

Cooperation Experience of Local Governments with Business Rights Ombudsman in the United States and the United Kingdom

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Abstract: The brisk growth of business rights ombudsman institution in the Russian federation is connected with the search for optimal models of its cooperation with the state authorities and local government. The priority is the experience of Foreign countries where institutions are formed to protect small businesses from excessive or unfair administrative burden, for example repetitive audits or investigations, excessive fines, threats and other unfair acts by the state. An ombudsman proceeds from the premise that due to limited resources, small business owners may not be informed about changes in the legislation or regulatory practice and not be able to adequately defend their interests in the face of the law enforcement administration.

Key words: Cooperation experience of local governments, business rights ombudsman, regulatory practice, legislation, informed about changes

INTRODUCTION

While the institution is characterized by extreme novelty there is no unity in the understanding of its objectives. It is impossible to determine the concrete model of candidate's selection for the position of business rights ombudsman as well as its legal status. All the above mentioned shows the attempt to define the place of business ombudsman in the political system and system of state agencies. The protection of rights and legal interests of selected set of people as well as the legal status of the entities should also be defined to entrust the business ombudsmen.

MATERIALS AND METHODS

The study is based on the usage of a systematic approach in conjunction with the comparative method. The usage of a systematic approach allows considering the development of small business in close relationship with the state policy.

The comparative method was used to analyze the statutory regulation of the business ombudsman institution in Foreign countries. Comparative linguistics

was used to perform the comparison that allowed evaluating the effectiveness of state regulation in this sphere. Research of the business rights ombudsman institute with the help of comparative linguistics allowed us to survey the perspectives and patterns of the institution's development.

The establishing of the ombudsman legal framework in the United States was quite a long way. The first legal act in this area was the law from 19th of September 1980, regulating the control measures for small business (regulatory flexibility act) (office of the national ombudsman report to congress for fiscal year 2012). Federal bodies of state power had to size up a regulatory impact on small business and seek ways to reduce the regulatory burden without compromising the case (Burmeister and Dobell, 1970).

The 1990s of the 20th century took place in the United States under the sign of further strengthening of small business. In March 1996, the US Congress adopted a law to ensure fair practices for small business ([http://tpprf.ru/ru/activities/relations/far abroad/ bilateral cooperation /countries/usa/ombudsmen](http://tpprf.ru/ru/activities/relations/far%20abroad/bilateral%20cooperation/countries/usa/ombudsmen)). US law creates a regulatory environment that is friendly to small business.

Mission of the national ombudsman's office is: firstly, cooperation with every federal agency that has a controlling authority for small businesses, in order to provide small business with all necessities. Secondly, the establishment and maintenance of the confidential treatment requests from small businesses about regulatory actions taken by the SBA personnel.

Thirdly, the annual reporting to congress including a regulating effect (that is based on the impartial assessment) on the agencies and their relationships with the emerging problems of small business. Therefore, assessments are based on proven comments received directly from the owners of small businesses and ten regional councils controlling law enforcement practice with respect to small business.

Fourthly, community outreach in every SBA region. Thus, the objective of the national ombudsman is to assist small businesses when they experience excessive or unfair administrative burden from public authorities. The United States Ombudsman Association is making efforts to support the ombudsman conception by assisting in the creation of new ombudsmen at all levels of government. Including the level of local government. (Mills M. Municipal Government Ombudsman). As an example, the experience of interaction between business ombudsman with local authorities in the UK and the US (which elect five council members including the mayor) provide the performance of a representative as well as executive and administrative functions.

The form of rule is very unusual for a city with 500,000 people and a metropolitan center with 1.6 million people. It is all about Portsmouth-Port City in the south of England. Seven commissioners perform public functions of state bureau. These administrative duties complement legislative functions which they perform as members of the city council (Burtless *et al.*, 1998). Without a clear distinction between the executive and legislative branches in the municipality's structure, the determination of the place for ombudsman gives us a lot of options. Creating an office is the result of an initiative measure in the early period of mayor's management. Other commissioners have a right to participate in the selection process or to confirm the selection of the mayor.

The ombudsman's office starts and continues working during the first 20 months with a permanent staff. Most volunteers are recruited from educational organizations. The volunteer staff quickly became an integral and important part of the ombudsman's office. While the number of personnel is certainly at the limiting level and can handle up to 6000 requests coming yearly.

That was enough to initiate an office that can demonstrate its efficiency in providing the citizens direct access to the local governments (Charochkina, 2012). It

was easier to initiate an office under the mayor, not the separate one. Especially if you keep in mind a current financial climate that influences on the budget cuts, not on its extension. Separate office with a vast number of staff would be much more difficult to approve. If the office demonstrates the value of the provided services, it will increase further political and financial support for it.

What means a small staff in terms of features. The office's service is focuses on expanding business opportunities to resolve their complaints and appeals, providing them with the knowledge by which they can initiate a review without the direct intervention of the ombudsman. Those who have already made an attempt, and did not get an adequate result, have the opportunity to make a complaint directly to the ombudsman.

While the office resources are limited, many issues are resolved by an ombudsman and a mayor through the joint resolution. It helps to avoid the unnecessary bureaucracy which may be accompanied by the official records (Local Government Ombudsman. Portsmouth City Council).

RESULTS AND DISCUSSION

Municipality of Anchorage created an ombudsman's office in 1975 by amending the municipal charter on the results of the vote (The municipal ombudsman's office). While at that time the city of Anchorage united with Anchorage District and local governments became larger, the members of the territorial collectives expressed their opinion that reorganization of the municipalities will make them less attentive to the problem of physical and legal entities. Creating an ombudsman will give them an opportunity to supervise and it make new municipality more accountable. It also should be noted that in the same year Alaska has already created the ombudsman on the basis of the state legislature. It helped to ensure a higher level of awareness of regional group members.

Anchorage Municipal Ombudsman was established on the decision of the representative body. The ombudsman elects and reports to 11 members of the municipal assembly. The Assembly could not establish the powers of the ombudsman by law until 1977. Only after the mayor vetoed by one of the latest versions of the law, based on an attempt to limit the powers of the ombudsman, the assembly passed a law establishing that ombudsman has a power to call citizens for questioning during an investigation with the obligatory attendance. Law lacked safe conduct of the ombudsman which will enable to terminate the powers of an ombudsman by only two-thirds vote of the assembly (Drucker, 1993).

In distinction from a state ombudsman, the Municipal Ombudsman does not have immunity to take the stand in court. Ombudsman was not also granted immunity from

civil lawsuits for actions taken during the execution of his duties in the office. Only the state laws such protection can be provided to ombudsman. Ombudsman office in anchorage increases public popularity and now has fourteen people staff with a few probationers. In 1990, an overwhelming majority adopted an amendment to the charter, extending the jurisdiction of the ombudsman in the school division. It greatly increased the rate of public support for the ombudsman concept.

Can the ombudsman effectively perform his functions without the establishment of his federal powers. We think yes. The viability of the executive model can be particularly evident at the local government level where there is the greatest expectation and the need for access to power. Both models of the ombudsman can provide freedom of access which is required in order to cover all segments of the population, especially whose voices are usually without any attention. Both offices provide citizens the opportunity to review their problems of course there are real differences that must be considered when choosing between models.

Executive ombudsman reporting to the head of the local administration in fact, depends on the government. Working impartially they still cannot be considered by public when they are in favor of one elected executive official (Galbraith, 1979). There is no guarantee that after the expiration of the current mayor, the ombudsman's office will be supported. Nevertheless without securing the law there is no guarantee that the individual or office will continue existing after the changing of leadership. In Oregon you could see a gradual reduction of the Ombudsman's Executive Office. This was not the result of political hostility to the office but rather because of the increased vulnerability to a significant reduction of budgetary allocations as the agency was supported by the governor but not an independent body, funded by law. This does not mean that a legislative ombudsman is guaranteed immune from the political situation in the United States. It is only slightly less vulnerable.

There is still a problem of public perception. How an ordinary citizen or businessmen perceive the ombudsman, who reserches as an appendage to the elected governing bodies such as the mayor. While most would agree that the ombudsman hosted at city hall will not look like a completely impartial, more independent institution. The extension of ombudsman a selected official and authorized bearing liability to the same person usually causes the most concern (Gilmundinov *et al.*, 2009).

More specifically, this means that in Portland Ombudsman is responsible for responding to specific questions relating to legislative actions and executive decisions in addition to the general duties of the ombudsman. For example, the mayor proposed an

amendment to the health care system of the city. An advantage of the program which was approved by the city council includes a medical coverage for city employee's relatives. This decision provides the medical insurance for the family in marriage. The ombudsman had a task to respond to the questions or objections on the part of employers in respect of the new health insurance system. While the ombudsman agreed with the mayor and the city council he was called to explain the necessity of this decision and its implications. The ombudsman agreed that the decision was fair. If he disagreed his task was to present his arguments against the mayor's arguments. This responsibility is familiar with a legislative ombudsman who has the right to explain or justify the actions of the legislature. In such a situation, you can easily find the necessary protective legislation. While the perspective of the conflict happened to be in fact, there were no significant differences.

There are other obvious differences which become apparent when a comparison is carried out between two different structures of the ombudsman. Some of these differences affect the manner in which the ombudsman works. The first primary difference is the absence of a subpoena by the executive of the ombudsman. This authority is considered to be one of the most important elements of the ombudsman. It is one of the few and true powers granted to the ombudsman. Citizens may sometimes forget that the ombudsman serves as a consultant and cannot claim the right to issue regulations. The government in the course of the investigation allows the ombudsman to obtain records or bear witness, uncooperative government officials. A legislative ombudsman in frequently needs to realize the direction of imperious injunction agenda.

As an executive of the ombudsman in the framework of Portland administration, the ombudsman must rely on the mayor giving him the opportunity to direct the summons as written in the charter of the city. (<http://www.portlandoregon.gov/citycode/28148>). How the absence of the right to send a subpoena may affect the efficiency of the executive Ombudsman in Portland. Today, there was no case when it was possible to conclude that the results of the investigation have suffered as a result of the lack of the right to send a subpoena.

Taking into consideration the possibility of staff, the ombudsman is restricted in the number of investigations. In addition, those who are aware of the ombudsman's office powers may be more willing to present evidence if they believe that such an office has the resources to carry out the investigation.

When the executive ombudsman requested information or documents that may be considered as

confidential they are usually given based on the fact that the ombudsman is in addition to the mayor and not as an independent body.

There are certain political realities within the framework of the democratic system which takes place in the United States, belonging to the order of the officer's election. Today, the elected official must constantly demonstrate to the public his achievements and especially in the mass-media if the official wishes to be re-elected. This reality is the result of the despond in government that took place over a number of years when the government was less sensitive to the needs of citizens as well as small and medium businesses. Elected officials such as the ombudsman are used to restore the confidence of citizens in their governments. It helps to explain why it is easier to create a new office of the ombudsman when it is combined with selected executive.

While there may be some loss of impartiality by creating an ombudsman institution in the executive office. Since, the ombudsman is responsible for administrative acts, only managers and administrators have been criticized by the ombudsman. Taking into consideration the structure of the ombudsman institution in Portland, a conflict between the mayor and the ombudsman is a rare case, while issues are dealt informally through cooperation. There is a greater access and therefore, the possibility to influence public policy. Conflicts between authorized representatives happen rarely because the issues are usually solved directly in interaction with officials, avoiding the need to produce critical public reports. Contact between colleagues of authorized as a rule is productive and not confrontational while the dynamics of the legislative process of course, causes conflict between the elected officials.

Any ombudsman can achieve improvements in public policy. It can be as simple as changing the methods by which the city aims to claims for damages. Ombudsman has an opportunity to explore how the city develops more collaborative ways of resolving conflicts. The city often uses mediatory procedures to resolve conflicts between citizens, individual entrepreneurs and companies on the one hand and public education on the other. The ombudsman initiated the development and implementation of the dispute settlement system in the administration which will be a model for others to follow. This is the first system that provides citizens with the opportunity to use mediatory procedure to resolve disputes between the administration and economic entities.

City committee was able to reach a consensus in which the following decisions were taken: mediatory process is entirely voluntary and may be rejected by either a citizen or official; everyone will be fully informed

about the implications of mediation. If mediatory process fails, the citizen cannot re-enter in the review process. Although, citizen retains the right to refer the case to the court he is not entitled in accordance with the signed agreement to use the information obtained with the help of mediation.

Citizens consider mediation as a viable alternative. It offers an opportunity to discuss the problems with the official directly in a non-confrontational setting in the hope that both sides will have a better understanding of perspectives and interests of each other. Many people just wanted to get a chance to be heard. Mediation program had a positive impact on improving the quality of official's research providing the opportunity to resolve the dispute through dialogue, rather than disciplinary action. Currently, there is extensive practice of dispute resolution in the framework of mediation programs.

Ombudsman's office continues to explore new opportunities for systems to settle disputes within the framework of administrative activities. Taking into consideration the high degree of conflict that is inherent in administrative procedures, the ombudsman can provide leadership, helping desk and departments in the implementation of these new systems and to realize the benefits arising from the resolution of conflict more productively. In Portland, there are a number of different refinements to the ombudsman concept; the purpose is to make the services provided by the office as accessible as possible. There are a number of successful offers as to provide local municipalities by the services of the ombudsman. Other ombudsman offices started to research on the executive model but later it was converted into a legislative model. There are municipalities that receive the ombudsman's services from the state, province, territory or common wealth. Some municipalities have contracted with a higher level of control for the ombudsman's services. While the ombudsman institute accepts the principles of efficiency and equity in the provision of public services, there is no single fixed model which would have to comply with the ombudsmen.

CONCLUSION

Based on the above, we can conclude the absence of a common approach to the definition of the interaction order of ombudsman institute with local authorities. In each case, the process has its own political background and its own history. Creating an Ombudsman institution on local level was due to the existing state and public institutions in English-speaking countries, whose experience in the human rights sphere has been the subject of analysis in the study.

Described municipalities had the opportunity to experience two very different models of the ombudsman, and also get acquainted with a wide range of successful practices of other offices of the Ombudsman within the support of the International Ombudsman Institute. Taking into consideration the variety in this area in various countries around the world, it seems to us that the basic elements for an efficient and fair Ombudsman model associated with “legislative model”. However, we must respect and support all variations of a business ombudsman institution, for example “executive model” that is very popular in the United States at the municipal level.

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