of%20Administrative%20Decisions%20By%20Government%20Agencies%20-%20A%20New%20Zealand%20Perspective_2001.pdf> [13.09.2020].

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Resolution 1959 (2013), Strengthening the institution of ombudsman in Europe, Adopted by Parliamentary Assembly, Assembly debate on 4 October 2013 (36th Sitting), <<https://pace.coe.int/en/files/20232/html>> [17.10.2020].

⁶² CDL-AD(2019)005-e, Principles on the Protection and Promotion of the Ombudsman Institution (The Venice Principles), Adopted by the Venice Commission at its 118th Plenary Session, Venice, 15-16 March, 2019, <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)005-e)> [17.10.2020].

⁶³ Recommendation CM/Rec(2019)6 of the Committee of Ministers to Member States on the Development of the Ombudsman Institution, Adopted by the Committee of Ministers, 16 October, 2019 at the 135th meeting of the Ministers' Deputies, <[https://search.coe.int/cm/Pages/result_details.aspx? ObjectId=090000168098392f](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168098392f)> [17.10.2020].

⁶⁴ *Elwood B.*, The Classical Ombudsman – an Effective Reviewer of Administrative Decisions by Government Agencies – A New Zeland Perspective, International Ombudsman Institute, №76, 2001, 2, <https://www.theioi.org/downloads/72sah/IOI%20Canada_Occasional%20paper%2076_Brian%20Elwood_The%20Classical%20Ombudsman%20-%20An%20Effective%20Reviewer%20of%20Administrative%20Decisions%20By%20Government%20Agencies%20-%20A%20New%20Zealand%20Perspective_2001.pdf> [13.09.2020].

⁶⁵ Ibid, 4.

Systemic analysis of various legal acts⁶⁶ shows that the mandate of the Public Defender of Georgia as an ombudsman involves the assessment of the activities of state agencies and local self-government bodies, as well as legal entities of public law. The mandate also applies to individuals (natural persons and legal entities of private law) who may perform public functions.

In contrast to the above-mentioned systems where it is important to define the functions of public administration to determine the scope of the mandate, the legal framework of the Georgian model focuses on institutions. As mentioned, it is possible to define the institution and the appropriate framework for these purposes based on the definition of the norms of public law, however, a question arises whether the Public Defender's mandate should be extended to the cases where the relevant entities do not perform public functions but participate in the private law relations, or private law entities or individuals exercise public power. This is one of the problematic issues in the administrative law,⁶⁷ which is usually the subject of evaluation by the court, which leads to additional ambiguity in terms of establishing the scope of the ombudsman's mandate.

3.2. The Launch of Examination of Complaints and the Scope of Responses

To protect the rights related to matters of public administration, it is important how the ombudsman starts to examine an issue and what powers he/she has in this process.

The Venice Principles indicate that the ombudsman shall have discretionary power to investigate cases on his or her own initiative or as a result of a complaint. The Venice Commission also indicates that the ombudsman shall be entitled to request the cooperation 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 whistleblowers within the public sector.⁶⁸ Article 19 of the same Principles states that the official filing of a request to the ombudsman may have suspensive effect on time-limits to apply to the court, according to the law.⁶⁹

The Council of Europe states in Recommendation CM/Rec (2019) 6 that the ombudsmen should be empowered to take action upon complaints received or on their initiative, against maladmini-

⁶⁶ See Organic Law of Georgia “On the Public Defender of Georgia”, article 3 paragraph 1, Departments of the Parliament of Georgia, 13, 07.06.1996; Law of Georgia, “General Administrative Code of Georgia”, Article 2 paragraph 1, sub-paragraph “a”, article 27 paragraph “a”, LHG, 32(39), 15/07/1999.

⁶⁷ *Turava P., Tskepladze N.*, Textbook of General Administrative Law, Tbilisi, 2010, 170-222 (in Georgian).

⁶⁸ CDL-AD(2019)005-e, Principles on the Protection and Promotion of the Ombudsman Institution (The Venice Principles), Adopted by the Venice Commission at its 118th Plenary Session, Venice, 15-16 March, 2019, <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)005-e)> [17.10.2020].

⁶⁹ Ibid.

nistration, unfairness, abuse, corruption or any injustice caused by providers of public services, regardless of their organizational form.⁷⁰

Even though there are different models in different countries, most ombudsmen receive reports of alleged violations from individuals. They first decide whether there is substantiated ground to justify an intervention. If so, they have then to decide whether to conduct a full investigation or to choose another form of intervention.⁷¹ In certain systems, the ombudsmen have the right to intervene only if there is a written appeal and compliance with formal criteria, but there are models where the institution can investigate the infringement on its initiative or the basis of an oral application. There are also examples of stronger mandates where the ombudsman inspects/audits agencies on his or her initiative and begins to examine the violations detected as a result of the inspection/audit.⁷²

In New Zealand, for example, the case is considered by the ombudsman on his/her initiative or based on a complaint, as well as at the request of the relevant parliamentary committee or the Prime Minister.⁷³ However, cases are examined by the ombudsman on his/her initiative mainly in exceptional cases, when the issue is of special importance, high sensitivity or high public interest.⁷⁴

The Public Defender of Georgia examines alleged human rights violations based on a complaint or his/her initiative.⁷⁵ In both cases, he/she has fairly wide discretion. In case of a complaint, the institution decides whether to start the consideration of the case on its merits after the initial examination of the complaint. The institution is also completely independent when examining a case on its initiative. To meet the standard of transparent conduct of activities and the high expectations towards the Public Defender, more foresight in this direction might be more appropriate. The Public Defender also has discretion in considering a complaint on which he/she has already made a decision.⁷⁶

It is also interesting to review the authority of the Public Defender in starting an examination of a case when administrative or civil proceedings relating to that case are pending in common courts.

⁷⁰ Recommendation CM/Rec(2019)6 of the Committee of Ministers to Member States on the Development of the Ombudsman institution, Adopted by the Committee of Ministers, 16 October, 2019, <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168098392f> [17.10.2020].

⁷¹ *Diaw M. Ch.*, The Ombudsman story: A Case Study in Public Oversight, Natural Justice and State Transformation, 2007, 17, <https://www.researchgate.net/publication/312341186_The_Ombudsman_story_A_case_study_in_public_oversight_natural_justice_and_State_transformation> [11.10.2020].

⁷² *Diaw M. Ch.*, The Ombudsman story: A Case Study in Public Oversight, Natural Justice and State Transformation, 2007, 22, <https://www.researchgate.net/publication/312341186_The_Ombudsman_story_A_case_study_in_public_oversight_natural_justice_and_State_transformation> [11.10.2020].

⁷³ *Elwood B.*, The Classical Ombudsman- an Effective Reviewer of Administrative Decisions by Government Agencies – A New Zeland Perspective, International Ombudsman Institute, №76, 2001, 8, <https://www.theioi.org/downloads/72sah/IOI%20Canada_Occasional%20paper%2076_Brian%20Elwood_The%20Classical%20Ombudsman%20-%20An%20Effective%20Reviewer%20of%20Administrative%20Decisions%20By%20Government%20Agencies%20-%20A%20New%20Zealand%20Perspective_2001.pdf> [13.09.2020].

⁷⁴ Ibid.

⁷⁵ Organic Law of Georgia “On the Public Defender of Georgia”, Article 12, Departments of the Parliament of Georgia 13, 07.06.1996.

⁷⁶ Ibid, Article 14, paragraph 2.

The main issue, in this case, is whether the ombudsman should continue to examine the case or how he/she can respond when the case has already been considered by the court and the decision has entered into force. Neither the legislation nor the regulations defining the activities of the Public Defender indicate anything in this regard.⁷⁷ With this approach, the effectiveness of the Public Defender as an alternative rights protection mechanism may be questioned.

Limitation periods are also problematic. For example in New Zealand, simply because a complaint may be within an ombudsman's jurisdiction, an ombudsman is not obliged to investigate it if the complainant has known about it for more than 12 months.⁷⁸ No such regulations or limitation periods are set for the Public Defender of Georgia. As a result, persons concerned may apply to the Public Defender several years after the violation of their rights and request a review of the legality of certain decisions or actions. Such a model calls into question the effectiveness of the ombudsman's response, as it is complicated to examine a case and establish the circumstances of the case that took place years ago, and it is also questionable how realistic it is to restore the right, which was violated several years or possibly decades ago, within the mandate granted to the ombudsman.

In the process of examining and evaluating a case, the powers of the ombudsman vary widely from country to country. In some systems, when examining an issue, the ombudsman enjoys unrestricted entry into various institutions and the right to conduct on-site inspections.⁷⁹ Some ombudsmen have wide discretion and decide themselves, without the involvement of the parties, how and when to respond. In certain systems, the ombudsman is subject to a relatively high standard of transparency and stakeholders are actively involved in the examination of a case and their opinions are important.⁸⁰

For example, the Canadian parliamentary ombudsman has the power to question people and to enter and inspect all public facilities.⁸¹ The ombudsman of New Zealand has wide powers to require anyone holding the information that may relate to the investigation to be disclosed to him/her. The power extends to all persons holding such information, whether or not they are themselves subject to

⁷⁷ Organic Law of Georgia "On the Public Defender of Georgia", Departments of the Parliament of Georgia 13, 07.06.1996, Additionally Order #82 of the Public Defender of Georgia, "On the Unified Rules of Procedure of the Office of the Public Defender of Georgia", 19 February, 2016 <<http://www.ombudsman.ge/res/docs/2020091012450956360.pdf>> [19.10.2020].

⁷⁸ *Elwood B.*, The Classical Ombudsman-an Effective Reviewer of Administrative Decisions by Government Agencies – A New Zeland Perspective, International Ombudsman Institute, №76, 2001, 8, <https://www.theioi.org/downloads/72sah/IOI%20Canada_Occasional%20paper%2076_Brian%20Elwood_The%20Classical%20Ombudsman%20-%20An%20Effective%20Reviewer%20of%20Administrative%20Decisions%20By%20Government%20Agencies%20-%20A%20New%20Zealand%20Perspective_2001.pdf> [13.09.2020].

⁷⁹ *Ibid.*, 11.

⁸⁰ *Diaw M. Ch.*, The Ombudsman Story: A Case Study in Public Oversight, Natural Justice and State Transformation, 2007, 22, <https://www.researchgate.net/publication/312341186_The_Ombudsman_story_A_case_study_in_public_oversight_natural_justice_and_State_transformation> [11.10.2020].

⁸¹ *Jamieson, O.C. R.*, Ombudsman Institutions Around the World: Analysis and Comparison of a Plurality and Practice, International Ombudsman Institute, №59, January, 1997, 4, <https://www.theioi.org/downloads/cbhdl/ioi-canada_occasional-paper-59_roberta-jamieson_om-institutions-around-the-world-analysis-and-comparision_1997-1.pdf> [26.09.2020].

the ombudsman's mandate. The power overrides statutory secrecy requirements and is subject only to such privilege as witnesses would have in court.⁸²

The Public Defender of Georgia enjoys a wide range of legislative guarantees in the process of examining a case, in particular, he/she has the right to freely enter any state or local self-government body, enterprise, organisation, institution; request and receive, immediately or no later than 10 days, from state and local self-government authorities or from officials all certificates, documents and materials necessary for conducting an inspection; request and receive written explanations from any official, officer, or equivalent person on the matters to be examined by the Public Defender; conduct expert examinations and/or prepare conclusions employing state and/or non-state institutions; invite specialists/experts in order to perform expert and/or consultation works.⁸³

At the same time, according to the legislation of Georgia, non-fulfilment of the legal request of the Public Defender in the process of examining a case is considered an offence and the relevant responsibility is provided for by the Administrative Offences Code.⁸⁴

According to the Information provided by the office of the Public Defender, no protocol on violations has been drawn up in connection with the cases related to public administration in 2019 and 2020.⁸⁵ However, beyond the statistical data, it is a matter of more in-depth research and discussion to establish what exactly this data shows, how effective this enforcement leverage is and whether it can ensure the achievement of the goal of establishing the objective circumstances of the case and effective implementation of the mandate by the institution.

3.3. Decisions Made by the Ombudsman

One of the important characteristics of the ombudsman institution is the recommendatory nature of its final assessments. When the ombudsman concludes that the complaint is substantiated, he/she makes a recommendation, or appeals to the executive or legislative body, although this appeal is not binding.⁸⁶ Precisely due to the recommendatory nature, the ombudsman belongs to a peculiar oversight

⁸² *Elwood B.*, The Classical Ombudsman-an Effective Reviewer of Administrative Decisions by Government Agencies – A New Zealand Perspective, International Ombudsman Institute, №76, 2001, 11, <https://www.theioi.org/downloads/72sah/IOI%20Canada_Occasional%20paper%2076_Brian%20Elwood_The%20Classical%20Ombudsman%20%20An%20Effective%20Reviewer%20of%20Administrative%20Decisions%20By%20Government%20Agencies%20-%20A%20New%20Zealand%20Perspective_2001.pdf> [13.09.2020].

⁸³ Organic Law of Georgia “On the Public Defender of Georgia”, Article 18, Departments of the Parliament of Georgia, 13, 07.06.1996.

⁸⁴ Law of Georgia, “Administrative Offences Code of Georgia”, Article 173⁴, Departments of the High Council of the Georgian SSR, Appendix 12, 31.12.1984.

⁸⁵ Official letter from the Office of the Public Defender of Georgia, №24/10758, 29.10.2020, <<https://drive.google.com/file/d/1wakyHmsQhYbXr7pWYWfm7PA3-C7G8nPK/view?usp=sharing>> [29.10.2020].

⁸⁶ *Satyanand A.*, The Ombudsman Concept and Human Rights Protection, International Ombudsman Institute, #68, January, 1999, 4, <https://www.theioi.org/downloads/d1k7g/IOI%20Canada_Occasional%20paper%2068.pdf> [13.09.2020].

institution, which, as already mentioned, promotes the protection of human rights and the development of democracy and the rule of law with the so-called “soft power”.

According to the Venice Principles, 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.⁸⁷

The recommendation of the Committee of Ministers of the Council of Europe indicates that the ombudsman should be empowered to make recommendations to prevent or remedy any misconduct and that the addressees of recommendations by the ombudsman institutions should have a legal obligation to provide a reasoned reply within an appropriate time.⁸⁸

Based on the study of different systems, several models of responses carried out by the ombudsmen are differentiated in the scientific literature. In particular, as a result of communication with the ombudsman at the very first stage of the examination of a case, the addressee/respondent agency acknowledges a mistake and remedies it; the ombudsman may negotiate and facilitate the agreement between the administration and the citizen; submit a recommendation to the agency as a result of the examination of the case on its merits; discuss systemic problems in the reports; in case of unconstitutional or defective regulation, apply to the Constitutional Court or the legislature with a proposal.⁸⁹

As a rule, the ombudsman’s investigation is not like court proceedings. He/she requests information from the relevant persons in accordance with the principle of inquisition and evaluates the issue within his/her authority and in the context of expediency, and finally issues the relevant recommendation. His/her assessment is not binding, nor can he/she compensate for the damage or replace the grievance/suit institutions.⁹⁰

2068 Anand%20Satyanand_The%20Ombudsman%20Concept%20and%20Human%20Rights%20Protectio
n_1999.pdf> [26.09.2020].

⁸⁷ CDL-AD(2019)005-e, Principles on the Protection and Promotion of the Ombudsman Institution (The Venice Principles), Adopted by the Venice Commission at its 118th Plenary Session, Venice, 15-16 March, 2019, <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)005-e)> [17.10.2020].

⁸⁸ Recommendation CM/Rec(2019)6 of the Committee of Ministers to Member States on the Development of the Ombudsman institution, Adopted by the Committee of Ministers on 16 October 2019 at the 1357th Meeting of the Ministers' Deputies, <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168098392f> [17.10.2020].

⁸⁹ Diaw M. Ch., The Ombudsman story: A Case Study in Public Oversight, Natural Justice and State Transformation, 2007, 18, <https://www.researchgate.net/publication/312341186_The_Ombudsman_story_A_case_study_in_public_oversight_natural_justice_and_State_transformation> [11.10.2020].

⁹⁰ Elwood B., The Classical Ombudsman – an Effective Reviewer of Administrative Decisions by Government Agencies-A New Zealand Perspective, International Ombudsman Institute, №76, 2001, 4-6, <https://www.theioi.org/downloads/72sah/IOI%20Canada_Occasional%20paper%2076_Brian%20Elwood_The%20Classical%20Ombudsman%20-%20An%20Effective%20Reviewer%20of%20Administrative%20Decisions%20By%20Government%20A gencies%20-%20A%20New%20Zealand%20Perspective_2001.pdf> [13.09.2020].

The main and important issue is that when assessing the flawed public governance, the ombudsman aims to promote lawful and effective public governance,⁹¹ so this approach is reflected in his/her responses as well. As a result of examination and evaluation, the ombudsman may identify sectoral directions of public administration and make relevant recommendations for the elimination of systemic problems.⁹²

According to scholars, the purpose of the ombudsman institution is not only to assess the legitimacy or relevance of specific actions or decisions made during the implementation of public administration or to promote the restoration of violated individual rights but also to consider the public interest in general, evaluate private and public interests and make recommendations from the perspective of human rights and administrative justice.⁹³

In case of the Public Defender of Georgia, the ombudsman responds to individual violations within the scope of his/her mandate; at the same time, he/she may make proposals to the institutions relating to systemic improvements. To this end, he/she, as the ombudsman overseeing public bodies, has the right to make a recommendation or proposal to the state authorities, municipal bodies, public institutions and officials, whose actions resulted in a violation of human rights and freedoms protected by the state; the recommendation/proposal may be aimed at restoring the violated right or maybe a general recommendation. The Public Defender may submit proposals to the relevant bodies on disciplinary or administrative liabilities of persons whose actions led to violations of human rights and freedoms; and in case of finding signs of a crime, he/she may apply to the relevant investigative bodies with a request to launch an investigation and/or criminal prosecution. It is also important that the Public Defender may in certain cases perform the function of the friend of the court (*Amicus Curiae*) in the common courts and the Constitutional Court of Georgia concerning matters of public administration; as well as inform the media of the results of the examination of violations of human rights and freedoms.⁹⁴

Thus, the Public Defender of Georgia may respond to a case not only in one but in several directions, which is why he/she belongs to relatively strong ombudsman institutions. However, the effectiveness of each of them, as well as the rate and reasons for implementation or non-implementation, and the problems identified in this process, require further in-depth study.

⁹¹ *Batalli M.*, Role of Ombudsman Institution Over the Administration. SSRN Electronic Journal. 10.2139/ssrn.2699061, 237, <https://www.researchgate.net/publication/314539863_Role_of_Ombudsman_Institution_Over_the_Administration> [10.10.2020].

⁹² *Ibid*, 239.

⁹³ *Diaw M. Ch.*, The Ombudsman story: A Case Study in Public Oversight, Natural Justice and State Transformation, 2007, 35-36, <https://www.researchgate.net/publication/312341186_The_Ombudsman_story_A_case_study_in_public_oversight_natural_justice_and_State_transformation> [11.10.2020].

⁹⁴ Organic Law of Georgia “On the Public Defender of Georgia”, Article 21, Departments of the Parliament of Georgia, 13, 07.06.1996.

4. Conclusion

In the Georgian scientific literature, the Georgian Public Defender has repeatedly been the subject of research as a constitutional guarantor of human rights. However, the present article, considering the international standards and practices of other countries, considers the Public Defender as an alternative mechanism for restoring the rights violated during the exercise of public administration. Despite the lack of relevant research in Georgia, the international scientific community actively considers the ombudsman as an alternative administrative justice and administrative grievance mechanism.

The diversity and constant progress of modern public governance and administration, as well as the interrelationship between the public and private law elements in this process, create more challenges for the ombudsman institution, which, inter alia, raises the need of improving its performance and its mechanisms.

The issues discussed in this article make it clear that the direction of the mandate of the Public Defender of Georgia, which is related to the oversight of public administration, its legislative regulation and practices, require further in-depth study and evaluation. It should be noted that the statistical data on the activities of the Public Defender's Office is produced in total for all its activities, and unfortunately, the data within the competence in the field of public administration oversight are not available without additional in-depth study. Based on such empirical, in-depth study and relevant recommendations, it will be important to review issues such as the further specification of preconditions for the launch of examination of a case by the institution, including the limitation period for applying to the Public Defender, parallel consideration of cases in other formal institutions, etc. Given the constitutional status of the institution and the high legitimate interest in its activities, it is also necessary to assess the adequacy of the guarantees and mechanisms related to the examination of a case on the one hand and the implementation of recommendations and proposals issued after the examination of a case on the other hand, and whether it is necessary to change the existing regulation to increase the effectiveness of the institution.

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