

## Report

**Subject matter:** The Institute of the Commissioner for Human Rights in the Russian Federation: constitutional and legal research

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**Relevance of the research topic.** The historical development of the Russian state, determined by territorial, geopolitical, economic, national and other factors, justifies the need for a strong, but adequate format of state power.

The foundations of the constitutional system of the Russian Federation are laid the rules that define the democratic and legal foundations of the organization of state power, which carry a multifaceted complex political and legal content. The Constitution of the Russian Federation does not allow the state power to go beyond the law, providing the framework with appropriate constitutional mechanisms. One of the elements of such a mechanism, which serves as a kind of internal instrument of self-restraint and self-regulation of the authorities, is the institution of the Commissioner for Human Rights in the Russian Federation.

The problems of ensuring the rights, freedoms and legitimate interests of a person, his protection not only from threats to external security and criminal encroachments, but also from the actions of the state itself, represented by its organs, have existed throughout the history of mankind. Thus, we have to state that the protection of human rights and freedoms, both from the state and from the state itself, remains and will remain one of the most urgent problems that requires permanent improvement, modernization and rationalization.

Currently, one can observe an escalation of interest in the institution of the Commissioner for Human Rights in the Russian Federation among both scientists and practitioners and directly human rights defenders. There are new scientific studies devoted to its functioning, the specifics of its activities, the experience of foreign countries, the specifics of conducting investigations. At the same time, the legal nature of this public office, the nature of the powers granted and legal guarantees, the specifics of their implementation, interaction with state authorities, and primarily with the Russian parliament, have not been fully investigated by legal scholars.

Over time, the validity and rationality of certain provisions of the Federal Constitutional Law No. 1-FKZ of February 26, 1997 "On the Commissioner for Human Rights in the Russian Federation" began to be subjected to certain doubts and justified criticism. The development of the institution of the Commissioner for Human Rights reveals new issues that require legislative resolution. The practice of the activity of human rights commissioners in the constituent entities of the Russian Federation also indicates the need to build a fundamentally new approach to regulating their status.

Insufficient and fragmentary scientific research in this area determines the need for a systematic, consistent and holistic scientific understanding of the constitutional and legal status of the Commissioner for Human Rights in the Russian Federation, as well as the conceptual development of proposals and recommendations for its improvement.

**The purpose of the study** is to conduct a constitutional and legal study of the institution of the Commissioner for Human Rights in the Russian Federation, the problems of its normative consolidation and actual implementation, to develop proposals and recommendations on improving the constitutional and legal status of the Commissioner for Human Rights in the Russian Federation and the commissioners for human rights in the subjects of the Russian Federation on the basis of the received data.

### Tasks:

- consideration of the theoretical and legal basis of the status of the Commissioner for Human Rights;



- identification of problems of differentiation and specialization of the institution of the Commissioner for Human Rights in Russia;
- research of the Institute of human rights commissioners in the state mechanism of Russia;
- study of the procedure for filing and considering a complaint to the Commissioner for Human Rights in the Russian Federation;
- consideration of the institution of human rights commissioners in the mechanism of judicial protection of rights and freedoms;
- identification of problems in the implementation of human rights activities by the Commissioner for Human Rights in the Russian Federation and the commissioners for human rights in the subjects of the Russian Federation.

#### **The results of the study.**

Today, the institution of the Commissioner for Human Rights is a specialized system for protecting the rights of citizens, which is designed to monitor violations of their rights and interests and promote the restoration of violated rights. The activities of this institute are based on the provisions of international law, the norms of the legislation of the Russian Federation, the principles of humanity and justice.

The model of interaction between human rights commissioners and the judiciary, formed in modern Russia, is optimal taking into account its constitutional development, the system of state authorities, the status of the President as a guarantor of human and civil rights and freedoms, the historically established role of the prosecutor's office.

At the same time, the institution of commissioners should be used more widely in the mechanism of pre-trial dispute resolution. The enormous flow of complaints to the federal Commissioner for compliance with criminal and criminal procedure laws when considering criminal cases and materials needs to be thoroughly summarized, it is necessary to discuss these results with the participation of the courts and the prosecutor's office. It is possible to consider the issue of wider interaction of the commissioners with the bodies of the judicial community.

These and, possibly, other measures, without encroaching on the independence of the judiciary, will make the interaction of the commissioners and the courts more effective and fully realize the potential of state bodies in ensuring the protection of human and civil rights and freedoms.

Thus, in the Russian Federation, the problem of low efficiency of human rights activities carried out by human rights commissioners can be solved by establishing an institute of deputy Commissioners at the level of federal legislation and providing a legal opportunity to establish such an institute at the level of legislation of the constituent entities of the Russian Federation. Based on the analysis of the existing models of the transfer of their functions by the commissioners to other persons in the world, it is necessary to establish in Russia the institute of deputy commissioners elected by the legislative (representative) bodies of state power of the Russian Federation and its subjects on the proposal of the commissioners themselves. The powers of regional commissioners to resolve complaints against territorial executive authorities, whose activities are managed by the President of the Russian Federation, should be expanded by introducing amendments to federal legislation.

It should be recognized that, despite the existence of significant experience in the implementation of the human rights function, the potential of this institution in the mechanism of legal protection and restoration of violated rights is not fully realized.

#### **Recommendations:**

In this regard, it is extremely urgent to adopt a special comprehensive federal law "On the general principles of the organization and activities of human Rights Commissioners in the Subjects of the Russian Federation", as well as amendments to the Federal Constitutional Law "On the Commissioner for Human Rights in the Russian Federation" and other legislative acts, in which it seems necessary to solve the following topical issues related to clarifying the legal status and competence of human rights commissioners:



1) increasing the procedural legal personality in the framework of civil, administrative and criminal proceedings-expanding the opportunities for direct participation in court proceedings in cases considered at the request of the commissioner, and familiarization with the materials of court cases at any stage if there is a complaint of the applicant;

2) fixing the procedural status of the human rights commissioners for all categories of cases and the rules of legal proceedings in the relevant codified acts - in the Code of Criminal Procedure of the Russian Federation, the CPC of the Russian Federation, the CAS of the Russian Federation, the Administrative Code of the Russian Federation;

3) involvement of human rights commissioners in the activities of pardon commissions;

4) granting the authorized persons the right of legislative initiative; wider use of the expert and legal potential of the human rights commissioners in the legislative process and evaluation of normative legal acts adopted by the authorities - ensuring the permanent participation of the authorized persons or their representatives in meetings of legislative (representative) bodies, in meetings on cases of challenging normative legal acts considered by the courts;

5) increasing the role of human rights commissioners in the constitutional judicial process-ensuring the permanent participation of the plenipotentiary representative of the Commissioner for Human Rights of the Russian Federation in open meetings of the Constitutional Court of the Russian Federation, regional human rights commissioners - in meetings of the constitutional (statutory) courts of the subjects of the Russian Federation;

6) strengthening the positions of the human rights commissioners in protecting the rights of persons in places of forced detention by implementing the norms of international law regulating the national preventive mechanism into Russian legislation and giving the human rights commissioners the competence to coordinate the participants of the national preventive mechanism who have the right to visit institutions that execute sentences; granting the right to visit these places to authorized representatives of the human rights commissioners, participation of representatives of the human rights commissioners in inspections conducted by the administration of these institutions on behalf of the human rights commissioners;

7) extension of the competence of the human rights commissioners to non-state structures - on issues of labor disputes, consideration of complaints about violations of rights in the field of health protection, education and some other issues;

8) securing the immunity of the inviolability of a citizen who has filed a complaint with the Commissioner for Human Rights;

9) strengthening the institutional, financial and organizational independence of human rights commissioners.

The implementation of these proposals, in our opinion, will strengthen the guarantees of citizens' rights and increase the effectiveness of the institution of Human rights Commissioners as one of the most important bodies of a legal and democratic state.