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# КОНСТИТУЦИОННОЕ, НАЛОГОВОЕ И МЕЖДУНАРОДНОЕ ПРАВО CONSTITUTIONAL LAW, TAX LAW AND INTERNATIONAL LAW

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## Comparative legal analysis of the Ombudsman institution of Kazakhstan and Turkey for compliance with international documents

The purpose of the article is to comparatively reveal the structure and activity of the ombudsman institute in Kazakhstan and Turkey and evaluate it in terms of international standards. In this context, the compliance of the ombudsman institutions of the two countries with the international documents, which regulate the status of national human rights institutions, was studied. The normative basis of their duties and powers, and international standards, will be examined, and if there are any shortcomings, they will be identified and recommendations will be made on what to do to improve them. In order to protect human rights and freedoms, the importance of the ombudsman institution in the society and its place in the state legal system was analyzed. Additionally, the status of the ombudsman institution, the order of creation and appointment to the position was studied. The requirements and duties of the ombudsmen of the two countries were shown. It was also determined that the norms of the internal legislation of the two states regarding the institution of ombudsman correspond to the principles of Paris and Vienna. In this context, proposals were made to improve internal legislation. To conduct scientific research work, the national laws were studied such as “On the Commissioner for Human Rights of the Republic of Kazakhstan” dated November 5, 2022 and the Law “On the Ombudsman Institute” of Turkey dated June 29, 2012. Result of the research work, some inconsistencies were obtained with international standards in the laws governing the activities of the ombudsman institution.

*Keywords:* Ombudsman, human rights commissioner, national human rights institutions, Paris principles of the United Nations, international standard, legal status, protection human rights.

### Introduction

After World War II, there was a need to protect and promote human rights at the global level. For this purpose, various protection mechanisms have been established through international and regional organizations. However, domestic laws primarily authorized to protect human rights. In this context, national human rights institutions (hereinafter referred to as the National Human Rights Institutions) were needed to transfer the human rights norms defined at the international level to national legal systems. For this reason, there is a temporal parallel between the protection of human rights at the international level and the emergence of national human rights institutions. In fact, it is no coincidence that since the founding of the United Nations (1945), national human rights institutions have been constantly encouraged [1]. The HRC “*is a key*

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*component of human rights protection systems and has an important role in the promotion and protection of human rights in democratic countries*” [2]. These institutions are “*links between government and civil society, between national and international systems*”. It serves as a bridge at the national level in the fulfillment of the state's international obligations in the field of human rights [3]. National human rights institutions have become widespread around the world, especially in the post-Cold War period. States have established human rights institutions under various names. Although their names, establishment and working principles are different from each other in many ways, these institutions appear as completely new entities apart from governmental and non-governmental organizations aimed at the protection and development of human rights at the national level.

The ombudsman also forms a type of national human rights institution. The institution of the ombudsman, which first implemented in Sweden in 1713 and whose constitutional status regulated by the Constitution of 1809, spread throughout the world, especially after the 1950s. Today, we see that approximately two out of three United Nations member states have an ombudsman, or institutions known by various names, that perform the same function. The Consultative Assembly of the Council of Europe in 1975 and in its recommendation decision No. 457, considering that the institution of the ombudsman has an effective function in the protection of human rights, proposed the creation of such institutions in the member states [4]. In this recommendation, the Council emphasized the importance of the ombudsman institution and emphasized that member states should establish ombudsman institutions that work on national, regional, local or specific issues [5]. A similar development took place in the European Union. The Maastricht Treaty, which entered into force in 1993, established the European Ombudsman to work within the Union. On the other hand, on March 15, 2019, the European Commission for Democracy through Law (abbreviated Venice Commission), the Council of Europe's department responsible for providing consultations and legal reviews on issues of democracy, human rights and the rule of law, “Preserving and developing the institution of the Ombudsman (Venice Principles)” accepted the principles [6]. This document, called “Venice Principles” for short, defined the standard principles of the ombudsman institution with reference to the Paris Principles and the recommendations of the Council of Europe on national human rights institutions in general, in particular ombudsman institutions. The Parliamentary Assembly of the Council of Europe [7] later approved these principles. In addition, paragraph No. 2 of the UN General Assembly resolution No. A/RES/75/186 (“The role of ombudsman and mediation institutions in ensuring and protecting human rights, good governance and the rule of law”) [8] states. Paragraph No. 8 of the report states that “the principles of establishment and operation of ombudsman and mediator institutions should be consistent with the Paris Principles, the Venice Principles and other international documents. Many studies have been written about the history, structure, functions, and establishment and working principles of the Ombudsman Institute in different countries. However, no research has conducted to compare the institution of the ombudsman in Kazakhstan and Turkey and evaluate the institutions of the two countries in terms of other international documents, especially the Paris Principles and the Venice Principles. We directly address this issue in this study.

#### *Methods and Materials*

It was carried out within the framework of internal legislation (Constitutional Law of the Republic of Kazakhstan “On the Ombudsman for Human Rights” adopted on November 5, 2022 [9]) and No. 6328 of June 29, 2012 “Law of the Republic of Turkey on the Ombudsman Institution” [10]). During the legal comparison, the compliance of the institutions of the two countries with the Paris principles of the United Nations and the Venice principles of the Council of Europe is determined. In this study, on the one hand, the Ombudsman of the Republic of Kazakhstan and the Ombudsman of the Republic of Turkey will be compared in various aspects. On the other hand, the situation of these two institutions against the standards introduced for national human rights institutions in international documents such as the United Nations Paris Principles and the Council of Europe Venice Principles will be revealed.

#### *Results*

Below we will research the structure, legal status and competence of the institutions of the two countries in accordance with international standards:

1. *According to the legal regulatory basis of the institution.* According to the Paris Principles and the Venice Principles, law should regulate the establishment of national human rights institutions (the ombudsman institution also forms a group of national human rights institutions) should base on a constitutional framework or their establishment and operation. As an institution established based on constitutional law, it

means that the institution given prestige and importance. On November 5, 2022, the Constitutional Law “On the Commissioner for Human Rights of the Republic of Kazakhstan” was adopted. Article 83–1 of the Constitution states: “The representative for human rights in the Republic of Kazakhstan shall assist in the restoration of the violated rights and freedoms of a person and a citizen, promote the rights and freedoms of a person and a citizen”. In addition, this article includes the guarantees of the Human Rights Commissioner, and it stated that law regulates the status, establishment and working principles of the institution. The activities of the ombudsman institute in the Republic of Turkey were regulated by the Constitution. In Turkey, the ombudsman called “Public Inspector”. It is introduced by amendments to the Constitution in 2010. According to Article 74 of the Constitution, everyone has the right to apply to the ombudsman. It is said, that the Ombudsman institution established under the presidency of the Supreme National Committee of Turkey is responsible for considering complaints about the work of the administration. The Law referred to in the Constitution is Law No. 6328 of June 29, 2012 “Law on the Ombudsman”. In light of the above explanations, both countries can see this institution as an institution with constitutional status according to international documents. In our opinion, this is a very fine-tuning.

2. *The construction model.* There is no standard model for national human rights institutions (NHRIs). The main thing is to follow the standard principles. In some countries it works as a board and in some countries it works as a single person. This style of ombudsman can also receive “accreditation of national human rights institutions”, even if it does not meet the “pluralist structure” required by the Paris Principles for the creation of national human rights institutions, as it is composed of one person. On the other hand, a subject-specific human rights ombudsman or a general ombudsman may be established. For example, Canadian prison ombudsman, Northern Ireland police ombudsman. In the Republic of Kazakhstan, a one-person human rights ombudsman institute was adopting, while in the Republic of Turkey, a multi-person model was adopting. According to the law, the institution consists of the chief ombudsman and five ombudsmen (Article 4–3). If we consider the field of activity and other features of the institutions of the two countries, it is clear that they belong to the category of national law enforcement institutions mentioned in international documents. There are many examples of both models in the world. The Vienna Declaration and Plan of Action, adopted after the World Conference on Human Rights, states that national human rights institutions can play an important role in the protection and promotion of human rights, and that each state has the right to choose a model of human rights that suits itself [11].

3. *Status.* From the point of view of the Paris principles, the most basic element in national human rights institutions is their autonomy or independence. This issue is explained in all its requirements in articles 2 and 3 of the chapter “formation, independence and pluralism” of the Paris principles. Independence is essential to the effectiveness, credibility and legitimacy of a national human rights institution. Institutional independence is not judicial independence. Here, the independence of the ombudsman means that he is not subject to any pressure from the state authorities while performing his duties and exercising his power and his duty cannot be terminate; disobeying the orders and instructions of the executive body while performing its duties. First, the national law enforcement agency should have an institutional structure independent of the executive power of the state. This statement should be reflecting in the norms that are the source of its establishment. Principle 14 of the Venice Principles states this: “*The Ombudsman shall not be given to any instructions and shall not be subject to the instructions of any authority*”.

According to A.B. Uzakbayeva, the ombudsman, as a legal institution, should be independent from any state body and official who may influence its decisions and should respond to the principles of non-reporting. This feature is an indispensable condition of the ombudsman [12]. In order for this element to exist, the principles of establishment and operation of the ombudsman must be providing by the constitution or law. In order for the institute to act independently against state bodies, it is necessary to have a constitutional basis [13].

The first paragraph of Article 3 of the Law “On Human Rights Commissioner of the Republic of Kazakhstan” states, that: “*The Commissioner performs his duties independently, he does not report to any state body or official*”. Paragraph 1 of Article 12 of the Law on the Institution of the Ombudsman in Turkey states: “*No body, institution, body or person can issue orders or instructions to the Ombudsman and ombudsmen regarding their duties*”. The second paragraph of this article states, “The Ombudsman and Ombudsmen is obliged to act in accordance with the principle of neutrality while performing his duties. According to Article 3 of Chapter 1 of the Law “On the Ombudsman for Human Rights in the Republic of Kazakhstan”, without the permission of the Senate of the Parliament of the Republic of Kazakhstan, the ombudsman may not be arresting, detained, arrested or put under house arresting, serious crimes may not be committed

while performing his duties. It is not possible to initiate a criminal case against them, impose or apply administrative punishment. Except for the exceptions provided by law, no restrictions can be placed on their rights. The same immunities apply to ombudsmen in Turkey. If it is proved that the Chief Ombudsman or Ombudsmen have committed a crime in connection with the performance of their duties, criminal investigation and prosecution against them may only be carried out with the permission of the President of the Supreme National Assembly of Turkey (Article 31–1). The relevant chamber of the State Council is the body that appeals against the decision to grant or deny a permit. According to the law, immunity does not apply in the case of a crime under the jurisdiction of a superior criminal court. At the same time, investigation and criminal prosecution carried out in compliance with general rules (Article 31–4). On the other hand, interfering with the legal activities of the ombudsman in the Republic of Kazakhstan entails responsibility specified in the laws of the Republic of Kazakhstan, which the ombudsman will indicate in his annual report. The law provides the following guarantees to the ombudsman (Article 3):

- The ombudsman cannot be as a witness about the information and circumstances he learned during the performance of his official duties;
- During the implementation of the ombudsman's activities, his safety is guaranteed in accordance with the legislation of the Republic of Kazakhstan.
- The ombudsman has the right to freely visit institutions and other places on the territory of the Republic of Kazakhstan upon presentation of his service identification.

According to Rule 23 of the Venice Principles: “The Ombudsman, his deputies and decision-making officials shall enjoy immunity from official statements made orally or in writing”. This immunity, also called functional immunity, is available even after the ombudsman will be dismissed from his position or ceases his duties. In our opinion, the functional guarantees provided by law regarding the ombudsman should also be taken into account for the employees and representatives of the ombudsman institution. In addition, the Law “On the Human Rights Commissioner of the Republic of Kazakhstan” does not have a provision that allows the ombudsman to use functional immunity after his dismissal or the end of his term of office. In Turkish legislation, there is no regulation on this issue in the Law on the Institution of Ombudsman. It should be noted, that the lack of regulation on this issue in the ombudsman legislation of both countries does not meet international standards.

4. *From the point of view of establishment of the institution.* One of the important international standards regarding the ombudsman concerns the formation of the institution. The Paris Principles and the Venice Principles of the UN determine the criteria for appointing the members of the institution, the method and the duration of the appointment, whether they are reappointing or not, for what reasons and in what order the members are terminated [14]. These issues are also highlighted in the Handbook of National Institutions of the United Nations and each of them is discussed and explained in detail from different aspects. Of course, tenure, legal and financial rights and guarantees are also very important for the independence of the institution. As noted by David Šeksilo and Stanislav Zakrochimskyi, the question arises whether the principle of selection based on the ombudsman's work, which was developed primarily for the appointment of the public service, can be fully applied in the appointment of the ombudsman. This requires the development of clear and detailed criteria for assessing candidate skills and abilities. A politically neutral body with sufficient experience [15] should evaluate candidates. The Paris Principles recommend that expertise, knowledge and experience, transparency, merit and civil society representatives adopt a nominating method that allows them to choose people from different sections of society in identifying their candidates and members. Some countries require a law degree. For example, in Denmark you have to become a lawyer. Some countries also include a requirement to practice law for a certain period. In Hungary, to qualify for the position of ombudsman, one must have at least 10 years of work experience, while in Croatia; one must have a law degree and at least 15 years of work in any legal profession. In Romania and Slovenia, the ombudsman must meet the requirements of Constitutional Court judges, and in Iceland and Norway, Supreme Court judges. He must be a highly qualified lawyer and have a certain reputation in the legal field [16]. In Bosnia and Herzegovina, a bachelor's degree in law, a degree in human rights and at least ten years of experience is required. A law degree and knowledge of human rights and freedoms are required in Albania. In addition, nominations must be open and the application process and evaluation of applications must be transparent and open to the public. According to the 7 principles of the Venice Principles, “the election procedure should be determined within the framework of public, open, objective principles and procedures aimed at revealing the merits of the candidates. The methods for ensuring public announcement of a vacancy shall be specified by law. Another point to note is that it shows the advantage of ensuring pluralism in people who can nominate candidates rather

than simply nominating the head of state or government. In this context, that allowing non-governmental organizations to nominate candidates for the position of ombudsman serves the institution's legitimacy. It cannot be said that the Law of the Republic of Kazakhstan on the Commissioner for Human Rights is in accordance with the 7th principle of the Venice Principles on the norms related to nomination applications and their evaluation. The Law on the Ombudsman Institute of the Republic of Turkey is more compatible with international documents in this respect. In Article 11 of the Law, the procedure for determining the chief ombudsman and ombudsmen is defined. If the chief ombudsman or one of the ombudsmen is ninety days before the end of the term of office and these duties are terminated for any reason, within fifteen days from the date of termination, the situation shall be reported to the Supreme National Assembly of Turkey (SNA). Those who have the qualifications to become the chief ombudsman or ombudsman candidate during the application period are announced by the SNA. The Commission will select three candidates among the candidates who applied for the election of the chief ombudsman within fifteen days after the end of the application period, and will notify them of their nomination to the General Assembly of the National Assembly. The General Assembly shall initiate the election of the Chief Ombudsman within fifteen days from the date of notification. The Chief Ombudsman is elected by secret ballot. The same procedure applies to ombudsmen. The election will be completed no later than ninety days from the date of application by the institute. On the other hand, according to Rule 6 of the Venice Principles, the ombudsman should be appointed based on procedures that strengthen the reputation, impartiality, independence and legitimacy of the institution as much as possible. Among the various methods, it is recommended that the Parliament is elected by a qualified majority. The commission has repeatedly noted that the unanimous election of the ombudsman in the Parliament strengthens his neutrality, independence and legitimacy, and contributes to increasing public confidence in the institution. For this reason, the Venice Commission does not accept elections with a simple majority or an absolute majority of the parliament. Election by three-fifths or more is saying to strengthen its legitimacy. The Paris Principles and the Venice Principles do not specify a specific term for the term of office. However, this suggests that short or very long periods are dangerous. According to the Venice Commission, a four-year term is considered short, and five years is generally recommended. Again, according to the Commission's report, the extension of the term of office should be allowed, but the appointment should not make for more than two terms. It is also of the opinion that the longer term of office of the appointing body or authorized body can have a positive effect on independence. The term of office of the Ombudsman of the Republic of Kazakhstan is five years, and the term of office of the Senate that elects him is six years. The law does not specify whether the Ombudsman can be re-elected. It should be noted that this regulation is an important gap and is not compatible with the principles stated in international norms. In the Republic of Turkey, the term of office of the chief ombudsman and ombudsmen is the same as the term of office of the Supreme National Committee, which elects them. Below, information on the terms of appointment, term of office and electoral body of the Ombudsman according to the legislation of the two countries is presented in a comparative table (Table).

Table

## Comparative analysis

State	Electoral body	Period	Candidate requirements
1	2	3	4
Kazakhstan	The Senate of the Parliament of the Republic of Kazakhstan on the recommendation of the President of the Republic of Kazakhstan (Law, Article 5)	5 years (Law, Article 5)	- to have citizenship of the Republic of Kazakhstan and permanent residence in its territory for the last 10 years; — to have higher education; — to have at least five years of work experience in the protection of human and citizen rights and freedoms; — not younger than 30 years old; — fluent knowledge of the state language; — ability to act.

## Continuation of Table

1	2	3	4
Turkey	Supreme National Assembly of Turkey (Constitution, Article 74; Law, Article 11)	4 years (Constitution, Article 74; Law, Article 14)	- Turkish citizenship; — must be over 50 years old for the position of the chief ombudsman, 40 years old for the ombudsman, — 4-year education at the faculty of law, politics, economics and management or equivalent education at higher education institutions abroad or in the country; — to have at least 10 years of work experience in government bodies, international institutions, public associations or the private sector; — non-prohibition of political rights; — not to be a member of any political party; — Article 53 of the Turkish Criminal Code No. 5237 of 26.09.2004, even if time has passed, he has been deprived of his liberty or pardoned for the crime he committed intentionally, or even if a decision has been made to postpone the announcement of the sentence, the first and second part of the second book of the Turkish Criminal Code crimes against the security of the state, crimes against the constitutional structure and the functioning of this order, crimes against national defense, crimes against the state, crimes against secrecy and espionage, and crimes against relations with foreign states or embezzlement, extortion, bribery, theft, fraud, must not have been convicted of forgery, breach of trust, fraudulent bankruptcy, trade misrepresentation, tortfeasor, devaluing property resulting from crime, money laundering or smuggling.

5. *On duties and powers.* According to the Paris Principles, since the main task of a national institution is the full protection and promotion of human rights, it is expected that the institution will give adequate powers to achieve this goal. On the other hand, the duties and powers of the institution should be clearly defined. Duties of the Commissioner for Human Rights of the Republic of Kazakhstan are specified in Article 7 of the Law. Their competence includes virtually all issues related to the protection and promotion of human rights and fundamental freedoms, as well as the prevention of violations. For this purpose, the ombudsman should develop draft laws and submit legislative proposals to the President of the Republic of Kazakhstan, the Parliament of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan on the protection and support of human rights. In addition, it has the duty and authority to make recommendations on issues related to the goals specified in the law. In addition, the state of the Republic of Kazakhstan has important powers such as giving opinions and recommendations on the ratification of international treaties on human rights and fundamental freedoms, signing agreements (memorandums) that promote the development and protection of rights and freedoms. On the other hand, it is authorized to cooperate with national law enforcement institutions operating at the international, regional and national levels. In addition to all these powers, it also focused on the duties and powers of conducting research with educational institutions and other organizations within the framework of promoting human rights education and research. Given the mandate given to the agency, it can be clearly stated that it meets the job description required of national law enforcement agencies as outlined in the Paris Principles. The Law on the Ombudsman Institution in the Republic of Turkey briefly regulates the duties of the institution without going into detail. According to Article 5–1 of the Law, “The institution reviews all actions, transactions, attitudes and behaviors of the administration on complaints related to the work of the administration”. In the law, duties assigned to the ombudsman are provided in a narrower scope than the Kazakh ombudsman is. In other words, it is considering in the classical framework of the mediation between the administration and the citizen, consideration and verification of the claims and complaints that the rights have been violated by the actions of the administration. In addition, consideration of decisions related to the exercise of legislative power, exercise of judicial power, and transactions related to military operations of the Turkish Armed Forces is not the responsibility of the ombudsman (Article 5–2).

#### *Discussion*

The introduction of the institution of the ombudsman with constitutional status, which aims to protect and improve human rights with amendments to the Constitution of the Republic of Kazakhstan until 2022, is

an important event. It is a significant step in the field of human rights that such an important institution, which aims to protect and promote human rights, is regulated by the constitution rather than by the law or presidential decree, which was often used in the past. However, the constitutional law requires improvement in aspects of institutional independence, authority, efficiency and pluralism of the ombudsman institute. In our opinion, improving the efficiency of the Ombudsman's work depends on two factors:

– Firstly, in order for the ombudsman to be able to fully implement the duties and powers assigned to him by law, the state bodies should give the institution the necessary importance and provide the necessary financial and technical support for its work according to its purpose. The most fundamental element of institutional independence is ensuring financial independence and providing sufficient facilities and resources. Achieving this requires expert and skilled personnel and financial resources. It is impossible to tell the functionality of the institution without sufficient financial resources [17]. Its independence remains on paper. Having individual staff, tools and equipment and a unique budget is an important tool for the institution to realize its expected benefits. The Handbook of National Institutions of the United Nations emphasizes the close relationship between financial independence and functional independence, and states that financial resources should be sufficient for the institution to function in practice, not for show [18]. The independence of the Ombudsman cannot be a reason to question the legality of his work as a defender of rights. Non-interference in his work, freedom and independence in decision-making are mandatory conditions of the ombudsman's activity and guarantee of his objectivity and impartiality. In addition to general guarantees, the ombudsman has immunity guarantees. This special guarantee given to the ombudsman derives from his status and the importance of the task he performs.

– The second is to standardize the conditions and selection procedure for candidates for the post of ombudsman, using the experience of developed democracies. Ombudsperson with knowledge in the field of human rights, who adheres to high moral and ethical principles and can act impartially, strengthens the legitimacy of the institution. It is stated that the privileges and immunities used by employees should be clearly specified in the law. In the handbook of UN institutions [19] it is recommended to ensure the inclusion of representatives in the institution, especially women and persons with disabilities. On the other hand, the necessity of a pluralistic structure in the formation of institutions is emphasized and it is said that it is also important for the independence of the institution. Therefore, a pluralistic, representative structure should be created. For this purpose, it is noted that the presence of representatives of various non-governmental organizations, religious groups, ethnic groups, professional organizations, political parties, trade unions and universities in the institution is important from the point of view of the representative structure of the institution [20]. People's trust in the institution depends on its effectiveness. Effectiveness is achieved not only by the formality of the institution, but also by showing the necessary sensitivity to human rights, taking complaints seriously and reports and decisions prepared by the ombudsman, being taken seriously and implemented by public institutions.

### *Conclusion*

The Paris Principles and the Venice Principles of the United Nations, prepared by the Venice Commission of the Council of Europe and adopted by the Council based on the principles therein, are international documents defining the standards of national human rights institutions established for ombudsmen or similar purposes. Today, a national human rights institution must obtain a certificate of status (A) from the Accreditation Committee of National Human Rights Institutions established at the United Nations in order to represent and speak at various international institutions. The way to get this document is to follow the Paris Principles. In March 2012, the International Accreditation Council granted “B” status to the Ombudsman Institute of the Republic of Kazakhstan [21]. Category “B” means that it does not sufficiently comply with the Paris Principles as mentioned above. Institutions with such status cannot receive a badge indicating that they are a national law enforcement agency. They do not have the right to vote in bureaus and sub-commissions. They can participate in universal and regional meetings as observers, but they cannot speak about the issues on the agenda in these meetings, nor can they give their opinions or suggestions regarding the addition of items to the agenda. No accreditation assessment has been conducted for the Ombudsman Institute of the Republic of Turkey yet [21]. Based on the situations discussed above, the following conclusions can draw:

– The law should provide for clear, transparent and participatory procedures for the selection and appointment of senior management of the NHRI (head and deputy head of the National Center for Human Rights) based on the qualities of candidates necessary to ensure the independence of the institution and public confidence in it. Moreover, the broad and unclear wording of the provisions on the removal procedure

may undermine the security of the ombudsmen's tenure and thereby call into question the independence of this institution, so they require significant revision;

- The law should provide additional guarantees to strengthen the provisions for financial independence and autonomy of the institution;

- The ombudsmen, representatives and employees must be protected from civil, administrative and criminal liability for oral or written statements, decisions made or actions taken in good faith;

- include constitutional law provisions, detail setting out the application process, pre-selection of candidates, election and appointment of the ombudsmen and reflecting a transparent, participatory process, as well as specific provisions establishing clear and objective criteria to select and evaluate candidates at all stages of the process;

- review the grounds for dismissal from office, provide clear and detailed provisions to ensure openness and transparency of the process of dismissal of the ombudsmen from office, requiring, in particular, a qualified majority vote in the Senate, and also the right of appeal to an independent tribunal, possibly to Constitutional or Supreme Courts;

- The state is obliged to allocate adequate funding to the Office of the ombudsmen in order to provide it with sufficient financial, technical and human resources to fully perform the duties.

In conclusion, the regular work of the ombudsman on the protection of human rights, the transparency of his institution, the organization of joint events with international organizations not only creates a positive opinion about the activities of national law enforcement institutions in international arena, also strengthens their assessment of Kazakhstan in the field of democratization and human rights protection.

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## Қазақстан және Түркия омбудсмен институтының халықаралық құжаттарға сәйкестігін салыстырмалы құқықтық талдау

Мақаланың мақсаты — Қазақстан мен Түркиядағы омбудсмен институтының құрылымы мен қызметін салыстырмалы құқықтық жағынан ашып көрсету және оны халықаралық стандарттар тұрғысынан бағалау. Осы тұрғыда екі елдің омбудсмен институттарының ұлттық құқық қорғау институттарының мәртебесін реттейтін халықаралық құжаттарға сәйкестігі, міндеттері мен өкілеттіктерінің нормативтік негіздері зерттеле отырып, жетілдіру мақсатында ұсыныстар берілді. Адам құқықтары мен бостандықтарын қорғау мақсатында омбудсмен институтының қоғамдағы маңызы мен мемлекеттік құқық жүйесіндегі орны сараланды. Одан басқа, омбудсмен институтының мәртебесі, тағайындау және қызметтен босату тәртібі зерттелді. Екі елдің омбудсмендеріне қойылатын талаптар мен міндеттер көрсетілген. Сондай-ақ, омбудсмен институтына қатысты екі мемлекеттің ішкі заңнамасының Париж және Вена қағидаттарына сәйкес келетіні анықталды. Ғылыми-зерттеу жұмыстарын жүргізу негізінде 2022 жылғы 5 қарашадағы «Қазақстан Республикасының Адам құқықтары жөніндегі уәкілі туралы» Конституциялық заңы және 2012 жылғы 29 маусымдағы Түркияның «Омбудсмен институты туралы» Заңы зерделенді. Зерттеу жұмысының нәтижесінде омбудсмен институтының қызметін реттейтін заңдарда халықаралық стандарттарға сәйкес келмейтін нормалары анықталды.

*Кілт сөздер:* омбудсмен, адам құқықтары жөніндегі уәкіл, адам құқықтары жөніндегі ұлттық институттар, Біріккен Ұлттар Ұйымының Париж принциптері, халықаралық стандарт, құқықтық мәртебе, адам құқықтарын қорғау.

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## Сравнительно-правовой анализ института омбудсмeна Казахстана и Турции на соответствие международным документам

Цель статьи — сравнительно раскрыть правовую деятельность института омбудсмeна в Казахстане и Турции и оценить ее с точки зрения международных стандартов. В этом контексте изучено соответствие институтов омбудсмeна двух стран международным документам, регулирующим статус национальных правозащитных институтов, а также даны рекомендации по совершенствованию. В целях защиты прав и свобод человека дифференцированы значение института омбудсмeна в обществе и место в государственной правовой системе. Кроме того, изучен статус института омбудсмeна, процедуры назначения и увольнения с государственной службы. Уточнены требования и полномочия омбудсмeнов, предусмотренные внутренним законодательством двух стран. Изучено внутреннее

законодательство двух государств относительно института омбудсмена на соответствие международным документам, таким как Парижские и Венские принципы. На основе проведения научных исследований рассмотрены Конституционный закон от 5 ноября 2022 года «Об Уполномоченном по правам человека в Республики Казахстан» и Закон Турции «Об институте омбудсмена» от 29 июня 2012 года. В результате исследовательской работы в законах, регулирующих деятельность института омбудсмена, определены нормы, не соответствующие международным стандартам.

*Ключевые слова:* омбудсмен, уполномоченный по правам человека, национальные правозащитные институты, Парижские принципы ООН, международный стандарт, правовой статус, защита прав человека.

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