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MONITORING UKRAINE'S SECURITY GOVERNANCE CHALLENGES



PROCEEDINGS FROM THE FIFTH INTERNATIONAL CONFERENCE
“THE ROLE OF OMBUDS INSTITUTIONS
IN SECURITY SECTOR GOVERNANCE”

29-30 November 2016, Kyiv, Ukraine

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MONITORING UKRAINE'S SECURITY GOVERNANCE CHALLENGES

**Proceedings from the Fifth International Conference
“The Role of Ombuds Institutions
in Security Sector Governance”
29-30 November 2016, Kyiv**

Kyiv-2017

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This publication offers the proceedings from the Conference V “The Role of Ombuds Institutions in Security Sector Governance”. Conference Five, following to the previous conferences recommendations, sought to examine current Ukraine’s security sector governance challenges related to the role of independent oversight institutions and monitoring security sector policies and practices. Ombuds institutions play a vital role in protecting human rights in any nation. A central role is the institutions’ ability to independently aggregate data about human rights violations in order to recommend investigations and to propose changes to policies and practices.

This publication offers presentations of the key speakers and selected remarks during Q&A sessions as well as the summaries of the working groups’ discussions.

General assessments, conclusions and proposals are those of the participants and do not necessarily coincide with the positions of DCAF, the Razumkov Centre or the official position of the Ministry of Foreign Affairs of the Netherlands.

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INTRODUCTION

The project “*Monitoring Ukraine’s Security Governance Challenges*” is being implemented by the Geneva Centre for the *Democratic Control of Armed Forces* (DCAF) jointly with Razumkov Centre, with financial support from the Kingdom of the Netherlands. The mentioned project enabled this publication, intended to enhance public awareness, encourage discussion and introduction of best practices of democratic oversight and governance in the Ukrainian security sector.

The goal of the project is to promote broad discussion of and access to Ukrainian and international experience of security governance through media coverage of public events, release of information in the Ukrainian and English languages in a printed format and on a special web site “*Ukraine: Democratic Governance in the Security Sector*” www.ukrainesecuritysector.com.

To ensure feedback, two national-wide public opinion polls have been conducted to study public opinion on national security and personal security issues, as well as the level of public awareness about democratic governance of the security sector.

The fifth international conference discussed the role of independent oversight institutions monitoring processes of formulation and implementation of the security policy in the conditions of present-day challenges for the security sector governance in Ukraine. Ombudsman institutions play a key role in defending human rights, while the efficiency of their performance of this function depends on the capabilities of independent collection of information on violations, initiation of investigations and drafting recommendations concerning the required political and executive decisions.

In democratic countries, stable and trust-based relations between civil society, democratic institutions and the security sector contribute to defence of human rights and prevention of violations through perfection of the processes of formulation and implementation of the security policy. The area of interest of independent oversight institutions covers specific issues of functioning of special services, law-enforcement and defence agencies from the viewpoint of both the influence of their activity on human rights, and observance of the rights of their staff.

The ombudsman institution in Ukraine operates in rather difficult conditions, caused not only by processes of deep transformation in the security sector and the system of justice, but also by the growth of public interest in problems of defence of human rights. Issues of development of the necessary capabilities, perfection of the regulatory-legal framework, introduction of new methods of work meeting present-day challenges were tabled for discussion during the conference.

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THE ROLE OF OMBUDS INSTITUTIONS IN SECURITY SECTOR GOVERNANCE

KEY MESSAGES AND OUTCOMES

In democratic societies, Ombudsman institutions play an important role of oversight of the security sector. Although their specific functions and powers in different countries may vary, Ombudsman institutions usually have similar tasks – supervision of defence, law-enforcement and intelligence agencies through continuous monitoring, handling complaints and conducting investigations on their own initiative. Ombudsman institutions are vital for detection of both systemic and isolated violations of human rights in the security sector, bringing executive bodies and security agencies to responsibility and encouragement of informed public discussion on human rights issues in the security sector activities.

For two days in a row, the conference participants could get a lot of useful information from the contributors, took part in constructive discussions, exchange of views and opinions, tried to reach a compromise, to work out joint decisions on the basis of the presented proposals. They identified the areas that deserved particular attention for implementation of universal democratic principles, concepts and best practices worked out in other countries, with account of the Ukrainian experience and realities.

The key obstacles to efficient activity of the National Ombudsman's office (imperfection of the regulatory-legal framework, lack of human and material resources, and insufficient powers) were identified, and possible solutions in the shorter and longer run were proposed: focus on enhancement of capacities, legislative regimentation of resources and powers.

The problem of efficiency of state institutions and non-governmental organisations defending human rights has always been acute for Ukraine. In the recent three years, the Ombudsman's institution has faced new challenges related with the military conflict. Apart from traditional peace-time functions, the Ombudsman also tackles, among other issues: highly important humanitarian problems of the civilian population that immediately suffers from the war, defence of the rights of military servants, persons liable to military duty and their family members, release of prisoners of war, and the rights of internally displaced persons. The possibilities of access to information have deteriorated meaningfully,

as a result of the need to enhance protection of information in the context of the ongoing conflict, but also due to the incomplete and non-systemic reformation of the security sector, and due to abuses taking the form of disproportionate and unreasonable restrictions.

In the conditions of the war, the number of detention facilities has increased. Places for detention of arrested soldiers, imprisoned insurgents and their collaborators appeared in the conflict area. Those places also require monitoring and reaction to detected facts of mistreatment of prisoners. Problems persist with unimpeded access of the Ombudsman representatives to such facilities, caused not only by the imperfection of the regulatory-legal framework and absence of due support from the top leadership and unit commanders. Scanty human and material resources of the Ombudsman, logistic obstacles and problems of physical security of the staff in the ATO area – this is not the exhaustive list of objective and subjective factors that affect the work of human rights activists.

The Ukrainian Ombudsman's Office runs Europe's biggest Department for Realisation of the National Preventive Mechanism, enabling coverage of different areas and lines of activity: the penitentiary system, SSU, the National Police, social care institutions (residential care facilities, mental hospitals). "Ombudsman +" system made it possible to employ public monitors who together with official representatives of the Ombudsman visit places of deprivation of liberty, discharging their mission at a high professional level, thanks to special trainings. Focused specialists (medics, journalists etc.) are employed, too.

The Verkhovna Rada of Ukraine's Human Rights Commissioner uses the powers of her office, resources of the Secretariat, and works closely with public organisations and human rights activists. Employment of non-governmental organisations for monitoring is an important aspect of improvement of the efficiency of work, offering a possibility to close the gap between the capabilities, the mandate, and the real needs. The public not only "supplements" the Ombudsman's office but also monitors the activity of the Human Rights Commissioner – activists have set up a working group that monitors the efficiency of work of the Ombudsman itself.

Alongside with the existing problems, some progress is observed in establishment of cooperation between human rights activists and the leadership of power agencies. It is facilitated by some administrative decisions, growing exactingness of civil society, awareness-building efforts and practical actions promoting trust and comprehension of mutual benefits from cooperation. Meanwhile, the "people in uniform" themselves do not utilise the capabilities of the National Ombudsman sufficiently. For different reasons they try to solve the problems of violation of their rights by corporate methods or do not at all try to defend themselves from illegal acts by their superiors or in instances of arbitrariness on the part of the state.

Much of the discussion dealt with terminological and conceptual aspects of the Ombudsman's activity, national specificities of his or her powers and ways of their exercise.

It was stressed that quite a few problems were caused by the poor comprehension of said aspects by the controllers and those controlled, mass media and society. Powers of the National Ombudsman, as a rule, go no further than monitoring, recommendations and communication. This institution usually has no executive functions, possesses no administrative levers to bring violators of human rights to responsibility.

The main challenge for practical implementation of the idea of creation of separate specialised structures of the Ombudsman's institution is presented by the guarantee of their independence. This tool is especially frequently mentioned in the context of the proposals to set up specialised departments within the structure of the National Ombudsman. To this end, it was proposed to reinstitute the position of a civilian Inspector at the Defence Ministry. That said, the procedure of his/her appointment and functions during the transitional period should be harmonised with the principles applicable to the military Ombudsman, principally through the guarantee of his/her independence from the Minister of Defence. Experts believe that an evolutionary approach involving the gradual creation of mechanisms at the national level – as well as the preservation and improvement of intra-agency supervision mechanisms – will secure continuous performance of functions of protection of the rights of military personnel.

Reservations were also heard, concerning the expediency of application of the terms of “police” and “military” Ombudsman, since it may run contrary to the basic principles (the Paris Principles¹). Departmental “Ombudsman” can work independently in presence of established, clear-cut mechanisms and administrative regulations provided in a law, which gives some guarantees of protection from the effects of the personal factor of the agency head or the political situation. An additional guarantee is presented by the readiness for cooperation with the public that should be introduced at the level of legislation and institutional mechanisms.

The participants who were members of public councils at state bodies admitted that the existence of such councils should not be seen as the decisive and sufficient sign of the government's cooperation with the society. The supervisory and representative functions of even the well-working councils are limited. Along with calls for wider involvement of the public, its representatives themselves noted that sometimes, public “controllers” discouraged cooperation by their unethical and unprofessional conduct.

¹ Principles relating to the Status of National Institutions, Adopted by General Assembly resolution 48/134 of 20 December 1993 – www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx.

The discussion of international experience and best practices was dominated by the opinion of futility of attempts to find a single, perfect and universal model. Overall, there are basic principles and best practices that should be followed, while building an efficient system of human rights protection in any democratic state: independence, empowerment, clear delineation of functions, and the provision of requisite resources.

In addition to the general principles, there are quite a few important national features and nuances of the Ombudsman's activity. If they are neglected, his or her work cannot be really efficient. First of all, this refers to the advanced trends in the development of society, technologies, and security challenges. International and regional organisations should promote observance of universal principles, dissemination of the best practices. That is why international cooperation presents an important element of the activity of the national institutions.

It is very important to have a good regulatory-legal framework, but what is no less important is that the Ombudsman institution consistently works to rectify its limitations, despite an imperfect regulatory-legal framework. It is much more important to ensure that the institution is functional than to overly focus on attempts to create a perfect system. Even the most smartly designed institutions do not always work perfectly, especially if they are not developing, not adapting their activity to ambient changes, not trying to work in a systemic way.

The philosophy of the work of Ukrainian state bodies is reflected in their institutional traditions not being shaped so that citizens often can exercise their constitutional right to do everything that is not expressly prohibited by law, rather that they only follow an exhaustive list of "everything" permissible in law regarding any engagement in civic activity. This may not only lead to significant overburdening of the regulatory-legal framework but can also make it insufficiently comprehensible, internally controversial and fit for only selective application.

Another key aspect is presented by confidence-building within the security sector agencies' executives and staff, as well as society as a whole. This cannot be achieved only by the law and administrative decisions. Instead, this is achieved through regular, consistent, efficient and transparent performance of functions provided by the law.

Taking into account reasonable reservations concerning the long terms and possible problems (of resources, coordination, duplication, etc.) with creation of independent specialised ombudsman institutions (military, police, etc.), it is deemed expedient to focus on enhancement of the efficiency of activity of the current National Ombudsman and the existing structures and mechanisms of internal control within security sector agencies at this stage. First of all, their powers and forms of work should be regimented by the law, rather than

by internal agency regulations. At present, the existing agency structures do a lot of work for oversight, provision of transparency, complaint handling – meeting and supplementing the classical functions of an human rights ombudsman.

The level of cooperation between the National Ombudsman and intra-agency oversight bodies largely depends on personal factors, being yet another argument in favour of the demand for proper legislative regimentation of such cooperation. Meanwhile, there are a number of good examples of mutually advantageous cooperation between representatives of the National Ombudsman's office, the security sector officers and human rights champions. If there is mutual understanding of the importance of protection of human rights, both from the viewpoint of civil society interests and with the purpose of building up mutual trust – and, respectively, the efficiency of the security sector's activity, – the problems are resolved on the basis of mutual interest, despite even the imperfection of the regulatory-legal framework.

OPENING REMARKS



Oleksiy MELNYK, Co-Director, Foreign Relations and International Security Programme, Razumkov Centre

International conference “The Role of Ombudsman Institutions in Security Sector Governance” is the fifth public event arranged by the Geneva Centre for the *Democratic Control of Armed Forces* and Razumkov Centre within the framework of the joint project “Monitoring Ukraine’s Security Governance Challenges”, funded by the Foreign Ministry of the Kingdom of the Netherlands.

Today’s conference, organised in close cooperation with the Office of the Verkhovna Rada of Ukraine Human Rights Commissioner, is to discuss the role of independent oversight institutions monitoring the processes of formulation and implementation of the security policy in the conditions of present-day challenges for the security sector governance in Ukraine. We understand the term “Ombudsman institutions” to encompass not only the Verkhovna Rada Commissioner but the totality of state bodies and non-governmental organisations dealing with problems in defence of human rights (Department of Human Rights of the National Police of Ukraine, Department of Public Affairs and Access to Public Information of the Ministry of Defence of Ukraine).

The Ombudsman institution holds a key role in the system of civilian democratic control of observance human and civil rights and freedoms, defence, prevention of violations and facilitation of restoration of violated rights and freedoms.

The Law “On the Verkhovna Rada of Ukraine Human Rights Commissioner” applies to “relations arising during the exercise of human and civil rights and freedoms between a citizen of Ukraine, irrespective of his location, a foreigner or an *apatride* staying on the territory of Ukraine, and bodies of state power, local self-government bodies and their executives and officials”.

In the very long list of powers and competences of the Ombudsman, the security sector occupies a special place, for a number of reasons. One can also say for sure that the Ombudsman, as well as other independent oversight institutions, plays a special role in the development of good governance in the security sector, first of all, for transparency and accountability of its activity, observance of human and civil rights and freedoms. The area of interest of the ombudsman institutions covers issues of functioning of special services, law-enforcement and defence agencies both from the viewpoint of their influence on human rights and observance of rights of the uniformed agencies' staff.

The world experience of the ombudsman – as a state institution – is over 200 years old, and such institutions exist in more than 100 countries of the world. There are different models and names, due to national, historic, legal, cultural specificities. Despite the national specificities, there are some common standards and principles of activity, formalised in international documents, and meeting the spirit of perception of the “Ombudsman” as a defender of legitimate rights and interests of citizens.

The institution of the Human Rights Commissioner in Ukraine was founded in 1998, and the process of its maturity is far from completion. Beyond doubt, in the last three years the ombudsman institution faced entirely new challenges that require new solutions.



UTMOST ENGAGEMENT OF THE PUBLIC WILL LET US ACT MORE EFFICIENTLY, MORE TRANSPARENTLY AND MORE COMPREHENSIBLY FOR SOCIETY

Valeria LUTKOVSKA,
Ukrainian Parliament Commissioner
for Human Rights



This conference is very important. We need new partners, new approaches for solution of the difficult issues arising today before our institution and this country.

It was absolutely rightfully said that in the past three years, the national ombudsman institution faced new challenges, and they are rather tough. The sector of civilian control of the military organisation used to be a part of the department for social and humanitarian issues and did its job fairly well. I cannot say that too much attention was paid to this area.

But recently, the situation has changed dramatically: great many draftees and widows who lost their men in the result of the armed conflict appeared in Ukraine. Serious changes were introduced to the legislation on the rights and freedoms of those persons. That is why it was decided to set up a special position of the Commissioner's representative (*de facto* vice-Ombudsman) for civilian control of the military organisation. This area of activity is growing rather rapidly. You will have an opportunity to make a more intimate acquaintance of the Commissioner's representative Mr. Svyatoslav Stetsenko, and he will tell about his work in more detail.

I should say that issues of protection of military servants are dealt with not only by that section, because military servants have access to public information, too. They cannot effectively defend their rights without such access. Military servants find themselves in situations where their personal data are disseminated overly widely and illegally, and so, they have to defend their rights in that domain as well. Sometimes military servants may appear in places of deprivation of liberty, and then, the mechanism for prevention of torture needs to be employed for observance of the rights of such persons.

I would like to draw your attention to the fact that there are 6,000 places of deprivation of liberty in this country. I mean only the official ones, and their number is growing. They are managed by more than 11 Ukrainian ministries and agencies. Each of them has its specific problems. Why is their number growing? Because, for instance, certain sites began to appear in the area of conflict, sometimes referred to as guardhouses, cages, or other types of stations. Those places of deprivation of liberty should also be inspected, and recommendations should be given, if the conditions of custody are inadequate there.

The issue of the Commissioner for civilian control of the military organisation rose in importance, when numerous problems arose with the enjoyment of rights by the persons recruited to defend state interests. We have been engaged in civilian control of military organisations for many years now, within powers provided by the Law on Civilian Control of the Military Organisation. On public demand, I instituted a special position of the Commissioner's representative for civilian control of the military organisation in mid-2014, since I believed that the person dealing with that issue should have more opportunities, greater autonomy, and more strategic vision than before.

Our joint mission today is to efficiently monitor military service in all military units, not only in peaceful areas but also closer to the zone of conflict. I should stress that I have recently had four business trips to see with my own eyes and to examine on site the problems of those who defend the country at the frontline today. After those trips, relevant recommendations were given to the Defence Ministry dealing with specific issues of support for military servants, exercise of their rights, etc.

We continuously monitor military units located in threatened areas of the country. There are great many problems there with the exercise of rights, with fulfilment of commitments assumed by the state, and in relations between commanders and military servants alike. All this translates into certain recommendations and submissions, sent to the Minister of Defence. Clear thing, not everything can be resolved by the Defence Ministry. In such cases I apply to

the Prime Minister of Ukraine for comprehensive solution of the problem issues arising in the life of military servants.

Employment of non-governmental organisations as our monitors to supervise institutions together with us is another important line of enhancement of the efficiency of our work and a task faced by us.

At present, we have Europe's biggest Department for Realisation of the National Preventive Mechanism. I can assign experts of that department to different lines of activity. Some are responsible for the work of the preventive system, others – for the activity of the Security Service of Ukraine and the National Police, yet others – for social welfare facilities. I wish to tell straight off that I am not sure if the gap between the capabilities and the mandate can be closed by state structures. I don't think so. But it can be closed through cooperation with civil society.

This function falls within the mandate of the national preventive service. Clear thing, it is next to impossible to visit 6,000 sites, given the maximum capacity of 300 visits per year. What have we done, and what lets us say that we experience the most systemic problems in all places of deprivation of liberty? We employed the public to discharge the function of the National Preventive Mechanism. We work under the "Ombudsman+" system that has entirely paid for itself. At present, public monitors who visit places of deprivation of liberty together with us "manage" the Department of the National Preventive Mechanism. Our monitors know better than I do, when trips are made. They passed special trainings delivered not only by representatives of the Secretariat but also by experts experienced in monitoring child care centres and mental hospitals. They are well aware what differs monitoring of a pre-trial detention centre from monitoring of, say, a boarding school.

Furthermore, we have "special units" staffed by physicians. They provide us with expert assistance in cases of bodily injuries or insufficient medical assistance at certain institutions. We have established a unique group of journalist monitors who passed special trainings, who know what the right to privacy means and how to take pictures or to make video recording so as to show shortcomings, on the one hand, and on the other hand, not to hurt the person already being a victim of mistreatment. We take them with us to make our work more transparent and to make the problems encountered in those closed institutions more visible for society.

Therefore, I stand for enhancement of efficiency through public engagement. State bodies have certain competency and certain views of specific things. In some cases we really stand as mediators between the public and a state body, if we

see a problem. Showing and proving that the public is not an enemy of the state body, and that the public is ready to contribute to improvement of the state body, is one of the goals that we set before the office of the Human Rights Commissioner.

I, for instance, have my own idea of the lines of enhancement of powers of representative in charge of civilian control of the military organisation. When we speak about the development of this line of the office's activity, I also see it in utmost engagement of the public in cooperation, because this is what will let us act more efficiently, more transparently and more comprehensibly for society.

There are some problems in establishment of cooperation with the defence agency. While we have accustomed the national police, the social sector, educational establishments to the possibility of us coming 24/7, as we discharge monitoring functions, we encounter problems with the Defence Ministry. We are asked: "Why should your regional representative come to our military unit and talk tête-à-tête with our military servants?". We do not want to look into secrets, we do not interfere in the tasks of military unit commanders, but we should know what problems officers and men experience, when performing those tasks, and how they can be helped.

At present, there are problems in the legislation, dealing not only with social protection of military servants. Let me say, great many privileges, promises and guarantees were never funded or only partially funded by the state budget. Meanwhile, there is the opinion of the Constitutional Court and a relevant article in the Constitution of Ukraine banning adoption of regulatory-legal acts that impair the existing rights. The problem is that having agreed to some limitations in private life, in the exercise of civil freedoms, military servants cannot get the intended compensation. Hence, other problems arise, related with some dissatisfaction with service, leading to deterioration of the team spirit. As a result, personal safety and national security are threatened. It seems to me that the approach should be changed. The state has no right to give promises and guarantees, and later, not to finance them. Ukraine should, first of all, create opportunities, as this is done in other countries.

For instance, when a military servant is left without a bonus (being an element of the cash allowance), this depends on the commander's decision and presents purely a factor of personal assessment of the military servant. A military servant should have clear guarantees and a clear idea what pay he or she will get and what it will consist of. It should not depend on personal factors, but on his or her speciality, skills, length of service and so on. Then, a military servant, aware of his or her capabilities, can get a credit at a lower interest rate or

a mortgage, instead of running to courts and demanding a free apartment, owed to him or her in accordance with the law. However, to change the situation, efficient monitoring of everything taking place in all domains is needed, among other things.

We rather actively pursue these issues, but it is clear that the tasks and formats of the Commissioner's work keep on changing, and therefore, today's conference is very important for us. We want to hear about the experience of other countries, expert opinions on the desired evolution for us and for the state, we want to think how to make defence of rights of citizens, including military servants, utmost efficient.



OMBUDS INSTITUTIONS AND SECURITY GOVERNANCE: INTERNATIONAL BEST PRACTICES

**Eden COLE, Deputy Head,
Eastern Europe Division, DCAF**



As previous speakers have said, there are a number of roles ombudsman institutions can play in security sector oversight. In this presentation I will generally refer to ombudsman- or ombuds institutions: in the case of Ukraine, this of course refers to the Parliamentary Commissioner for Human Rights. The presentation will outline some best practices for ombudsman institutions involved in actively monitoring the security sector, and also some lessons learned that are relevant to Ukraine. I will do so in order to, hopefully, inform our discussions later today, and to inform our participants and Ukrainian colleagues on issues relevant to the challenges that they face vis-à-vis the ombudsman function and monitoring the security sector. In this context, it is important to note that, if I recall correctly, the Ukrainian ombudsman institution has had an 'A' rating – reflecting full compliance with the Paris Principles for National Human Rights Institutions – for several years now.

Ultimately, an effective ombudsman institution is crucial to ensuring the credibility, legitimacy, and effectiveness of broader oversight of the security sector. It has to be mentioned that a lot of different terms can be used to describe a national ombudsman institution. There can be a variety of different human rights defence mechanisms, like, for instance, national human rights institutions, commissions, committees, councils, or, if we take the example of Georgia, a public defender. But ultimately, their roles and function are the same. These are defined by the so-called Paris Principles.

The Paris Principles are a set of international standards to frame and guide the work of national human rights institutions. The Principles define the role,

composition, and status of an ombudsman institution's functions. They identify their objectives, their independence, their human rights mandate, funding, and their inclusive and transparent appointment processes.

First, national institutions have to be vested with the competence to promote and protect human rights. They need to have as broad mandate as possible, which needs to be clearly set forth in a constitutional or legislative text. The composition of the institution and its competence should be clearly specified. The institution needs to be able to monitor any situation in which human rights are violated.

The next important principle is that the ombudsman institution should be able to advise government, parliament, or any other body on human rights violations, on any issues related to relevant legislation, and on general compliance and implementation of international human rights instruments. Institutions should also have the ability to relate to and engage with regional and international organisations. And the ombudsman institution should also have a mandate to educate and inform the general public and the wider society in the field of human rights issues.

So, in the case of Ukraine, the ombudsman institution already has an 'A' rating in relation to the Principles and there is already a platform for engaging on security sector oversight issues. I will come to the issue of the resources necessary to do that later in the presentation.

When we talk broadly about security sector oversight, there are a number of agencies that can perform that oversight. As we have discussed in this conference series before, there is a crucial role for the parliament and particularly for its committees to play in the oversight of the security sector – not only defence and security committees, but also human rights committees, budget and audit committees. The executive also has a crucial role to play in setting strategic security policy. The government and aligned ministries have responsibility to implement those policies. In the security sector itself, be it law enforcement, intelligence or the military, there needs to be a capacity to for internal oversight within those institutions. And, more broadly, there need to be independent oversight institutions, and this is where the national human rights and ombuds institutions can be clearly situated. It is important to note there can be other independent oversight institutions: some nations have independent anti-corruption committees and you have some of those features at the moment here in the Ukrainian context. But, fundamentally, the most important of those independent oversight institutions in any nation is going to be the human rights monitoring institution.

When a state actually acknowledges where its biggest human rights challenges lie in relation to law enforcement, front-line police, penitentiaries or within intelligence sector, and if the national ombudsman institution is able to aggregate those human rights violations, it is much easier for improved policy to be adopted,

practices to be implemented, and also for – if necessary – for the legislative framework to be updated. Ultimately it is the responsibility within the government and executive to clearly and unambiguously define the roles and responsibilities of security sector institutions.

In many nations, the work of a human rights ombudsman institution can also be used as an argument for ensuring that the management of any security sector component is actually civilian. More broadly, in the context of independent oversight institutions and onward, this can also be a catalyst for change in terms of resource management within the security sector in terms of redefining roles of the use of limited human or financial resources.

In broad terms, the work of the ombudsman institution provides a significant incentive for the government to ensure that all personnel in security sector are accountable; that there is a clear legal framework for their work and there are clear penalties for any human rights abuses that they are responsible for. In the case of Ukraine, this is vitally important in the context of observing the European Convention on Human Rights. Many European nations are still have to incorporate the jurisprudence of the European Court of Human Rights into their security policies and practices.

So, in what ways can ombudsman institutions perform their role in the governance of the security sector? Well, in practical terms it is simply a matter of monitoring, reporting, and aggregating data on violations by security sector personnel, conveying that information to the relevant authorities, and engaging not only with democratic institutions and government on these issues, but also with civil society and the media.

If an ombudsman institution is to perform an effective role in this context, it is important that they develop a capacity to monitor the entire security sector. Ultimately, a lot of this monitoring work is important in terms of prevention, especially in the context of preventing abuses in places of detention. But, it can be argued that there is not only preventative role, but also a deterrence role that ombuds institutions play here. Once the society has actually embedded the principles of observing human rights, it creates a significant deterrent for personnel who are intent on abusing the rights of citizens, or ignoring established procedures for governing interaction with citizens in a variety of contexts.

In terms of the methods of monitoring the security sector, ombudsman institutions need to be able to not only receive complaints and aggregate data, but also to perform inquiries, investigations, and, in some jurisdictions, inspections. This is one of the issues that causes the most tension at the governmental level, not least the right of the ombudsman institution to inspect places of detention.

Some societies have more unique examples that are still interesting in terms of identifying best practices related to inspections in general. As we will discuss the role of military ombudsman later today, it is worth noting that in

Germany – where the military ombudsman is appointed by the parliament and reports directly to the parliament itself – the ombudsman can enter any German military facility anywhere at any time no matter if it is in Berlin or in Afghanistan. That is an extreme solution that has been possible by a consensus that it creates a lot of confidence in the system. At the same time, it prevents any arguments about whether an ombudsman can or cannot enter a military facility.

At the same time, having the capacity to aggregate data and to share it with democratic institutions, with the parliament, with security sector, ombudsman institutions also need the resources to perform outreach and communication activities. Ombuds institutions need to be able to communicate effectively to broader civil society and to the media. Because there is an educational role to perform as well, they should be able to provide informed comments on issues that arise: for instance, about secret detention facilities or about conduct of a particular law enforcement unit. The institution needs the resources to be able to respond to these issues in real time and in a constructive and highly informative way. Whenever there are controversial incidents, the ombudsman institution needs to be able to engage with regional and international organisations, and international civil society, who may be interested in assisting the investigation on those issues, or help them to actually provide solutions to those challenges, principally through sharing best practices. This is very much a reciprocal process.

Here in Kyiv, in October 2015, a conference was hosted by the Parliamentary Commissioner for Human Rights with the United Nations Development Programme on the role of national human rights institutions in conflict and post-conflict situations. The conference brought into clear focus a number of issues that are relevant in many societies, but particularly, in Ukraine and other nations in the region. In conflict and post-conflict settings there are additional roles the ombudsman institutions can play in relation to vulnerable groups, victims of conflict, protection of women and children's rights, the protection of the rights of IDP, and also reconciliation and peace-building. In a post-conflict situation ombuds institutions also have to look at issues such as the rights of property. This is a challenge that Ukraine will also face in the near future and there will be an issue of what role does society perceive for the ombudsman institution to play. Of course, the Ombudsman institution in Ukraine is already engaged on these issues and that was reflected in the conference itself.

How national ombudsman institutions can work on a practical level on oversight of the security sector and in a cooperative way with democratic institutions and government, and civil society, and media? Our original intention today was that we would have a speaker from Serbia or Croatia who would talk about direct experience in addressing these issues, but also developing monitoring far beyond just monitoring law enforcement, police activities, or places of detention, but also looking at issues such as intelligence oversight.

Some of the lessons from these countries are also relevant to others, not least at the European level. It is useful to look at the role of Public Defender in Georgia since 2012. Of course, it can be argued that not all of the lessons learnt in Georgia's reforms are immediately relevant to Ukraine, but perhaps the expansion of the office of the Public Defender can serve as a useful precedent. For example, after the elections in 2012, it took nearly eighteen months for the new Public Defender to secure additional resources from the Prime Minister for the 2014 budget onward. The Public Defender used those funds to expand the activities of the ombudsman institution, creating a small human rights academy for training within the ombudsman institution itself, and also a small a unit dedicated to looking at security sector oversight issues. In this way, the Public Defender was able to address more oversight issues, not just the police and law enforcement services, but also broadening monitoring to what is State Security Service, particularly after it was separated from Ministry of Internal Affairs in 2015.

In this way, the Public Defender was able to increase credibility of the institution, to expand its activities whilst recruiting and training more staff, particularly in the security sector unit, to look at very specific issues related to human rights observance by the military, different police and law enforcement units, penitentiaries, and also the activities of intelligence and state security services. So, in this case post-2012 Georgia is a useful example of a credible ombudsman institution receiving more financial resources with which it successfully expanded its monitoring activities.

Next, let us briefly look at the experience of Serbia over the last few years, specifically its ombudsman institution, known as the 'Protector of Citizens'. The outgoing Ombudsman, Sasha Jankovic, has been active at the European level in sharing lessons learned during the last few years.

One area in which Serbia is especially interesting is in terms of monitoring intelligence services. As a result of the Ombudsman's work there were very substantial debates within Serbia about what constitutes, for instance, the principle of the right to privacy, and what can be defined as a home: for instance, can a hotel room be considered a private space like a home? All these arguments were played out in public, but ultimately, even though the Ombudsman lost in these arguments, the intelligence services had to more clearly define their activities. Serbia's ombuds institution also had to deal with similar issues related to interception of communications. This led, of course, to tension between human rights' defenders and intelligence services. But one of the outcomes of these processes was a greater public understanding of rights to privacy as a result of discussions conducted in public spaces, all of which were made on the basis of the Ombudsman's independent monitoring activities.

The ombuds institution was able to use communication channels to effectively explain these issues to the general public by doing interviews with the conventional

media, including print media, and television. Social media was also used to put videos online explaining basic human rights, civil and political rights, and explaining the work of the ombuds institution work in the context related to the security sector and suspected violations of those rights.

Overall, it is important to remember that every nation faces challenges in maintaining the observance of human rights, not least in Europe. For example, in the United Kingdom in many cases Northern Ireland's police ombudsman is paraded as an example of best practice. And it is arguable that the establishment of this ombudsman has played a very important role in terms of confidence-building in Northern Ireland itself after 20-30 years of armed conflict. But, it is geographically limited just to Northern Ireland. If you go to the rest of the UK, there are still significant arguments about what would constitute an effective police complaints and monitoring instrument. Thus, the UK has reformed or modified its police complaint mechanisms several times since the 1980s, as there is no specific national human rights institution dealing with those issues.

If you also look at the issue of military ombudsman, it is only in the last few years that the UK actually created a military ombudsman to monitor human rights issues within the military itself. The institution is still defining its role and it still has its own challenges gaining the confidence of the military itself.

So, in every society there can be challenges in actually establishing these types of national ombudsman institutions that are dealing with security sector issues, and it is vitally important that they are effective at the national level. In terms of ongoing security sector reforms, the challenge Ukraine currently faces is how to develop the capacities of the national human rights institution in parallel with those of other oversight actors.



INDEPENDENT OVERSIGHT INSTITUTIONS: ENSURING COHERENCE, EFFECTIVENESS AND INDEPENDENCE

Ben BUCKLAND,
NHRI Adviser, APT Geneva



There are two examples of why independent monitoring is not just about human rights, but also in the interests of security organisations. Particularly, it helps to make them more effective and more efficient. So, if you agree with that first point, I hope you do, what are the key elements of any oversight?

One of the key parts of Paris Principles is independence. This independence means independence from the police or other bodies that the oversight institution is tasked to oversee. Let me mention now two very recent examples in my own country, in Australia, where the President of Human Rights Commission conducted a long inquiry into the treatment of children in immigration detention centres, which made the government upset. As a result, the government announced that they will not be asking the Commission to stand for a new term. This is a very strong institution, an institution that has a very strong legislative independence and now I can see that because of the recommendations they made, its independence is under attack.

Another example is in the United Kingdom where Her Majesty's Chief Inspector of Prisons, an independent prison monitoring authority, was asked by the Minister of Justice some years ago to reapply for his position, which he declined due to seeing this as an attempt to undermine his independence.

So, the idea of independence is not a solved problem and there are limits to what can be achieved in the law. But I think this comes back to idea that institutions are only independent when the government and the society, and those in the security sector, see the value in having independent institutions. Not just for the sake to uphold the rule of law and protect human rights, but because – and I come back to my first point – they help make the whole security sector more efficient, more effective. So that is the issue of independence.

In terms of powers, we are talking about the law, about powers of access to information, powers to make unannounced visits to all places and to access people, the ability to speak to people in private – detainees or staff of institutions that like to be part of an investigation. But again, I think that powers of law are not the whole answer. There are lots of examples of strong, independent oversight bodies. In Belgium, for instance, the independent oversight committee has a shared computer terminal in their offices, so they do not have to go to the government agencies and ask for files or documents. They can just look at the computer that they have in their office. Certainly, this is the extraordinary level of access to information powers.

There is another kind of a example. I was speaking recently about this in Pakistan, where they told me that if people do not comply with regulations, they arrest and detain them. This probably is a step too far. But the point is that powers are important. The really key thing is having the resources to process them and expertise to understand the information the institution receives. Without adequate enforcement, without expertise, powers can end up overwhelming the oversight institution.

Couple of years ago we were talking with then the new Armed Forces Ombudsman in South Africa, when he had not even set up his office yet and did not have any staff or any resources. He said: “The first thing I’m going to do is to tour the whole country and raise awareness of the institution.” And his statement made me kind of speechless, because, of course, as soon as he does that he is going to have thousands of complaints without knowing the complaints’ management system, without the resources and staff to deal with. It will then completely undermine any trust that he wanted to have as a new institution.

In less extreme cases, many oversight institutions have the powers, but there are significant statutory limitations. Often the common challenge for these institutions is that the number of complaints is overwhelming their ability to do any preventive work being busy with responding to those complaints. I think, at the end the most effective institutions are not those that have more powers, but those whose recommendations are taken on because they are based on strong evidences, they are impartial and they are achievable. The powers they have and can use as the last resort are not as important as the trust they have. Beyond

these issues of powers and independence, there is an issue – which is relevant to Ukraine – of how oversight institutions can work together towards building a respected oversight system. There are many examples in other countries where different oversight institutions have geographical or professional coverage. It is important to have every agency and every place covered by oversight. Coherence is important, because if different oversight institutions present contradictory reports and recommendations it allows the authorities to reject them simply because they are contradictory.



ROLE OF THE OMBUDSMAN IN OVERSIGHT OF THE SECURITY SECTOR

Svyatoslav STETSENKO,
Representative of the Office of
the Ombudsman of Ukraine on
the Military Servicemen Rights



I am grateful to the organisers for the opportunity to present the position of the Secretariat of the Verkhovna Rada of Ukraine Human Rights Commissioner concerning the role of the Ombudsman and independent institutions in the field of civilian control of the military establishment and law-enforcement bodies.

The legal framework for the Ombudsman’s activity at civilian control of the military establishment and law-enforcement bodies includes the Constitution of Ukraine, the Law of Ukraine “On the Verkhovna Rada of Ukraine Human Rights Commissioner”, and Article 11 of the Law of Ukraine “On Democratic Civilian Control of the Military Organisation and Law-Enforcement Bodies of the State”.

It should be noted from the very beginning that civilian democratic control is a very broad field of activity. The Ombudsman has certain powers dealing with observance of rights of military servants and law-enforcement officers. Namely, the Commissioner is tasked to defend the rights of citizens who discharge their official duties within the national military establishment and law-enforcement bodies. Defence extends to constitutional rights and legitimate interests of military servants, persons liable to military duty while staying in the reserve and veterans of military service, former combatants, disabled veterans and their family members.

When speaking about rights, we mean both human and civil rights, and specific rights of military servants, conditioned by the specificity of their state service. We proceed from the assumption that observance of rights of military servants

is not just an issue of their individual rights but also a very important element of strong defence of the country as a whole. Without public trust in military institutions of the state, without confidence that all obligations and legitimate interests of the people who put their life at risk for the sake of security are met, serious problems may arise in the armed forces and society with motivation to perform the military duty.

The material inputs of war are certainly important. However, no weapon, no sophisticated military equipment will bring victory, unless the people – the country's citizens – are ready to sacrifice their time, powers, health and life for defence of the values that are important for them personally and for the whole society.

The Secretariat of the Verkhovna Rada of Ukraine Human Rights Commissioner has a separate section of civilian control of the national military establishment and law-enforcement bodies, established in 2016. In addition to military servants, protection is extended, in line with the functional responsibilities of our unit, to such categories as policemen, officers and men of civil defence bodies, persons recognised disabled as a result of obtained injuries or disease during service, war veterans among those persons, veterans of internal affairs and family members of the above-mentioned persons. Noteworthy, most of all applications of citizens for defence of violated rights come to us not from active military servants. We are mainly approached by law-enforcement officers, veterans of law-enforcement bodies of the Ministry of Internal Affairs, public prosecution offices and family members of military servants. They are followed by ATO participants who have retired from military service. Active military servants apply least of all. There are several reasons for that.

The first reason is legal illiteracy. Quite some military servants are simply unaware that they can and may defend their rights, using the capabilities of the institution of the Human Rights Commissioner. We make efforts to raise awareness. There is an agreement with the Minister of Defence that in the system of legal education of military servants, their rights will be fully made clear.

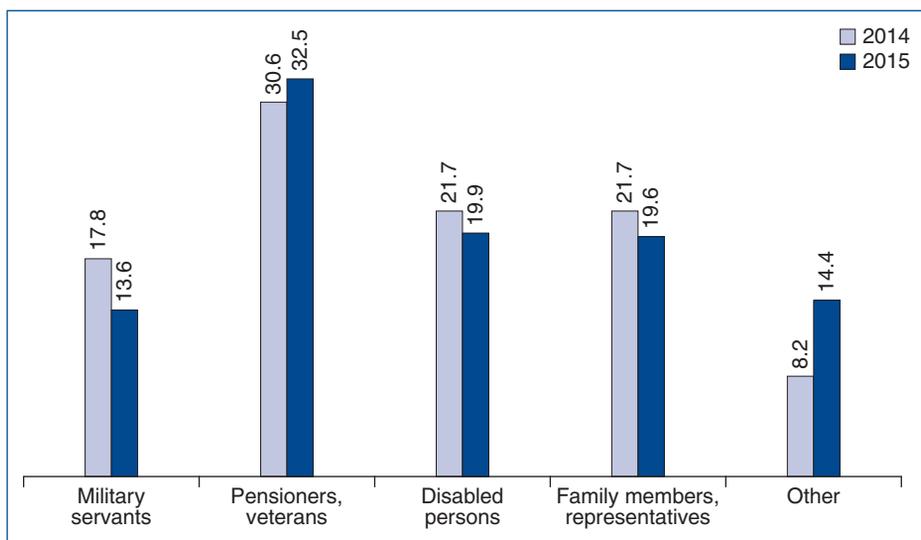
The second one is presented by the corporate spirit, whereby military servants try to resolve all their problems within their organisation. We very often see that, when monitoring the state of observance of rights of military servants, especially in the combat zone, military servants frankly speak about their problems. As soon as you ask them to file those in writing, they refuse. When asked: "Why?", they answer: "Well I do have problems, but I have a very good commander. If I write a complaint, they will come and punish the commander. I don't want this".

Anyway, we respond not only to applications but also to information we obtain when monitoring military units, both in permanent garrisons and in the combat

zone. Relevant submissions and proceedings are then sent to the bodies of state governance competent in the relevant sector. They include separate ministries and the head of the Government, but first of all – the Minister of Defence.

Now, a few words about what was done this year. The section was created earlier this year, but some work was certainly done even before it was established. Problems with observance of rights of military servants are not always purely occupational military problems. Respectively, the department for observance of socio-economic and humanitarian rights, the department for protection of personal data, the department for observance of rights to information, observance of gender equality – they all somehow responded to applications of military servants. It is expected however that by the end of this year the number of applications will double, compared to last year. Furthermore, this year we focused not only on applications but also on monitoring. While last year, the Office representatives visited 15 military units, this year – 20 units in the combat zone and 8 – in permanent garrisons. Following all monitoring, if necessary, procedures are developed concerning detected violations and concrete officials, measures are taken by the concerned bodies of state governance. If those issues are systemic – and most of them are – the relevant proposals are sent to the head of the government and concerned committees of the Verkhovna Rada.

Distribution of applications by applicants (%)



Here are statistic indicators of applications of military servants to the Human Rights Commissioner in 2014, 2015 and 11 months of 2016. The diagram shows that if we look at the percentage of applicants, military servants apply least of all. Notably, according to our assessment, operation of internal control systems

in the Defence Ministry, the General Staff and military units improved greatly. Nevertheless, the majority of military servants try to solve their problems within the armed forces. Unfortunately, we have to admit that violations of rights of military servants are mainly committed by the state, disrupting social guarantees for military servants provided by the Constitution and laws of Ukraine: the right to housing, the right to rest, the right to a sufficient living standard and level of maintenance of adequate quality in line with the set norms.

Here, I refer not just quantitative indicators but also the quality of maintenance provided to military servants. Last year, we were repeatedly told that military servants received all the materiel they were supposed to have in line with established norms. Indeed, they may get the proper quantity of uniforms and accoutrements. However, their quality does not meet the conditions of field service, first of all, in the combat zone. As a result, military servants have to spend a significant part of their allowances to buy necessary accoutrements just to survive and spin out health in the field and during combat operations.

The Human Rights Commissioner has already said today that the state often unilaterally refuses to meet the requirements of the laws of Ukraine concerning its obligations to military servants, depriving them of the right to terminate a contract due to non-compliance with the contract terms by the state. We see the expanding powers of a commander to terminate a contract with a military servant. On the other hand, a military servant is now deprived of an opportunity to terminate a contract because of breach of the contract by the Armed Forces, i.e., the state. This problem requires a legislative solution.

This important problem was previously disregarded by the Commissioner's Office. One of the reasons lies in the insufficient level of professional training of mobilised military servants, insufficient training that can be obtained in training units before they come to combat units. We see it as an example of violation of the constitutional right to education. Every citizen has the right to education, and a military servant, respectively, has the right to special training. To be sure, neither the best equipment nor the best accoutrements can guarantee accomplishment of combat missions or survival, if a military servant has not got sufficient training. We believe that this refers not only to those military servants who currently serve in the armed forces but also to persons liable to military duty, who may be mobilised in case of declaration of general mobilisation. The same refers to reservists of the primary reserve.

In fact, unfortunately, the present system of training is organised so that it involves a short training after contract signing. This is a financial problem, a problem of logistic support, but on the other hand, this is also a problem of implementation of advanced methods of training of military servants. If with respect to active military servants it is somehow resolved through adjustment of training programmes and accumulation of fighting experience, the problem of

training reservists and persons liable to military duty has failed to gain traction so far. In 2014, we saw the results – when people who once served in the army but were not retrained while staying in the reserve were mobilised. They often appeared not ready to professionally attain combat missions and stay alive. This experience was gained at great cost. We will monitor the problem of professional training, and I hope that we will resolve it jointly with the Defence Ministry, the General Staff, and the Command of the National Guard.

Concerning the issue of efficiency of activity of the Verkhovna Rada of Ukraine Human Rights Commissioner: I ask you to keep in mind that our function is supervisory. The Commissioner has no executive functions. We personally do not resolve these problems. This is a task for those bodies of military and state governance that have executive powers and resources. We act within the scope of the tasks vested in us, within the scope of human, financial and material capabilities for monitoring. Information is always brought to the attention of those bodies that are tasked to resolve those problems.

Concerning the expediency of creation of a separate institution of the military Ombudsman, I agree that this could improve the capabilities and efficiency of advocacy at observance of rights of military servants. Meanwhile, this would require additional resources. We believe that if such an institution is created and relevant amendments are introduced to the regulatory framework, it would be expedient either to confine its competence to those military servants who are on active military service, or to find another method of interaction with the Ombudsman's main office, to be able to use its resources. For instance, our section of civilian democratic control of the military establishment and law-enforcement bodies has only six positions, and although the number of applications and monitoring tasks is great, we can engage for that purpose units of the Secretariat of the Human Rights Commissioner, dealing with other, related problems. This means that this task is dealt with not only by the section of civilian democratic control but also by the other units of the Commissioner's Secretariat.

The priority lines of strengthening capabilities of the Human Rights Commissioner in the field of civilian control of the security sector include: functional capabilities of monitoring of the military by a separate unit for monitoring and analysis of observance of rights of military servants; information and communication capabilities; mobility and prompt response to problems with visits to the army in the field.

ROLE OF THE DEPARTMENT OF HUMAN RIGHTS OF THE NATIONAL POLICE OF UKRAINE

Kostyantyn TARASENKO,
Department of Human Rights of
the National Police of Ukraine



The Ombudsman institution is really important in a democratic country and must surely be efficient in Ukraine. The National Police currently undergoes deep reformation. The agency leadership welcomed the idea of establishment of the Department of Human Rights, now being implemented. The main task of the Department is to monitor observance of human rights in police activity. Our Department began operation in September, 2016, more than half of the Department staff has been appointed. The Department operates on the principles of publicity and transparency. We are open for cooperation with society, public and international organisations.

The Department structure includes two units. The first one is the Section of the National Police Head Human Rights Commissioners that monitors observance of human rights and freedoms by police officers keeping public safety and order, during detection and solution of crimes, prevention of administrative and criminal offences and countering crime, pre-trial investigation of criminal offences, performance of other tasks vested in the police.

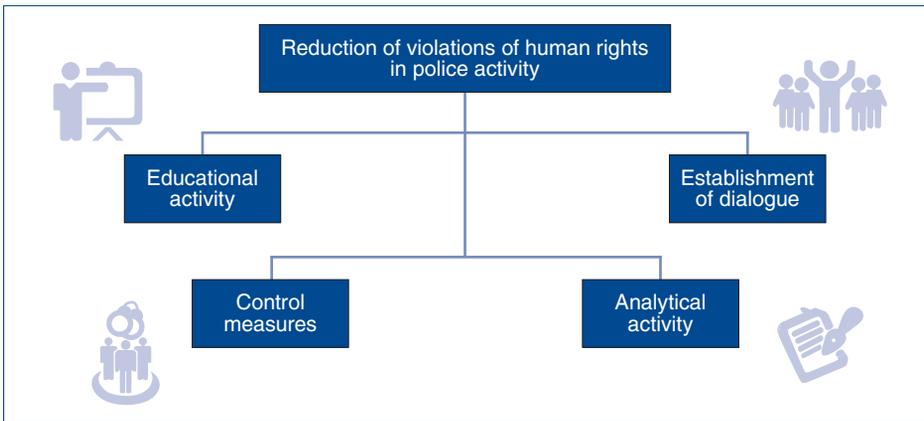
The second Section is responsible for operation of temporary detention facilities: it monitors activity of police bodies and units guarding persons detained on charges of criminal offences, persons subjected to pre-trial custody and convicts, their transportation during pre-trial investigation, investigative activities, court trials, implementation of court rulings of administrative arrest.

The Department is subordinated to the Head of the National Police. The main task of both sections is to ensure that policemen do not violate human rights.

Concerning the specificity of structure of the section of police ombudsman: the section consists of the central staff and regional representatives. Seven persons are employed in the central staff, plus 2 to 3 representatives in each region of Ukraine and the city of Kyiv, directly reporting to me. The initial idea was to subordinate representatives in the regions to regional administration heads, but we gave it up to secure police ombudsman against falling into dependence on regional administration heads and in this way to remove the threat to proper performance of their functions.

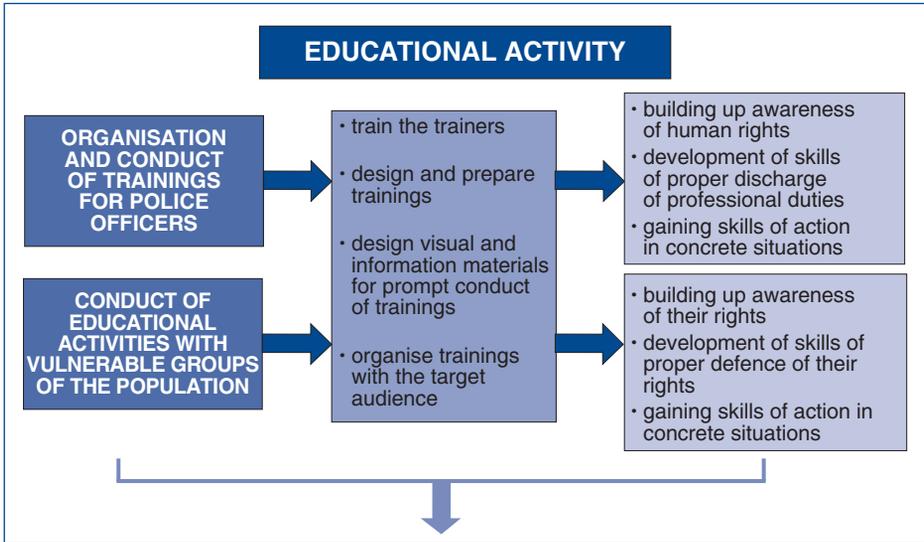
Regarding the second Section that monitors operation of temporary detention facilities, it also has the central staff made up of 7 persons (organisation, control and methodological support for the relevant regional divisions and sectors, temporary detention facilities, escort units) and regional units – 8 divisions and 17 sectors (119 persons), subordinated to heads of main administrations of the National Police in the regions. We, on our part, also exercise control of the activity of regional branches.

The main task of our activity is to reduce the number of human rights violations at policing. In fact, our task is to bring those violations to nought. Now, I will briefly describe some key functions and lines of work.

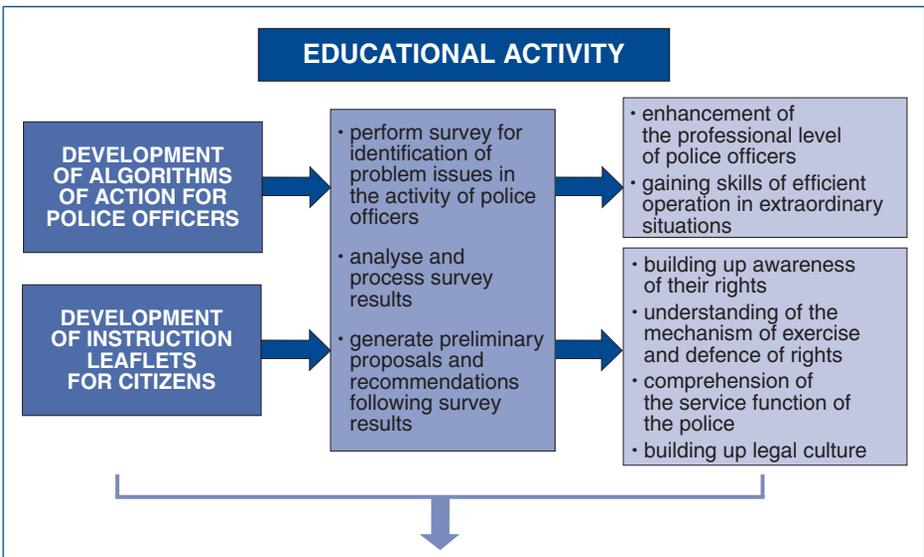


Educational activity takes place in two key areas: 1) conduct of trainings for policemen, and 2) organisation of educational activities with vulnerable groups of the population. We always teach trainers some specific points. For instance, if my officer works in Odesa region, we target him to work with gypsies. In the areas populated by ethnic minorities, trainings with policemen are held to promote contacts with these groups of the population and, respectively, cooperation. Many problems arise from misunderstanding or unwillingness to understand one another. What does it give us? First of all, policemen improve their knowledge

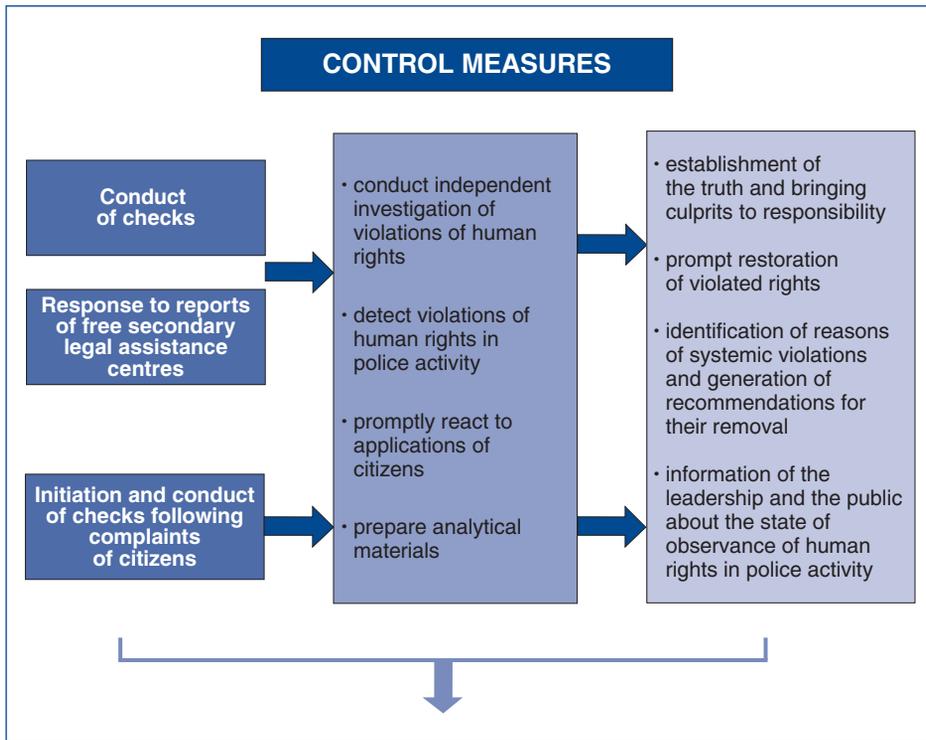
of human rights, better understand the nature of human rights, why beating or tortures are inadmissible. We try to give policemen skills of correct conduct in accordance with the law. The public covered by our trainings learns to defend its rights and builds up awareness of their rights.



Analytical activity is the following line. We develop certain algorithms of action for police officers, draw up instruction leaflets for citizens. My officers monitor police units to detect violations. If violations are systemic, the reasons are identified and analysed. Upon the analysis of those reasons, we draw up recommendations for removal of systemic problems.



Dialogue with the institutions of society is another line of our activity. We closely cooperate with state bodies, permanently exchanging information about violations. We get from partners information about violations committed by policemen, and our centres obtain information, for instance, about unlawful actions of advocates with respect to citizens. We also closely cooperate with public organisations that render to us information and methodological support, for instance, at organisation of workshops and round tables.



Control measures are yet another task. We inspect National Police units where, unfortunately, problems are many. We react to reports from free assistance centres. My representatives promptly visit the scene to respond.

The Section officers also review complaints of citizens. They accept complaints and initiate internal checks. There are instances where a person complains to the regional main administration about actions of a police officer, but the regional administration not always responds to those complaints, unless the complaint comes from our representative.

We have encountered a new problem in our activity, not expected initially. It is protection of the rights of policemen. When our unit was set up, we did not discuss this issue. By now, we have received about a dozen applications from

policemen complaining about actions of their superiors. We had to start internal investigations, my officers serve on commissions and, respectively, control the progress of internal investigation.

INDICATORS OF ACTIVITY OF THE DEPARTMENT OF HUMAN RIGHTS

Reduction of the number of violations of human rights in police activity

Building public trust in the police

Perfection of the regulatory-legal framework of the National Police

Introduction of advanced approaches to law-enforcement activity

Enhancement of the professional level of police officers

Establishment of fruitful interaction with civil society

Establishment of efficient contacts with international partners

Improvement of conditions in places of imprisonment

Bringing conditions in temporary detention facilities in line with international standards

We represent the National Police in the domain of human rights internationally, cooperating in this field with OSCE and the Council of Europe.

Hence, the main goals of our work include: reduction in the number of human rights violations, building trust in the National Police, improvement of the regulatory-legal framework, introduction of advanced approaches to law-enforcement activity, establishment of cooperation with civil society and improvement of conditions in places of imprisonment. It is too early to speak about big achievements, but there are some results, thanks to systemic measures already implemented by our Department. For instance, the system of control and record of stay in temporary detachment facilities, recording all developments after a person appears in a temporary detention facility in the electronic system.

The system operates in a trial mode, but it is already installed at 72 out of 240 temporary detention facilities. So, I can see from my workplace when a person appears in a temporary detention facility, his or her complaints, indicative flags of the time of detention and release. We plan to launch this system all over

CUSTODY RECORDS

Information recorded in the information subsystem

Personal particulars, time of detention, notification of the lawyer, third parties, notice of suspicion. Risk group.

A screenshot of a web-based form with multiple columns and rows of input fields, checkboxes, and dropdown menus, used for recording personal details and detention status.

Sanitary treatment, movement within temporary detention facility, checkout time

A screenshot of a web-based form with various input fields and checkboxes, designed for logging sanitary procedures and facility movements.

Conducted searches, examinations, hunger strikes, suicide attempts, inadequate behaviour

A screenshot of a web-based form with several input fields and checkboxes, used for documenting searches, examinations, and behavioral incidents.

Prominent physical characteristics of the detainee

A screenshot of a web-based form featuring a section for physical characteristics, including a body diagram and a facial image, alongside other input fields.

Primary medical examination, diseases, complaints about health, recommendations of physicians

A screenshot of a web-based form with multiple input fields and checkboxes, used for recording medical examinations and health-related information.

Record of complaints, applications (letters); record of parcels, seizure of prohibited items

A screenshot of a web-based form with various input fields and checkboxes, designed for logging complaints, applications, and seizures.

Ukraine. This will give us a possibility to monitor not only detention facilities but also investigators who unreasonably delay formalities for release of persons, and the police as a whole. Ideally, this system should be activated upon detention of a person. The detention time ticks away, starting from that moment. This is an ideal, we have not reached it yet, but we hope that we will do all that soon.

INSTITUTION OF MILITARY OMBUDSMAN – DETERMINATION OF PRESENT-DAY DEMAND

**Arsen Ilyin, Ministry of Defence
of Ukraine Reform Office**

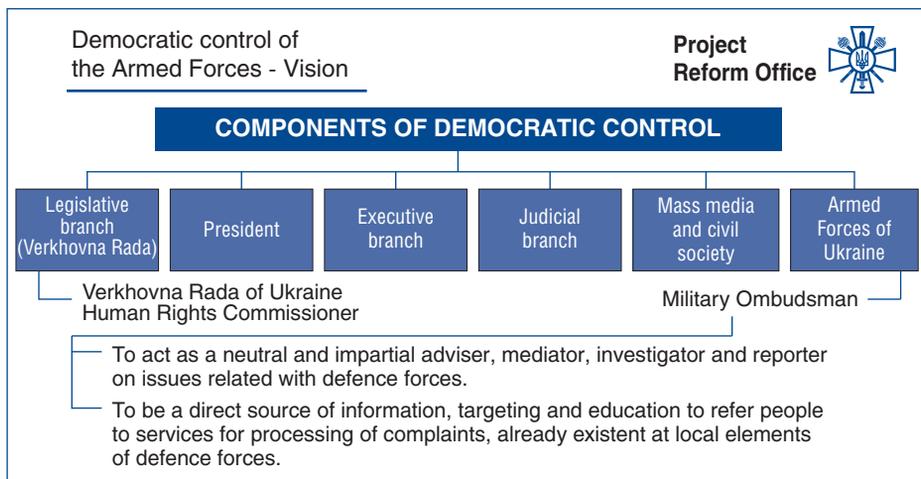


I would like to inform you about the results of work of a group of experts under a joint project with OSCE and the Verkhovna Rada, drawing up the Concept of Democratic Control of the Armed Forces. The presented deliverables are not the final version yet, and our team will be grateful for your feedback. There are enough people in this room who know the subject in detail and can produce proposals and assessment regarding the workability of this version.

Our proposal rests on the Canadian experience. Respectively, we propose to set up the post of an ombudsman at the Defence Ministry, but that ombudsman should not be appointed by the Minister of Defence. The novelty of our proposal is that it is not a controlling body, as it was proposed previously. He should act as a neutral and impartial adviser, mediator, investigator and reporter on issues related with defence forces. He should also be a direct source of information, of which he has a good command. He must have access to processing of complaints, but within the existing structures only, i.e., he will not create its own separate structures to deal with applications.

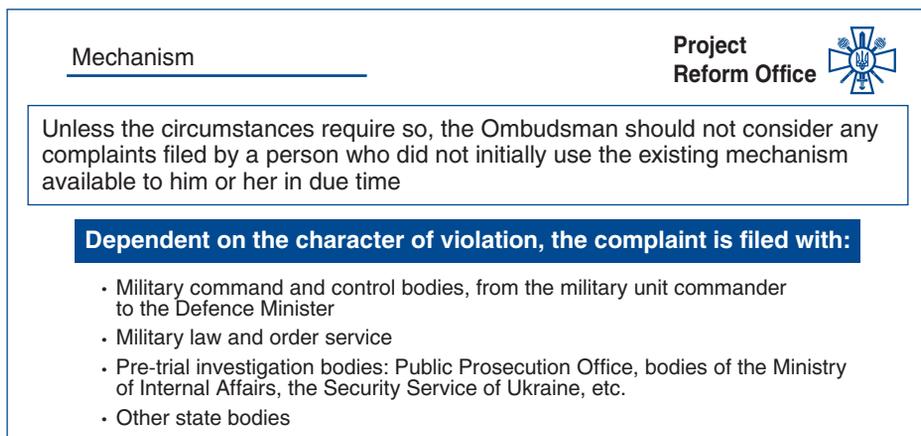
The Verkhovna Rada Human Rights Commissioner and the military ombudsman should cooperate, but the military ombudsman should have a possibility to focus on the problems of military servants, since he will have more access to information

and will work within the Defence Ministry. This will give him better access and an opportunity to resolve problem issues within the Ministry. The Verkhovna Rada Commissioner will consider only those issues that cannot be solved in the Ministry of Defence for different reasons.



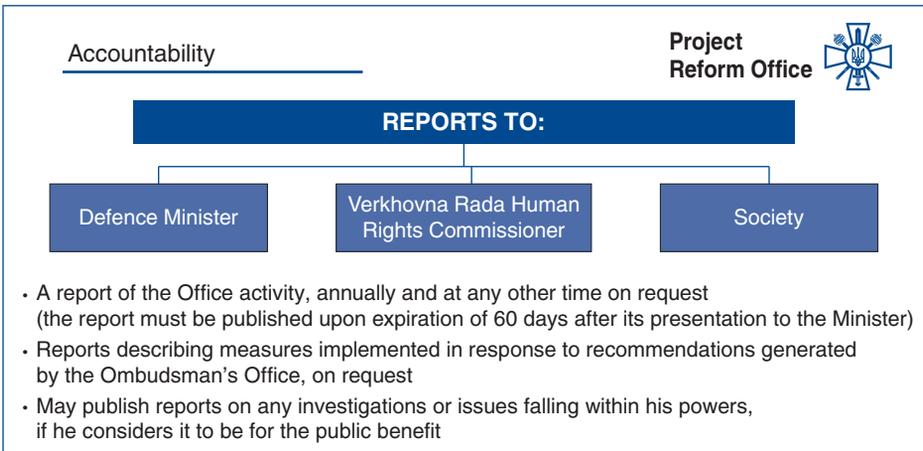
In our opinion, the military ombudsman should be appointed by the Verkhovna Rada by secret ballot upon submission by the Minister of Defence. It is very important that the Minister of Defence cannot dismiss him by his order, but only under the procedure similar to his appointment. Although he is subordinated and reports to the Defence Minister, he does not belong to the chain of command. Therefore, one cannot give him direct orders.

The military ombudsman could discharge his investigation functions both on a written request of the Minister and on his own initiative. He shall investigate on his own initiative any issues relating to the defence forces. At that, he must notify the Minister.



The procedure of processing complaints provides that before coming to the military ombudsman, an application must pass standard echelons of authority. If the case is not very special, the ombudsman shall not consider complaints that have not been filed to the unit commander, if the direct superior did not react.

To be sure, there should be some restrictions of the area of responsibility covered by ombudsman investigations. The list of such restrictions should be thoroughly formulated and discussed. We assume that this list should include issues of professional standards, research in the field of information technologies. We ask colleagues for comments on the proposed restrictions.



Accountability is an important aspect. Of course, the Ombudsman must report to the Minister of Defence, the Verkhovna Rada Human Rights Commissioner and society on a regular basis. While granting him the right to publish reports of any investigation or issues falling within his powers, which he considers expedient to bring to the notice of society, we should also regiment restrictions subject to secret classification.

Budget issues are highly important. If the post of a military ombudsman is set up, the Defence Ministry budget should have a separate item of expenses on the ombudsman's office.

I have briefly informed you about one of the most practical options, at present – one of the most path-breaking options considered by us. What is good about it is that in case of its approval, it can be implemented within rather a short time. Of course, we will present it for further public discussion, and today's conference may be seen as the first attempt.

STANCE OF CIVIC ACTIVISTS AND JOURNALISTS ON INDEPENDENT OVERSIGHT INSTITUTIONS

Oleksandra MATVIYCHUK,
Head of the Board, Center for
Civil Liberties



For several years, I was a member of a working group monitoring the activity of the Human Rights Commissioner. This may seem unusual but the public united into a working group and monitored violations of human rights in the Commissioner's activity: how efficiently she reacted to the challenges arising during such monitoring and the problems revealed by the monitoring.

Before passing to present-day challenges for monitoring of observance of human rights within the security sector structures, I would like to note some terminological difference in the terms we are using. When we speak about the Ombudsman institution, we mean the mechanism discharging two functions. The first one is detection of instances of violation of human rights. The Ombudsman's response to detected violations is recommendatory. Therefore, that institution does not hold itself accountable. The second function is kind of an interface between the authorities and civil society, since the Ombudsman is not subordinated to anyone and is accountable to society, that is, the people for whom it exercises its parliamentary control. Discharge of the mission of an interface between the authorities and civil society is more efficient, when representatives of public organisations are involved. When I hear departments established with

the Ombudsman's office being termed as "police ombudsman", "military ombudsman", I feel kind of a confusion of terms, since, according to the Paris Principles,² the key criteria of that institution include independence. With our best will, specialised ombudsmen fall short of meeting this criterion of independence. So, I would suggest calling them differently in order not to deceive ourselves and not to misrepresent the notion.

Now, on challenges. The Verkhovna Rada Human Rights Commissioner, the newly-established Department of Human Rights of the National Police, "military ombudsman", the planned institutions and other similar structures face the following four key challenges.

The first one is the absence of established, perfectly detailed mechanisms and administrative regulations regimenting their work by the law. Hence, all that activity depends on persons and the leadership's attitude to the activity of those units. There was good experience, whereby the law granted additional powers to the Ombudsman, the National Preventive Mechanism was set up, now used by the Ombudsman's Office under the "Ombudsman+" model.³ Exactly such mechanisms are needed, formalised by laws, independent of persons and the political situation. The Department of Human Rights of the National Police will find it rather difficult to work efficiently, since its bylaws are imperfect, and the public is not admitted to the process of investigation and control of processing of their complaints. We should address this challenge, starting from local and ending with institutional mechanisms.

Regional coverage is the second challenge. In the conditions of the Russian armed aggression – I mean temporarily occupied territories with a population of 5.5 million people – one person or central office cannot cope with this volume of tasks. We came to this conclusion in course of cooperation with the Commissioner's Office as long as 3 or 4 years ago, when the models of regional representatives and coordinators were introduced. Specialised semi-independent institutions monitoring observance of human rights within agencies should also think about this. We understand that in the conditions of a budget deficit, it is rather hard to build the appropriate network and hierarchy. Nevertheless, presence of people and structures to rely on in each region is a precondition necessary for efficient work.

The third one is access to information. The majority of our problems and challenges are aggravated by incomplete and irregular reformation of the

² Principles relating to the Status of National Institutions dealing with promotion and defence of human rights. Annex to the UN General Assembly resolution 48/134 of 20 December 1993 – www.ombudsman.gov.ua/ua/page/secretariat/international-cooperation/international-instruments/paris-principles.html.

³ National Preventive Mechanism. – www.ombudsman.gov.ua/ua/page/npm/.

security sector structures and the fact of the Russian armed aggression and its consequences. The existence of these two problems at a time leads to abuse of the rhetoric of the priority of opposing the Russian aggression to reason disproportionate limitation of access to public information. We faced it when, for instance, the Office of the Verkhovna Rada Commissioner tried to monitor the activity of the Security Service of Ukraine in connection with unlawful detention of persons. It so happened that the Office visited possible places of detention and found no one there, but later, people came out who testified before international organisations, some of them spoke publicly and told where they had been held, and how.

The fourth one is the insufficient level of public involvement, poor communication with the public. In reality, the efficiency of monitoring and advocacy of human rights may be enhanced only through active involvement of public organisations. The practice of different bodies is different, especially in the security sector. Some believe that if they have a public council, it represents the public to cooperate with, while all others should turn to their public council. Even if a public council at a state body works well, it does not deal with general oversight of the activity of that body, it can respond and discharge limited controlling functions. I tell you that, as a member of several public councils. So, we should more actively involve the public, support mutually beneficial formats, introduce such models as the Commissioner's Office did with the National Preventive Mechanism "Ombudsman+". We are also aware that the public is very different. Some enter an executive suite and say that they came to control him. All this happens, but normal civilised cooperation should be built.

Here are three points for conclusion. First, human rights organisations have long been speaking about the need of adoption of a special law on public control not only in the security sector but also for identification of possible forms and methods of public control in general. The Constitution says: if it is not forbidden, do it, but the rooted approach of the state bodies and the institutional nature of the legislation requires this list to be specified in a law, to refer to in the process of civic activity.

Second: the powers of semi-independent institutions designed to monitor observance of human rights within agencies should also be specified by laws, not to depend on the will of the leadership.

The third, and the main point. If we still speak of special ombudsman, not structures within bodies monitoring observance of human rights, we will not avoid the issue of amendment of the Constitution. The current Constitution does not allow establishment of independent bodies, except those provided by the Constitution. We don't know what additional special ombudsman we may need in the future, and the Constitution is a prognostic document adopted for

decades. Our colleagues from the Commissioner's Office submitted to the Constitutional Commission proposals of amendment of Section 2, how to prescribe it to avoid the need of listing all the bodies in order to pave the way for creation of independent bodies meeting the criteria set by the Paris Principles.



COOPERATION WITH OMBUDSMAN – POSITIVE CHANGES

**Oleksandr KOPANYTSIA, Head of
the Department of Public Affairs and
Access to Public Information,
Ministry of Defence of Ukraine**



Regarding the work of the Ombudsman’s representatives in military units, we regularly train military unit commanders to work with the Commissioner’s representatives, so that they could show problems that can be practically resolved at that level.

Regulatory documents clearly stipulate the citizens’ right to apply to the concerned authorities. The Law “On Applications of Citizens” expressly provides responsibility of executive bodies and officials. The Law “On Access to Public Information” is among the ten best laws in the world. That is, executive bodies and concerned officials are under the pressure of the state legislation that specifies their responsibility for dealing with applications of citizens, including defence of the rights of citizens provided by the Constitution.

Regarding the response to applications. Today’s communication means allow any citizen to put a question on-line even to the President, while the law demands reaction within the set terms. Today, a soldier on the frontline can apply to the Defence Minister, if the issue is not resolved by his commander.

Within just one year, we handled more than 50,000 applications of citizens, public organisations, different offices defending their own rights or interests and human rights in general. Regarding the Defence Ministry reaction to the

situation, since we are in the state of a hybrid armed aggression of the Russian Federation against Ukraine today, we step up the role of the public in all functional systems of the Armed Forces. The Defence Minister by his order set up twelve regional reception desks of the Minister, which allows a citizen to apply directly to the Minister of Defence of Ukraine via a regional reception desk. All this is strictly controlled.

Why does the Ombudsman's office sometimes complain that it is not welcome by military officials? Today, a military commander acts in strict compliance with the four manuals and state laws. They clearly specify his powers, the main principle of those powers being the unity of command. If someone interferes in the functions of a commander, the commander who does not quite understand why he is subjected to pressure reacts in accordance with the manuals. Now, the situation is changing. There are directives of the Defence Minister regarding interaction with the Commissioner's office, and there are practical results. I only ask you to keep in mind that we must take into account the regulatory framework existing within the state. At the same time, I share the opinion that the work done in the years of independence should be treated with extreme caution, and all conditions should be created for the defence of human rights.



INDEPENDENT OVERSIGHT INSTITUTIONS: ENSURING COHERENCE, EFFECTIVENESS AND INDEPENDENCE⁴

Ben BUCKLAND,
NHRI Adviser, APT Geneva



It is rather hard to decide, which world practices are the best. In my opinion, no oversight system is perfect, there are different organisations that may have advantages and disadvantages, in different versions. However, there are several key principles that should be emphasised.

The first of them is that no matter whether you create one or many institutions, they should be independent from the supervised bodies. As it was mentioned before, the Paris Principles laid down a very good basis for independence. The second principle is the existence of powers, as well as resources and experience, enabling efficient exercise of the granted powers. If there is an institution that monitors keeping people in custody by the police, but it cannot work efficiently due to lack of resources, creation of another institution with insufficient resources will not solve fundamental problems either.

In addition to the issues of powers, resources and experience, there are problems with allocation of responsibilities and coordination of action. The system of independent oversight should cover all institutions, sites and persons. Detention facilities are deemed to include not only police stations but also corresponding

⁴ Reverse translation.

facilities of special services, as well as the procedures of detention and transfer of detainees from one facility to another. Many national preventive mechanisms now monitor deportation measures and a number of untraditional detention facilities, such as mental institutions. We should mention here geriatric homes, juvenile detention centres, confinement facilities for military servants, detention centres for migrants. All those sites should be properly monitored. Indeed, in some countries this is done very easily. For instance, in Liechtenstein, there is one detention facility, easy to control for the independent oversight body, but in most countries this is not so easy.

National models of the oversight systems may be conventionally divided into two main groups. Some countries have one institution with very broad powers encompassing all structures of the security sector. In other countries, the system has many institutions with specific oversight roles. Specialised institutions are sometimes further categorised in accordance with their specialisation. For instance, in Indonesia, there is a human rights commission with broad powers, and specialised commissions in charge of rights of children and women.

There are also functional divisions. For instance, in Canada, there is a “correctional investigator”, who monitors prisons, working in coordination with regional oversight bodies that have some functional experience. In Great Britain police oversight is divided geographically, and in Northern Ireland there is a “police ombudsman” with extremely broad powers, whereas police oversight in England and Wales works in cooperation with another institution.

Allocation of responsibilities of different institutions in the law should be addressed with caution. Amendment of a law takes much time. In my opinion, the law should specify powers more broadly, to be elaborated later, during negotiations between the oversight bodies.

There are also problems with the exercise of those powers. I cannot recall a representative of a monitoring body saying that they have sufficient resources. You never have enough resources to do everything that you want or have to do. That is why strategic planning and priority setting are needed. When the French National Preventive Mechanism was set up, everything was started with prisons, then – as it gained experience – police stations, mental institutions, and processes of deportation were covered. It took more than eight years to cover the whole range of detention facilities. In Norway, the Parliamentary Ombudsman during the first six months after the institution of the national mechanism did not visit detention facilities, although he had the powers to do that. First, they completed the process of planning, identified bottlenecks, resource needs, etc.

It is important to admit that oversight means an extra burden on the overseen institutions. I particularly mean monitoring of places of deprivation of liberty. We always insist on the right to undisclosed visits, and it is highly important that

oversight bodies are allowed to make visits at any time, day and night. But how reasonable is an unexpected visit, say, at 6 A.M. on Saturday? That is why, say, in Denmark the Ombudsman notifies about the timeframe of such inspections in advance, for instance, “from August till October”, not specifying the exact arrival date.

Sometimes it happens that two different monitoring bodies visit the same place at the same time, which also imposes unnecessary load on the monitored institutions. It should be avoided, and I dare stress that only some of those problems can be settled by the law. Where oversight institutions with overlapping powers are many, people engaged in oversight should more often gather in one room to discuss, where gaps exist, and where their powers overlap.

There is one more problem, related with fragmentation. International cooperation is a powerful tool available to national human rights institutions. They have an opportunity to work with the UN Human Rights Council, to employ special procedures, to give and obtain information and recommendations. The military ombudsman will no longer be able to do that on his own, since he will not be represented in the UN.

Different divisions with overlapping powers can cooperate within one institution more efficiently. Meanwhile, there is another challenge, related with concentration of broad powers in one oversight institution, entailing in the danger of monopolisation of oversight in the country. We know the example of the Armenian Ombudsman, who is doing really very useful work, but the very fact that he is a former minister of justice rules out speaking of true representation of civil society, since he cannot be independent, given his close relations with the government. In many countries, people in the government want to replace a strong and independent Ombudsman with someone less critical about the state policy.

This is especially relevant, when all oversight functions are either concentrated in one institution, or vested in one person, who can be “swallowed”, “conquered”, in a jiffy undermining the efficiency and independence of oversight. It is more difficult for the government to do this, if you have several institutions. And I think that this reaffirms the important role of civil society as the monitor of monitors of balance of different formats of monitoring bodies.

OVERSIGHT MECHANISMS AND THE HUMAN DIMENSION OF SECURITY⁵

**Graziella PAVONE, Human Rights Officer,
Human Rights, Gender and Security,
ODIHR**



When we speak about the security sector, we should realise what kind of security is meant. The recent decades have seen substantial shifts of the paradigm from the traditional state-based approach to human security. State security proceeds from the defence of territory and mainly focuses on external threats. Such an approach is rather “flexible”, regarding the need of observance of human rights. This paradigm was seriously revised after the end of the Cold War.

The policy of human security in the first place deals with the safety of individuals. This approach puts human rights and the rule of law in the centre of perception of security, policy and practical steps. Threats to the safety of individuals are not only of external origin. The state itself, that must be the guarantor of security, can also be a threat and a violator of human rights.

There are many separate aspects that need to be taken into account within the paradigm of human security. For instance, there are different needs in the field of security and justice, different priorities for men and women, different populations and communities. This challenging task cannot be resolved by one state institution, or only through division of responsibilities among the judicial system, public prosecution offices, legislative bodies and national institutions defending human rights. Society and mass media need to be actively engaged,

⁵ Reverse translation.

too. In the countries, in which ombuds institutions have insufficient powers in the field of human rights, the role of society becomes especially important, as an additional tool for detection of human rights violations, information about them, and defence of human rights.

In nearly all countries national human rights institutions have a specific mandate to defend human rights, let alone concrete commitments to ensure gender equality and fight discrimination, as it is, for instance, in Great Britain, where a special commissioner of the service handling complaints of military servants applies an approach differentiated by the type of violation and gender, performs cross-analysis of information from other sources, which makes it possible to reveal gender regularities and discriminatory patterns within the system. Respectively, such efforts end up with systemic proposals for dealing with the revealed problems.

National human rights institutions are recommended to arrange separate meetings or focus groups for, say, women and men, or victims of gender violence, to ensure free expression of one's opinion. A monitoring team for detection of possible violations should be appropriately staffed and should have an appropriate methodology. There should be teams not only of made up experienced experts but always including women as team members, if they are to visit female detention facilities.

We now have the Paris Principles that specify mechanisms of cooperation among different oversight bodies. Unless specified in the relevant legislation, the "national institution" (Ombudsman) engaged in promotion and defence of human rights should propose, for instance, signing of a memorandum of understanding with other institutions or organisations of civil society to ensure utmost efficiency of human rights activity and data collection.

The "National Institution" takes part in drafting state reports (presentations) on fulfilment of treaty obligations for UN bodies and committees, regional organisations. If necessary, the ombudsman may express a separate opinion on such issues, based on the principle of his independence. The ombudsman works in cooperation with international organisations, regional and national institutions of other countries in the issues of promotion and defence of human rights, is empowered to gather information and report it to the UN specialised committees or the Human Rights Committee both in national reports and in the form of alternative reports. For instance, the French National Consultative Commission on Human Rights has recently presented its comments to six regular reports and separately provided information on a number of issues, that were later released by the UN Committee.

I wish to draw your attention to the experience of the Spanish Ombudsman. His monitoring activities set an example of organic and comprehensive measures

for defence from gender violence. The Spanish Ombudsman's office gets information about cases of discrimination and violence on a gender basis from bodies of state power, informs the authorities about such incidents, and has an advisory role.

In conclusion, I would like to inform you about our plans of broadening powers and capabilities of national human rights institutions. We are currently restructuring the map of best practices of prevention of violence. It will be supplemented with a guidebook for oversight of institutions in charge of monitoring places of deprivation of liberty and pre-trial detention centres. We also plan to work together with national security and defence committees of national parliaments for integration of human rights issues and gender aspects in the functions of inspection and oversight of the executive branch. At that, we plan to cover not only the police and ministries of internal affairs, but also the defence agencies.



OMBUDS INSTITUTIONS FOR THE POLICE AND LAW ENFORCEMENT AGENCIES: BEST PRACTICES⁶

Nazli YILDIRIM, DCAF Consultant



Today, I would like to draw your attention to some key features of efficient oversight: independence, mandate, and powers to handle complaints about actions of police officers. I will try to prove these points with concrete facts from the international experience.

The importance of independence of oversight institutions was mentioned more than once today. What exactly do we mean by their independence? One important aspect of independence is apparently presented by hierarchic independence. Oversight institutions should have subordination entirely different from that of law-enforcement bodies. While law-enforcement bodies report to the minister of internal affairs, independent oversight institutions should report directly to parliament or another ministry, for instance, the ministry of justice, in some cases. For instance, in Belgium, the *Permanent Oversight Committee* on the Police Services reports directly to Parliament, while in Northern Ireland, the Police Ombudsman reports to the Department of Justice.

The next factor of independence is financial. It means not only the existence of sufficient human and financial resources, but also the guaranteed minimal budget,

⁶ Reverse translation.

provided for the parliamentary control mechanism. Oversight institutions should act without fear that their budget will be halved because of overly critical actions with respect to law-enforcement bodies.

Another key aspect of independence is operational independence at investigation of complaints about police actions. The best example is presented by the Northern Ireland Police Ombudsman, possessing very strong investigative powers. There are also other examples of institutions handling complaints about police actions: the Irish Ombudsman, the Danish one, and, to some extent, the English and Welsh independent institutions handling complaints about police actions. They all have investigative powers, independent from oversight bodies. We can generally categorise them into two categories. The first category includes oversight bodies with a broad mandate, i.e., national ombudsman institutions, overseeing police in the context of the general duties. The second one includes specialised oversight institutions (Police Ombudsman in Northern Ireland, Independent Complaints Directorate in South Africa, Independent Police Conduct Authority in New Zealand). They focus solely on police oversight: handle complaints, control strategies, policies and practices of law-enforcement bodies' activity.

Another recent survey has shown that specialised institutions get far more complaints than institutions of the ombudsman with a general mandate. The reason is that specialised institutions, having more powers and resources, make the public more confident that their complaints will be effectively investigated.

Specialised institutions, in their turn, may be further divided into two groups. Some specialised institutions handle all complaints about police actions, from the most serious ones to mistreatment of society members by police officers (Northern Ireland, the Netherlands). In England and Wales, independent complaint handling commissions focus only on serious violations (violence, instances of cruel treatment, injuries and tortures).

There is no single correct approach to this issue. If the country resources are sufficient, specialised oversight bodies are offered a choice of broad or narrow powers, depending on the complaint type, specificity of their country, police history, human rights violations in the past and the actual crime trend. The United Nations Organisation recommends oversight bodies to have the broadest possible powers to handle all kinds of complaints about the police, but where resources are missing, the focus should be only on cases of death and heavy injuries.

To be sure, the efficiency of the Ombudsman's office and specialised oversight bodies largely depends not only on the completeness of powers, but also on how they are exercised. Relevant practices in different countries seriously differ. At the very least, they are authorised to obtain and record complaints about police actions. This does not guarantee however that a complaint will be effectively

investigated. The Brazilian Ombudsman's office has created a complete database of all complaints about police they got. They subdivided it on geographic, gender, age bases, analysed that database and found some regularities. The Brazilian police got relevant conclusions, for instance, regarding the trend to "shoot to kill" in some regions and recommendations to do away with that practice. Those recommendations were taken into account by the Brazilian authorities.

An import prerequisite of the efficiency of oversight institutions' work is presented by the policemen's confidence in the need of cooperation during investigation. It is important to have the norm of police cooperation in the law. It should not depend on the good will of a police executive who decides, whether to cooperate or not. For instance, in New Zealand the police is legally obliged to notify the oversight body about the instances where actions of police officers have led to a serious injury. In South Africa, the police must give all required documents to the Independent Complaints Directorate for their investigation.

The Police Ombudsman in Northern Ireland is seen as the golden standard in this respect, because he has everything: a team of investigators, technical capabilities and technologies of search and interrogation of witnesses (surveillance cameras, forensic experts), and everything to conduct investigation on their own. They even have the powers to arrest and detain in the case of emergency. They have the powers to call in witnesses for questioning, to search records of surveillance cameras, to enter premises and to access police databases.

What mechanisms make oversight bodies more efficient? As a rule, material elements of criminal conduct or a criminal offence are presented to the prosecutor. But as we hear from the ombudsman institutions, prosecutors do nothing, while we can monitor their work. A prosecutor can protract investigation or not start it at all. The *Danish Independent Police Complaints Authority* may appeal against the prosecutor's decision not to institute proceedings. They can apply to the superior prosecutor, which does not guarantee reopening of the case, of course, but gives a chance.

If an ombudsman's institution detects a disciplinary offence, recommendations are normally given to the police executive, and it depends on the executive, whether disciplinary sanctions will be imposed or not. In Northern Ireland, if a police executive does not accept recommendations or neglects them, the Ombudsman may insist on calling a disciplinary court for repeated review of the Police Ombudsman recommendations. This does not mean that a disciplinary court will ultimately demand fulfilment of recommendations either, but this gives the Police Ombudsman of Northern Ireland an additional tool.

A common remaining problem is that recommendations following investigations are sent to the authorities, but the authorities do not reply to them. There is no reaction, despite international standards, good practices and

the authorities' duty to give a written response, even if such a demand is not prescribed in the law. Many countries have such a norm in their legislation. In England and Wales, the law obliges the authorities to inform about the measures taken, explaining, which recommendations were met and which were not, and why. The Independent Police Complaints Commission in Great Britain has recently introduced the practice of publication of responses on its web site.

My presentation dealt with complaint handling, being only one of the functions of the Ombudsman's office and specialised oversight bodies. Control of strategies, policies and practices of law-enforcement bodies is a no less important function of oversight bodies. I bring to your notice references to Internet resources, where you can find practical instances of activity of oversight institutions, experience of solution of systemic problems.⁷

⁷ Garda Ombudsman (Ireland) – <http://www.gardaombudsman.ie/about/about.html>; Northern Ireland Police Ombudsman – <https://www.policeombudsman.org>; Independent Police Complaints Commission (England and Wales) – <https://www.ipcc.gov.uk>; Independent Police Complaints Authority (Denmark) – <http://www.politiklagemyndigheden.dk/english>; Independent Police Conduct Authority (New Zealand) – <http://www.ipca.govt.nz>; Independent Police Investigative Directorate (SA) – www.icd.gov.za; Ombudsman's Office (Brazil) – <https://www.embrapa.br/en/ouvidoria>; Committee P (Belgium) – <http://www.comitep.be/EN/index.asp>; Office of the Commissioner for Fundamental Rights (Hungary) – <https://www.ajbh.hu/en/web/ajbh-en/about-the-office>; Police Oversight Principles. European Partners Against Corruption (EPAC) 2012 – www.epac.at/download/EPAC_Handbook_Online.pdf.

OMBUDS INSTITUTIONS FOR THE ARMED FORCES: BEST PRACTICES

**Will Mc DERMOTT, Project Officer,
DCAF Geneva**



Summing up the best international experience of the institution of the military ombudsman, all five key features of their activity should be mentioned in the first place: 1) his activity encompasses the armed forces; 2) his activity focuses on complaint handling; 3) he defends human rights; 4) its purpose is to prevent bad governance, and, finally and very importantly, 5) they are independent and unbiased in their work. If an ombudsman meets all these features, really discharges all the five functions, then we can speak about rather a strong position of the institution.

We can also identify three main models of the military ombudsman. The first model rests on internal mechanisms of complaint handling. Normally, this is the main inspection of the defence ministry, working in subordination (the Netherlands, the USA, the Czech Republic). This model has its advantages – it carries special expertise, since it is usually staffed by the armed forces’ officers. The ombudsman has huge experience in issues dealing with the military, broad access to information as an armed forces officer. Its main drawback is that such an ombudsman is not independent. They often make friends with commanders. Military servants abstain from filing complaints, fearing that their complaints will not be properly investigated. Such instances are many.

The second model is the general institution of the ombudsman. His powers encompass oversight of all branches of power, the military sector being only a separate segment (Poland, Serbia, Ukraine, Sweden). The main advantage of this model is in its high social status. Most citizens are aware of the ombudsman's activity, they enjoy great popularity and can receive applications. As a rule, they are more independent, since they are not administratively tied with the armed forces. Their weak points include lack of special knowledge, which does not allow him to fully understand some problems of the armed forces; limited access to the armed forces in absence of good cooperation with the defence agency. This can complicate investigation of complaints.

The third model is the institution of the military ombudsman as a hybrid of the two former institutions (Great Britain, Germany, Canada). A specialised ombudsman is fully independent from the defence ministry but deals only with cases concerning the armed forces. At that, the weak point of such a model is the danger of duplication of powers and rivalry, which can be avoided only in presence of clear-cut coordination and the will to cooperation between institutions.

Such division is rather relative, as are the mentioned advantages and disadvantages. An ombudsman's deputy can be an expert in military matters, possessing the experience and knowledge in issues dealing with the armed forces. And vice versa, a national ombudsman may be perceived closely related with government officials and therefore, not independent.

That is why it is important to have an institution continuously working to rectify defects, despite deficiencies in the law. It is really important to make the institution workable, rather than to try to create a perfect system. Indeed, it is good to have an institution with strong powers, but this will all be in vain, if that institution is not respected.

There are a number of general problems dealing with military ombudsman institutions. The same problems are faced by institutions of the police ombudsman and ombudsman institutions in general. They suffer from inadequacy of their mandates or powers, lack of resources, insufficient awareness of society and a negative attitude to them (deserved or not). Even the most smartly designed institutions not always work perfectly, especially if they are not developing and do not adapt their activity to the changing situation.

For instance, in Finland, they had to introduce amendments to the law. The law, written in 1920s, provided that the Human Rights Commissioner must investigate all the obtained complaints. Its authors could not envisage how simplified the process of dispatch of letters can be by email, which translated into a tide of niggles, which the Ombudsman was obliged to investigate. On the Ombudsman's request, the Parliament revised the norms of the law and let him ignore such complaints.

In Georgia, the Ombudsman has no right to initiate his own investigations going beyond the subject matter of a complaint. However, the ombudsman institution rather soon came to the conclusion that investigation of a specific case often reveals larger systemic problems that require additional investigation to draft recommendations for systemic remedy of deficiencies. The Ombudsman is seeking formal recognition of the right to conduct investigation on his own, but per se, already exercises it, not waiting for an official decision.

The legislation of Tajikistan does not empower the Ombudsman to visit military units, but thanks to good relations with the defence agency, inspection visits can be made for several years now. There is a hope that such cooperation will soon be formalised in a law.

The greatest obstacle for efficient work of the institutions of ombudsman is presented by the lack of resources. There is a long-standing problem of understaffing and lack of funds. Unfortunately, funding is used as a political tool, to impair the ombudsman, to deprive him of a possibility to conduct investigation with respect to certain persons or sectors. Hence, proper and stable funding is critically important. Ombudsman institutions should have a possibility to hire the required specialists – experts possessing special knowledge (legal, military), necessary for efficient investigation of complaints.

Finally, a serious challenge for the institutions of ombudsman is reputation. Reputation involves trust of citizens, but the trust of the defence agency is no less important. When the institution of the military ombudsman appeared in Norway in 1950s, initially, there was much scepticism and even discussion about its liquidation, but thanks to resolute support from then Minister of Defence, those discussions ended in nothing, and the institution has been active for 65 years now.

Another key aspect – building trust and confidence on the part of the military. This is achieved through regular inspection of military bases, communication with commanders and men, discussion of problems faced by them. Powers of the Dutch Inspector General include regular communication with military servants with the purpose of familiarisation and information of soldiers about the institution's activity and their right to file complaints. The German Parliamentary Commissioner, too, regularly meets military servants to talk without any special occasion.

Such visits sometimes reveal current problems. When the German Commissioner visited soldiers based in Afghanistan, they complained about the quality of food. Soldiers' complaints about food in the army are rather typical, but the Commissioner decided to go into detail and found out that there really was a problem related with the overly complex procedure of transportation of foodstuff from Germany to Afghanistan. As a result, amendments were made

that improved soldiers' food and reduced cost. It might have been a minor problem, but this example shows that simple communication can facilitate changes, important for soldiers. In reality, even difficult problems do not necessarily require overly complex solutions.



WORKING GROUPS' DISCUSSIONS⁸

(EXTRACTS)



THERE WERE THREE WGS:

- I. NATIONAL OMBUDS INSTITUTION;
- II. MILITARY OMBUDS INSTITUTIONS;
- III. LAW ENFORCEMENT OMBUDS INSTITUTIONS.

⁸ The Working Groups were conducted under the Chatham House rules. Therefore, all statements, except those that were made with a clear and intentional connection to the authors, are presented anonymously.

In the present-day conditions, there is no sense to pay so much attention to the necessity of amending the Constitution regarding a commissioner in charge of oversight of various power structures, and moreover, to make division into military and police ombudsman. Given how our parliament works, we will only waste time on discussion.

Today's situation in the country is characterised by a serious decline of law and order in the life of the state. In the years of independence, our people, including the people in uniform, have never been so vulnerable to arbitrariness and unlawfulness.

I believe that there is one Commissioner, responsible to the Verkhovna Rada, the law, and the people of Ukraine. In addition, she is engaged in international activities, defending human rights. There should be a national Human Rights Commissioner, and there should be representatives of the Human Rights Commissioner in the domains of: the Ministry of Defence and the Armed Forces, the Ministry of Internal Affairs and the National Police, the National Guard, a representative in charge of the Security Service of Ukraine and intelligence bodies.

During working meetings, representatives the Ministry of Internal Affairs and the Ombudsman failed to agree on conduct of joint inspections, but such joint inspections became possible thanks to good contacts and cooperation at the local level. These joint efforts produce results.

The Department of Human Rights of the National Police of Ukraine has an oversight role in internal investigations. Internal investigations may concern different facts – from breach of the right to applications to instances, where an application actually means a report of a criminal incident.

In 2010, there were plans to introduce dual subordination of the Department of Human Rights to the Ministry of Internal Affairs and to the Ombudsman, but that initiative was intentionally obstructed due to the low respect for then Ombudsman (Nina Karpachova).

On the one hand, a central executive body is independent, on the other – controlled. What independence can we talk about, if you are within the structure of the National Police?

Within our system, there can be either a police ombudsman, that is, a new structure, or the second option – expansion of the powers of the National Ombudsman's office. We can create structures to defend human rights in other ministries and agencies, but first of all, inspection of one matter by five different agencies should be ruled out. Second, keep in mind that any system requires resources.

The issue of dual subordination is not on the agenda now, because this would lead to the growth of the bureaucratic machinery. Close cooperation of civil society representatives with representatives of the law-enforcement sector will best of all contribute to the end result.

Starting from 2012, when the new Code of Criminal Procedure of Ukraine entered into force, the Border Service does not perform functions of preliminary investigation, initiation of a criminal case, detention as suspects. Detention on the border involves a short list of procedural actions lasting up to 72 hours with an obligatory notice to the prosecutor.

Media reports not always reflect the whole picture or the full range of possible incidents involving foreigners on the border. Representatives of non-governmental organisations, ombudsman's representatives can confirm that there were instances, where dishonest persons or organisations, under the guise of their mandate, used specific situations to their favour.

I will unlock a big secret about “covert prisons of the Security Service of Ukraine” – they do not exist. The recent months have seen an event, unprecedented in the history of special services – a visit of a UN Delegation jointly with representatives of the Commissioner and public organisations to the Security Service of Ukraine territorial branches. Access was provided to all official premises at the Delegation's choice. Within the ATO area, those civic activists who reported existence of detention facilities at certain places also took part in the commission's work. Those reports were not confirmed.

Regarding clearance to work in the Security Service of Ukraine for the Ombudsman alone – it is a question of physical access to all the premises. There are no obstacles for the work of her subordinates, their access to documentation in specially allocated premises, observance of the requirements of state secrecy. I see nothing extraordinary here, in the context of the international practice. Any special service has certain restrictions on access for persons who have no state secret clearance.

The notions of departmental and independent are antonymous. A departmental body cannot be independent *a priori*, especially under the Ukrainian bureaucratic traditions.

Any law-enforcement body has internal security, internal inspection, and a number of external oversight structures. We could improve cooperation without spending additional resources by writing interagency regulations, for instance, of the Security Service of Ukraine, the General Prosecutor's Office and the Commissioner's Office. A departmental order on contacts with the Human Rights Commissioner may be needed. For a rank-and-file man in uniform, the word of his commander in such a situation matters more than the requirements of the law. No commander of a military unit will let a civilian in a military unit without an order from the General Staff. In presence of common regulations, he knows what to do, while the Commissioner's representatives know better, what to expect.

Indeed, institution of departmental ombudsman is not a way out, because it is unrealistic to speak about their independence within the agency.

I wish to note that all military servants are to file complaints up the chain. This means that only when the uppermost commander fails to solve the issue, they can apply to the Ombudsman. Personal data of the majority of the Security Service of Ukraine operatives are protected by the law, officers are forbidden to reveal their affiliation. This means disclosure of confidential information. This is even more true for officers of intelligence bodies. For instance, a foreign intelligence officer cannot reveal his identity without pulling the plug on his future professional career.

In the context of reformation of public prosecution offices, the function of oversight of observance of human rights in places of deprivation of liberty will be transferred to penitentiary inspections, as envisaged by the Constitution. This function stays with public prosecution offices until the creation of those bodies.

Public prosecution offices have set up a new unit that monitors provision of medical assistance to prisoners and convicts. The problem of medical assistance was assigned to a separate unit, since the rights of prisoners are violated exactly because of the absence of medical assistance. According to the Ministry of Justice, over 10 months of 2016, 430 prisoners and convicts died, every third of them – of HIV/AIDS or tuberculosis.

The military experiences problems with many social issues that should have been dealt with by the Ombudsman as an institution, independent from the military command and designed to monitor rights of military servants, either declared and not granted, or violated by the state. People apply to commanders, because they have real mechanisms, at least, in the people's eyes.

I would like all of us to have at least the first idea of the functions and rights of the Commissioner, to understand that she does not solve problems falling within the competence of the legislative and executive branches. The Ombudsman's functions are to oversee and to inform, meaning detection of individual and systemic problems, their analysis and notification of bodies of state and military governance, whose competence covers guarantees of those rights. The Ombudsman does not and should not have other tools.

Cooperation with public associations should be a "two-way street". The success of the National Preventive Mechanism was made possible by the significant portion of work, assumed by public offices of the Ombudsman in the regions.

The Ombudsman's communication channels include not only official documents but also public activity through public organisations and mass media.

The institution defending human rights should have a national status. It represents the interests of citizens, defends their rights at all levels and is not reduced to just one agency. This is desirable not only out of principle, but also because of the essence of the rights of military servants, who depend not only on acts of the Defence Ministry, but also on decisions of the Government and the Verkhovna Rada.

Today, the Commissioner's Secretariat has no resources for the activity of the "military" ombudsman. The budget did not specify such a unit, functions were just reallocated within the Secretariat, using the staff and funds of the other units. Lack of resources makes them to use military transport during monitoring visits, which creates kind of a conflict and certain dependence on those, whom they inspect.

The existence of the "military" ombudsman within the structure of the national institution will enable employment of the material resources and administrative staff of the Ombudsman's office and experts in gender equality, access to information, etc.

The system of internal control in the Defence Ministry is among the most powerful in the country. It includes the Chief Inspectorate, the Military Law and Order Service, the Financial Service, and the Legal Service. The Defence Minister can promptly get all the information he needs. So, one should not hope that the issues of observance of the rights of military servants can be resolved through the ombudsman institution alone.

The Defence Ministry has a department in charge of work with citizens and access to public information, responsible for handling applications of citizens. There are several channels for incoming applications: hotlines, electronic and paper mail, personal reception of citizens, public reception offices of the Minister of Defence in Kyiv and in the regions (12).

The system of internal inspections in the Defence Ministry is inflated and does not meet the requirements of civilian democratic control. Perfection and reformation of the structure and procedures of internal control of observance of the rights of military servants within the Defence Ministry is useful, but the Ministry cannot substitute and take upon itself the function of external civilian democratic control that should be exercised beyond that system.

We have a fair regulatory framework for establishment of contacts between the Commissioner's office and, say, the Defence Ministry. The Commissioner has access to all levels of information, and all talk about secrecy is nothing but excuses. So, thanks, in particular, to this platform, we better realise, what we should focus on in practical terms.

Cooperation should be promoted by signing interagency regulations, without overmanning the staff of the national Ombudsman. For a man in uniform, the word of his commander in an emergency situation matters more than requirements of a legislative act. When he and his commander have regulations, they will know what to do, when meeting the Commissioner's representatives, while the Commissioner's representatives will know what to expect.

Violations of human rights during operational search measures and intelligence activities should be investigated by special prosecutors. For that, they don't need access to all the information, only to the procedures.

It offends me to hear that the National Police should have a body overseeing police officers. A policeman should himself stand guard over the law, set an example, and the concerned executives – be responsible for their subordinates. Excessive activity of the public in state governance erodes the principle of responsibility.

People in uniform are really afraid of filing applications to defend their legitimate rights. Hence, we see a paradox, where handsome and courageous defenders of the state are ready to sacrifice their lives, but are not so courageous defending their rights, guaranteed by the state. As a rule, more than 90% are anonymous, fake applications, or those complaints are sent on behalf of relatives. Why is the situation unfolding like that, and what are the ways of solution of those problems? How to find the golden mean that would make it possible to combine observance of regulatory requirements, unwritten corporate rules and to ensure protection of the rights of the people in uniform?

I see the main reason, apart from those that were mentioned, in that the criterion of observance of human rights in the system of human resources management is unimportant or totally absent. Criteria of mission performance outweighs all other factors. This is true not only for combat conditions. Indeed, in combat, performance of the mission is a priority despite even some violations, since it is a question of human lives, sovereignty and territorial integrity of the country. But even in routine service, the focus is on performance of missions at any cost, not involving criminal responsibility. The criterion of observance of human rights is formally absent. We see it from the reaction to the proceedings initiated by the Human Rights Commissioner.

If there is a violation of the rights of a military servant by a specific commander, those rights are restored after such proceedings. However, the strongest reaction to the actions or inaction of an official involves a minor admonition, not even a reprimand. There were instances, where the rights of a military servant were restored by his superior, but after that, the military servant faced pressure on other pretexts.

