

TIES 2020**International conference «Trends and innovations in economic studies»****ECONOMIC PROCESSES BASED ON THE INSTITUTION OF
THE COMMISSIONER FOR HUMAN RIGHTS**

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Abstract

The article considers the issues of improving the organizational and legal status of the Commissioner for human rights in the subjects of the Russian Federation. The goal is the further development of the institution of the Commissioner for Human Rights, aimed at legal support of economic processes. The methodological basis of the study is a dialectical method of cognition of reality in its connection and interaction: analysis of theoretical and regulatory sources and documents, judicial practice; comparison and generalization. Based on the analysis of the Federal laws provisions and laws of the subjects of the Russian Federation, the author substantiates the need to enshrine the general principles of the organization and activities of regional commissioners in the Federal law. It should establish common standards and guarantees for the activities of human rights commissioners in the subjects of the Russian Federation. The study confirms the possibility of forming unified standards of status and activities of the Commissioners for Human Rights, both for Federal and subjects of the Russian Federation.

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1. Introduction

Recent social processes indicate that the inattentive attitude of state structures and local government authorities to the protection of citizens' rights and freedoms can cause the social and economic crisis of the state. Under its conditions, all social processes can get out of control. In order to help citizens protect their rights and legitimate interests, the institution of the Commissioner for Human Rights has been established. Its legal status is defined by Federal Constitutional Law of December 26, 1997 "On the Commissioner for Human Rights in the Russian Federation" (Government of RF, 1997).

However, despite the twenty-year history of this institution, the current legislation does not have a clear definition of the concept of the Commissioner for Human Rights.

The Constitutional Court of the Russian Federation defines the Commissioner for Human Rights in the Russian Federation as a constitutional authority established to ensure guarantees of state protection of citizens' rights and freedoms, their observance and respect by public authorities, local government authorities and officials.

Federal structure of Russia and its vast territory have led to the fact that in the process of drafting the Federal constitutional law "On the Commissioner for Human Rights in the Russian Federation" there was a question of forms of its work in the republics, territories and regions of Russia. One version of the Federal law stipulated that the Russian Commissioner would establish representations in all subjects of the Russian Federation. At the same time, this principle contradicted the federal structure of Russia. According to the Constitution of the Russian Federation, the protection of human rights is the subject of joint competence of the center and the subjects of the Russian Federation. In this connection, the law has a rule that the position of Human Rights Commissioner in the subject of the Russian Federation is established in the subjects of the Russian Federation.

Article 16.1 of the Federal law of October 6, 1999 № 184-FZ "On general principles of organization of legislative (representative) and executive state government bodies of subjects of the Russian Federation" (hereinafter – the Law on General Principles) (Government of RF, 1999) grants the subjects of the Russian Federation the right to independently establish the position of Human Rights Commissioners in the subjects of the Russian Federation and finance their activities.

Although the institution of the Commissioner for Human Rights in the Russian Federation has been in existence for two decades, it started its activity in the Irkutsk region relatively later, in 2007. The first law in the region "On the Commissioner for Human Rights in the Irkutsk Region" was adopted on October 4, 2006 (Legislative Assembly of the Irkutsk Region, 2006).

2. Problem Statement

The effective performance's indicator of the regional commissioner is impossible without close cooperation with public authorities and local government, public human rights organizations in the Irkutsk region. In his work, the Commissioner for Human Rights in the Irkutsk Region is independent of any bodies, organizations, associations and officials (Malyshev, 2013).

The increasing number of complaints received by the regional commissioner every year shows a strengthening of citizens' trust in this institution. In 2015, 1848 appeals were received (+12,7 % compared to 2014), in 2016 – 2181 appeals, in 2017 – 2112 appeals, in 2018 – 2041 appeals (Moskalkova, 2018).

Based on the results of the consideration of complaints received to him, the regional Commissioner draws up conclusions containing recommendations on possible and necessary measures for the restoration of violated rights and freedoms of citizens. The Commissioner also makes statements, petitions, complaints to the relevant authorities and officials for action. The term for conclusion's consideration of the Commissioner for human rights in the Irkutsk region by state bodies is 1 month.

Legislative innovations enshrining at the federal level the basics of the legal status of regional commissioners has strengthened the guarantees of their independence. It has improved work efficiency and the degree of interactivity with public authorities. The legislation of the Irkutsk region grants the Commissioner the right to apply for the initiation of disciplinary or administrative proceedings against an official whose decisions or actions (inaction) constitute violations of human and civil rights and freedoms. The Commissioner has the opportunity to send suggestions and recommendations related to guaranteeing human rights and freedoms and improving administrative procedures to state authorities, local government or officials.

The extensive reform of the legislation regulating the activities of regional commissioners identified an obvious problem. It relates to the need to standardize relevant regional laws. In this case, there are certain difficulties in understanding the meaning and content of the latest Federal legislation on regional commissioners, as well as the need to clarify their individual provisions.

The analysis of the laws of the subjects of the Russian Federation shows the unresolved issues of interaction between the regional commissioner and the state authorities of the subjects of the Russian Federation. First of all, there are unresolved issues with regional parliaments, which arose in the process of transformation of new federal regulations in the legislation of the Russian Federation's subjects. For example, in the Irkutsk region, the Commissioner has the right to legislative initiative.

In addition, the legislation defining the organizational and legal status of regional commissioners and their competence shows great differences in the commissioners' status, their rights, duties, responsibilities and organizational principles of activity. This inevitably creates unequal conditions for residents of different regions who apply for protection of their rights.

The Commissioner for human rights, together with the working apparatus, is a state authority. It has all its characteristics: it acts as a part of the state apparatus, has its own legal status and competence, which is enshrined in the Federal constitutional law, as well as in other legislative acts. It is a legal entity, independently participates in public-legal relations, consists of subdivisions united in a structure and consolidated by unity of purpose and objectives that are performed by federal civil servants in accordance with the Federal Law "On the State Civil Service of the Russian Federation". And it also has a material base and funding from the budget and has other state authority's properties. In the Irkutsk region, the law provides for the presence of its own apparatus in the number of 16 people, ensuring the activities of the regional Commissioner. 11 people fill positions of the state civil service of the region and no more than 5 people are employees who fill other positions. At the same time, the regional commissioner is not entrusted with the functions of ensuring the activities of the Commissioner for children and

Commissioner for entrepreneurs' rights, although this practice exists in the subjects of the Russian Federation.

Another problem is the limited powers of regional commissioners and the lack of legal means available to them to restore citizens' rights. This leads to the fact that a small part of incoming complaints is considered with a positive result.

Analysis of the reports of the Commissioner for Human Rights in the Irkutsk Region on the situation in the sphere of observance of human and civil rights and freedoms in the Irkutsk Region in 2015–2018 showed the presence of problems in various spheres of life, including economic. Statistical data, for the period under review, on citizens' appeals, their subject matter and number, are one of the informative indicators in assessing the situation in a particular area of state and municipal authorities' activity.

3. Research Questions

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4. Purpose of the Study

The purpose of the study is the further development of the institution of the Commissioner for Human Rights, aimed at legal support of economic processes.

5. Research Methods

The methodological basis of the study is a dialectical method of cognition of reality in its connection and interaction: analysis of theoretical and regulatory sources and documents, judicial practice; comparison and generalization.

6. Findings

The combination of these legal regulatory deficiencies, as well as the lack of an integrated approach in its implementation, complicate the activities of regional commissioners. We consider that these circumstances can be effectively and fully eliminated only through the adoption of a Federal legislative act regulating the basis of the legal status of the Commissioner for Human Rights in the subject of the Russian Federation.

The provisions of paragraph "2" of Art. 71 of the Constitution of the Russian Federation (Constitution of the RF, 1993), taking into account the legal positions of the Constitutional Court of the Russian Federation, make it possible to conclude that effective human rights mechanisms should be enshrined at the federal level. Mechanisms should refer to the institution of the Commissioner for Human Rights, both of the Russian Federation and regional commissioners. The study revealed that citizens' appeals confirm the imperfection, first of all, of federal legislation, that regulates socio-economic human rights, including remuneration for work and protection of property. Improvement of legislation and its effectiveness is possible on the basis of legal expertise of laws and draft laws (Bondar, 2017; Ishchuk, 2016). This makes it possible to identify existing gaps inconsistencies in legal regulation and formulate measures to address them. These circumstances require interaction of the Commissioner with legislative and executive authorities and officials on a permanent and systematic basis. Moreover, the Commissioner should consolidate public institutions of civil society in cooperation with state authorities. Improving legislation is useful not only on the basis of the analysis of the practical legislation implementation, but also audit of foreign countries' legislation. Thus, the Ombudsman in Greece monitors the observance of human and civil rights and freedoms in the light of the decisions and actions of state and local governments and their officials. The Ombudsman controls the activities of enterprises and organizations providing housing and communal services (garbage collection, water supply, electricity supply, gas supply, sewerage, water treatment), but also the work of the media and mail.

The Ombudsman in Argentina monitors the maintenance of the road and railway network (Mironov & Shagalov, 2006). The Estonian Ombudsman is authorized to contribute suggestions to the Parliament on bringing members of the Parliament and the President of the Republic of Estonia, members of the Government and judges of the State Court of Estonia to criminal responsibility in accordance with the law (Jarvelaid & Kalle, 2015).

Thus, the study confirms the possibility of forming unified standards of status and activities of the Commissioners for Human Rights, both for Federal and subjects of the Russian Federation.

So far, there is no such comprehensive legislative act. The presence in the Law on General Principles of only one article 16.1 does not solve the issue of unification of regional legislation, regulating the activities of Human Rights Commissioners in the subjects of the Russian Federation.

However, the adoption of a full-fledged federal framework law on regional human rights commissioners, which would establish common standards in the organization and functioning of this institution in the regions, is relevant. Its formation is currently in the final stage (Moskalkova, 2018).

7. Conclusion

The practice of successful functioning of the Institution supports its further development, its strengthening as a supplementary guarantee of state protection of human and civil rights and freedoms. Admittedly, despite the considerable experience of the implementation of the human rights function, the potential of the institution of the regional commissioner in the mechanism of legal protection and restoration of violated rights is not fully realized.

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