LAW OF UKRAINE "On the Ukrainian Parliament Commissioner for Human Rights"

(The Official bulletin of the Verkhovna Rada of Ukraine


(As for the constitutional recognition of certain provisions, see.

Decision of the Constitutional Court № 5-pn/2000 (v005p710-00) of 18.04.2000.)

As amended by the Law N 274-VI (274-17) of 15.04.2008,

OBVRU , 2008, No.25, p.240.)

CHAPTER I
GENERAL PROVISIONS

Article 1. Parliamentary control over the observance of constitutional human and citizens' rights and freedoms

The Ukrainian Parliament Commissioner for Human Rights (hereinafter referred to as «the Commissioner»), governed in his or her operation by the Constitution of Ukraine, the laws of Ukraine and effective international agreements that the Verkhovna Rada of Ukraine has agreed to comply with on a mandatory basis, shall permanently exercise his or her parliamentary control over the observance of constitutional human and citizens' rights and freedoms and the protection of every individual's rights on the territory of Ukraine and within its jurisdiction.

Article 2. The scope of application of the Law

The scope of application of the Law shall extend to relations emerging from the implementation of human and citizens' rights and freedoms exclusively between a citizen of Ukraine, irrespective of his or her dwelling place, a foreigner or a stateless person, who are on the territory of Ukraine and bodies of state power and local self-government, their officials and officers.

Article 3. The purpose of exercising parliamentary control over the observance of constitutional human and citizens' rights and freedoms

The parliamentary control exercised by the Commissioner shall be aimed at:

1) protecting human and citizens' rights and freedoms proclaimed by the Constitution of Ukraine, the laws of Ukraine and international agreements of Ukraine;

2) observing and respecting human and citizens' rights and freedoms through entities indicated in Article 2 of this Law;
3) preventing acts of violation against human and citizens' rights and freedoms or the facilitation of their renewal;

4) facilitating the process of bringing legislation of Ukraine on human and citizens' rights and freedoms in accordance with the Constitution of Ukraine and international standards in this area;

5) improving and further developing international cooperation in the area of the protection of human and citizens' rights and freedoms;

6) preventing any forms of discrimination with regard to a person's implementation of his or her rights and freedoms;

7) encouraging legal knowledge among the population and protecting confidential information about each person.

Article 4. Legal status of the Commissioner

The Commissioner shall be an official, whose status is determined by the Constitution of Ukraine, this Law and the Law of Ukraine «On State Service».

The Commissioner shall be independent of other state bodies and officials in the exercise of his or her operation. The activity of the Commissioner shall be supplementary to the existing measures of protection of constitutional human and citizens' rights and freedoms; it neither repeals them nor results in reviewing the competence of state bodies which ensure the protection and restoration of violated rights and freedoms.

The authority of the Commissioner cannot be terminated or restricted in the event of expiration
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of term of the authority of the Verkhovna Rada of Ukraine or its dissolution (self-dissolution),
declaration of martial law or the state of emergency in Ukraine or in its separate areas.

The Commissioner shall have a seal, featuring a Small State Coat of Arms of Ukraine and his or
her appellation.

The capital of Ukraine – the City of Kyiv shall be the seat of the Commissioner.

CHAPTER II

APPOINTMENT TO THE POST, DISMISSAL FROM THE POST

AND TERMINATION OF AUTHORITY OF THE UKRAINIAN PARLIAMENT COMMISSIONER
FOR HUMAN RIGHTS

Article 5. Requirements for the candidate to the post of the Commissioner and appointment to
the post of the Commissioner

The Commissioner shall be appointed to his or her post and shall be dismissed from his or her
post by the Verkhovna Rada of Ukraine through a secret ballot vote.

A citizen of Ukraine, who has attained the age of 40 on the day of voting, has a good command
of the state language, high moral qualities, experience in human rights protection, and has been
residing in Ukraine for the last five years can be appointed to the post of the Commissioner.

A person who has a criminal record for committing a crime cannot be appointed the
Commissioner if the record is not cancelled or erased by the procedure established by law.
The Commissioner shall be appointed for the term of five years, commencing from the day of his or her taking oath at the session of the Verkhovna Rada of Ukraine.

Article 6. The procedure, for nominating a candidate to the post of the Commissioner

Proposals for candidate(s) to the post of the Commissioner shall be made by the Chairman of the Verkhovna Rada of Ukraine or by no fewer National Deputies of Ukraine than one-fourth of the constitutional composition of the Verkhovna Rada of Ukraine. A respective Committee of the Verkhovna Rada of Ukraine shall submit its conclusions to the Verkhovna Rada of Ukraine on each candidate to the post of the Commissioner, on how the candidate meets the requirements envisaged by the Law, and on the absence of reasons which would prevent the candidate from holding this post.

The candidate shall be nominated for appointment to the post of the Commissioner within twenty days, commencing from the next day after:

1) this Law has entered into force;

2) the term of appointment for the Commissioner has expired, his or her authority has been terminated or in the event of his or her dismissal;

3) the results of voting have been announced, in the event that the Commissioner has not been appointed.

Voting shall be conducted during plenary sessions of the Verkhovna Rada of Ukraine in the form of a secret ballot vote but no earlier than ten days and no later than twenty days upon the expiration of term for the nomination of candidates for participation in elections.
The candidate shall not be deemed appointed until he or she receives the majority of votes from National Deputies of Ukraine making up the constitutional composition of the Verkhovna Rada of Ukraine, with the resolution adopted thereof.

Should more than two candidates be nominated to the post of the Commissioner and none of them are appointed, the Verkhovna Rada of Ukraine shall repeat voting between the two candidates who have received the largest number of votes.

Voting on the appointment of the Commissioner shall be repeated in accordance with the procedure established by this Article.

Candidates for the appointment to the post of the Commissioner shall be nominated again in the event that none of the candidates received the required number of votes.

Article 7. The oath of the Commissioner

Before assuming his or her post at the session of the Verkhovna Rada of Ukraine, the Commissioner shall take the following oath:

«I (first and last name) on assuming the post of Ukrainian Parliament Commissioner for Human Rights, solemnly swear to honestly and scrupulously protect human and citizens' rights and freedoms, conscientiously perform my duties, honour the Constitution of Ukraine and laws of Ukraine, and be governed by justice and personal conscience.

I commit myself to act in an independent and unbiased manner, serving human and citizens' interests.»

The authority of the Commissioner shall be effective from the moment of taking oath.
Article 8. Incompatibility with the post of the Commissioner

The Commissioner cannot be given a representative mandate, hold any other positions at bodies of state power, perform any other work, paid or unpaid, at bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, except teaching, scholarly or any other creative activity.

The Commissioner cannot be a member of any political party.

In order to comply with the conditions stipulated in the first and second part of this Article, the Commissioner should eliminate any encumbrances within a period of ten days following his or her appointment. The Commissioner cannot take the oath until the aforementioned encumbrances are eliminated.

If the encumbrances noted in the first and second part of this Article emerged during the term of activity of the Commissioner, they should be eliminated within a period of ten days commencing from the day of disclosure.

Should elimination of these encumbrances be impossible within the period of ten days, the Commissioner shall be obligated to make, within the established period, a statement on the refusal to follow any instructions or exercise any other authority than that which is given to the Commissioner.

The authority of the Commissioner shall be terminated and the Verkhovna Rada of Ukraine shall be obligated to remove him or her from the post, in the event the Commissioner has not complied with established requirements within the aforesaid period. The new nomination of candidates and appointment of the Commissioner shall be exercised in accordance with the procedure envisaged by Article 6 of this Law.

Article 9. Termination of authority and dismissal of the Commissioner from his or her post
The authority of the Commissioner shall be terminated in the event of:

1) the refusal of the Commissioner to further comply with his or her duties through the submission of a statement of resignation;

2) the entry into legal force of a court verdict of guilty against him or her;

3) a declaration by the court that the person holding the post of the Commissioner is missing or the pronouncement that he or she is dead has entered legal force;

4) the taking of oath by the newly-elected Commissioner;

5) the death of the person holding the post of the Commissioner. The Verkhovna Rada of Ukraine shall adopt the resolution on dismissal from the post of the Commissioner prior to the expiration of term that he or she has been elected for in the event of:

1) violation of the oath;

2) incompliance with the requirements on incompatible activities;

3) termination of citizenship of Ukraine;

4) inability to comply with duties for a period exceeding four months due to unsatisfactory health conditions or the loss of ability to work.

The Temporary Special Commission of the Verkhovna Rada of Ukraine shall conclude whether
there are grounds available to dismiss the Commissioner from his or her post.

Should the aforesaid grounds be available, the Verkhovna Rada of Ukraine shall review the issues and adopt a respective resolution on dismissing the Commissioner from his or her post following an application "by the Chairman of the Verkhovna Rada of Ukraine or no fewer National Deputies of Ukraine than one-fourth of the constitutional composition of the Verkhovna Rada of Ukraine.

The Commissioner shall be deemed to be dismissed from his or her post, if the majority of National Deputies of Ukraine, making up the constitutional composition of the Verkhovna Rada of Ukraine, voted in favour thereof.

Termination of authority and dismissal of the Commissioner from his or her post shall be legalized by a respective resolution of the Verkhovna Rada of Ukraine.

CHAPTER III

ORGANIZATION OF THE ACTIVITY OF THE REPRESENTATIVE

Article 10. The secretariat of the Commissioner

A secretariat, which is a legal entity and has its own bank account and established seal, shall be formed in order to secure the activity of the Commissioner.

The structure of the secretariat, distribution of duties and other issues concerning the organization of its activity shall be governed by the Regulations on the Secretariat of the Ukrainian Parliament Commissioner for Human Rights (hereinafter referred to as «Regulations»).
The Law of Ukraine «On the State Service» shall apply to Secretariat staff members. The Regulations and the budget of the Secretariat shall be approved by the Commissioner within the scope of budget expenses allotted for the Commissioner’s activity. The appointment and dismissal of the Secretariat staff members shall be exercised by the Commissioner.

A board of advisors (which can also operate on a voluntary basis), made up of persons having practical experience in the area of protection of human and citizens’ rights and freedoms, can be formed under the Commissioner with the aim of offering consultation, conducting scientific investigations as well as examining proposals on how to improve the situation with regard to the protection of human and citizens’ rights and freedoms.

Article 1. Representatives of the Commissioner

The Commissioner shall be entitled to appoint his or her Representatives within the allocated funds approved by the Verkhovna Rada of Ukraine.

The organization of activity and scope of authority for the Representatives of the Commissioner shall be governed by Regulations on Representatives of the Ukrainian Parliament Commissioner for Human Rights, which are approved by the Commissioner.

Article 12. Procedure for financing the activity of the Commissioner

Financing for the activity of the Commissioner shall be allocated from the State Budget of Ukraine and will annually be envisaged in a separate line.

The Commissioner shall elaborate, submit to the Verkhovna Rada of Ukraine for approval and comply with his or her budgetary outlays.

The Commissioner shall submit his or her financial report in accordance with the procedure established by the legislation of Ukraine.
The Verkhovna Rada of Ukraine and respective bodies of executive power and bodies of local self-government shall form the necessary environment in which the Commissioner, his or her secretariat and delegates shall operate.

CHAPTER IV

THE AUTHORITY OF THE COMMISSIONER

Article 13. The rights of the Commissioner

The Commissioner shall be entitled to:

1) be received, without any delay, by the President of Ukraine, the Chairman of the Verkhovna Rada of Ukraine, the Prime Minister of Ukraine, the chairmen of the Constitutional Court of Ukraine, the Supreme Court of Ukraine and higher specialized courts of Ukraine, the Procurator General of Ukraine, the chairmen of other state bodies, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers;

2) attend sessions of the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the Constitutional Court of Ukraine, the Supreme Court of Ukraine, and higher specialized courts of Ukraine, the collegiums of procurators' offices of Ukraine and other collegiate bodies;

3) appeal to the Constitutional Court of Ukraine with regard to: the issue of conformity between the Constitution of Ukraine and the laws of Ukraine and other legal acts issued by the Verkhovna Rada of Ukraine, acts issued by the President of Ukraine, acts issued by the Cabinet of Ministers of Ukraine, and legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea concerning human and citizens' rights and freedoms;
the official interpretation of the Constitution of Ukraine and the laws of Ukraine;

4) visit, without hindrance, bodies of state power, bodies of local self-government, enterprises, institutions, organizations, irrespective of their forms of ownership, and be present at their sessions;

5) read documents, including classified (secret) ones and obtain copies from bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, bodies of prosecution, including cases which have been filed in court.

The access to information related to civil, military and state secrets shall be given in accordance with the procedure established by legislative acts of Ukraine;

6) demand from officials and officers of bodies of state power, bodies of local self-government, enterprises, institutions, organizations, irrespective of their forms of ownership, facilitation in conducting acts of inspection regarding the activity of enterprises, institutions and organizations under their control and subordination, and ensure that experts participate in acts of inspection, providing their expertise and respective conclusions;

7) invite officials and officers, citizens of Ukraine, foreigners and stateless persons to submit oral and written explanations with regard to cases under review;

8) visit, at any time, places of detention, holding cells, various types of facilities where convicts are imprisoned and facilities where medical treatment and rehabilitation is forcefully applied, psychiatric hospitals, interview persons who are residing there and obtain information on their living conditions;

9) attend court sessions of all instances, including court sessions held behind closed doors, in the event that the subject of the legal case at hand, in whose interest the judicial proceedings have been ruled to be held behind closed doors, has given consent;
10) appeal to the court about protecting human and citizens' rights and freedoms of persons who cannot do this on their own due to reasons of health or any other appropriate reason, and also attend judicial proceedings personally or through a delegate in accordance with the instances and procedure established by law;

11) submit to respective bodies, documents containing the response of the Commissioner to instances of violation against human and citizens' rights and freedoms, for use in taking respective measures;

12) supervise the observance of established human and citizens' rights and freedoms by respective bodies of state power, including those that conduct detective and search activity.

13) exercise control over the ensuring of equal rights and opportunities for women and men. (Article 13 has been supplemented by paragraph 13 in accordance with the Law No.274-VI of 15 April 2008)

Article 14. The duties of the Commissioner

The Commissioner shall be obligated to honour the Constitution of Ukraine and the laws of Ukraine, other legal acts, human and citizens' rights and interests protected by law, ensure the exercise of functions conferred on him or her and fully utilize the rights given to him or her.

The Commissioner shall be obligated to maintain the confidentiality of information. This obligation shall remain effective after the termination of his or her authority.

In the event that the Commissioner has disclosed this information, he or she shall be liable in accordance with the procedure established by legislation.
The Commissioner shall not be entitled to disclose information that was obtained concerning the personal life of a petitioner and other persons related to the petition, without their prior consent.

Article 15. Acts of response of the Commissioner

The acts of response of the Commissioner to violations of provisions of the Constitution of Ukraine, the laws of Ukraine, international agreements of Ukraine on human and citizens' rights and freedoms shall be constitutional submission of the Commissioner and submission to bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions and organizations, irrespective of their forms of ownership, and their officials and officers.

The constitutional submission of the Commissioner shall be an act of response submitted to the Constitutional Court of Ukraine with regard to the issue of conformity with the Constitution of Ukraine (constitutionality) of a piece of legislation of Ukraine or any other legal act issued by the Verkhovna Rada of Ukraine, by the President of Ukraine and the Cabinet of Ministers of Ukraine, by the Autonomous Republic of Crimea; and with regard to the official interpretation of the Constitution of Ukraine and the laws of Ukraine.

The submission of the Commissioner shall be the document which is submitted by the Commissioner to bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers for the purpose of assuming, within the period of one month, respective measures aimed at the elimination of revealed acts of violation against human and citizens' rights and freedoms.

Article 16. Grounds to conduct legal proceedings and assign acts of inspection

The Commissioner shall exercise his or her functions on the basis of information regarding acts of violation of human and citizens' rights and freedoms, which he or she obtains through:

1. the appeal of citizens of Ukraine, foreigners, stateless persons or their representatives;
2. the appeal of the National Deputies of Ukraine;

3. his or her own initiative.

Article 17. Consideration of appeals by the Commissioner

The Commissioner shall receive and consider appeals of citizens of Ukraine, foreigners, stateless persons or persons acting in their interests, in accordance with the Law of Ukraine «On Appeals of Citizens».

Appeals shall be submitted to the Commissioner in a written form within the period of one year after disclosure of the act of violation of human and citizens' rights and freedoms. In the case of exceptional circumstances, the period can be extended by the Commissioner, but should not exceed two years.

While considering an appeal the Commissioner shall:

1. initiate proceedings on the act of violation committed against human and citizens' rights and freedoms;

2. explain what measures the person who has filed an appeal with the Commissioner should undertake;

3. submit an appeal, as appropriate, to the body which is competent to consider the case, and control the consideration of this appeal;
4. decline consideration of an appeal.

The Commissioner shall not consider appeals which are under review in courts, shall terminate legal proceedings that have been initiated if the person concerned has filed an appeal, statement or complaint with the court.

Notification on accepting an appeal for consideration or refusal to accept an appeal for consideration shall be submitted in a written form to the person who has filed it. The refusal to accept an appeal for consideration shall be grounded.

Article 18. Annual and Special reports of the Commissioner

During the first quarter of every year, the Commissioner shall provide the Verkhovna Rada of Ukraine with an Annual report on the situation with the observance and protection of human and citizens’ rights and freedoms in Ukraine by bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers, whose acts (acts of omission) resulted in a violation of human and citizens’ rights and freedoms, and on the shortcomings discovered in legislation on human and citizens' rights and freedoms.

The Annual report should refer to instances of violation of human and citizens' rights and freedoms, in regard to which the Commissioner has undertaken necessary measures, findings of the inspections conducted within the period of one year, conclusions and recommendations aimed at improving the situation with regard to securing human and citizens' rights and freedoms.

Should the need arise, the Commissioner shall provide the Verkhovna Rada of Ukraine with a Special report (reports) on separate issues regarding the observance of human and citizens' rights and freedoms in Ukraine.

The Verkhovna Rada of Ukraine shall adopt a resolution based on an Annual and Special report (reports) presented by the Commissioner.
Annual and Special reports, along with the resolution adopted by the Verkhovna Rada of Ukraine, shall be published in official publications of the Verkhovna Rada of Ukraine.

Article 19. Participation of the Commissioner in international cooperation

The Commissioner shall participate in the preparation of reports on human rights submitted by Ukraine to international organizations in accordance with effective international agreements that the Verkhovna Rada of Ukraine has given consent to comply with on a mandatory basis.

CHAPTER V

GUARANTEES OF SECURING THE ACTIVITY OF THE COMMISSIONER

Article 20. General guarantees of the activity of the Commissioner

Interference from bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers into the activity of the Commissioner shall be prohibited.

The Commissioner shall not be obligated to provide explanations on details of cases that he or she has settled or cases that he or she is addressing.

The Commissioner shall enjoy the rights to immunity during the entire period of his or her tenure. He or she cannot be held criminally liable without consent from the Verkhovna Rada of Ukraine or be subject to administrative punishment imposed by judicial procedure, be detained, arrested, searched as well as be subject to personal examination. No one except the Prosecutor General of Ukraine can initiate criminal proceedings against the Commissioner. Should the legislation on guarantees of activity of the Commissioner, his or her Representatives
and Secretariat staff members be violated, the offending persons shall be held liable in accordance with effective legislation.

Upon the expiration of the term of tenure for which the person has been elected to the post of the Commissioner, he or she shall be provided with the job (post) previously held before the appointment and which is safeguarded for him or her during the period that he or she performs the duties of the Commissioner, or he or she shall be provided with another equivalent job (post) at the same enterprise or, if this should prove impossible, with his or her consent, at another enterprise, institution, organization.

The life and health of the Commissioner, his or her Representatives employed on a permanent basis, shall be indemnified in the form of a mandatory state insurance for the event of death, trauma, disability or illness developed during the performance of official duties. Procedure and terms of insurance shall be established by the Cabinet of Ministers of Ukraine.

Article 21. Guarantees of protection of human and civil rights during the process of appealing to the Commissioner

Anyone can appeal to the Commissioner without any restriction and hindrance in accordance with the procedure envisaged by effective legislation.

There can be neither privileges nor restrictions related to race, skin colour, religious or other beliefs, sex, ethnic and social origin, financial status, place of residence, language and other such factors when appealing to the Commissioner.

Any person under custody can appeal to the Commissioner or his or her Representatives in writing. In this instance, restrictions related to correspondence shall not apply to this individual. Correspondence from this individual shall be dispatched to the Commissioner within the period of twenty-four hours.

Correspondence meant for the Commissioner and his or her Representatives from persons who are detained, arrested, in custody, or in various types of prison facilities and facilities where
medical treatment is forcefully applied, as well as from other citizens of Ukraine, foreigners and stateless persons, irrespective of their place of residence, shall not be subject to any censorship and inspection.

Those persons who have committed acts prohibited by this Article shall be held liable in accordance with effective legislation.

Article 22. Obligation to cooperate with the Commissioner

Bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, officials and officers addressed to by the Commissioner shall be obligated to cooperate with him or her and assist him or her, as appropriate, in:

1) ensuring access to materials and documents, as well as under provisions of the regulation acts on the protection of state and official secrets;

2) providing information and explanations with regard to the factual and legal basis of their acts and decisions.

Any refusal to cooperate by bodies of state power, bodies of local self-government, associations of citizens, enterprises, institutions, organizations, irrespective of their forms of ownership, their officials and officers as well as deliberate concealment or the providing of false information, illegal interference into the activity of the Commissioner with the purpose of counteraction shall incur liability in accordance with effective legislation.

CHAPTER VI

CONCLUDING PROVISIONS
1. This Law shall become effective on the day of its publication.

2. The Cabinet of Ministers of Ukraine shall, by 1 February 1998:

provide the Verkhovna Rada of Ukraine with proposals on bringing legislative documents of Ukraine in conformity with the Law of Ukraine «On the Ukrainian Parliament Commissioner for Human Rights»; bring resolutions of the Government of Ukraine in conformity with this Law; ensure that ministries and other central bodies of executive power of Ukraine review and repeal normative acts which contradict this Law.

President of Ukraine L. KUCHMA

Kyiv, 23 December 1997 №776/97 – BP