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CONSTITUTIONAL AND LEGAL STATUS OF OMBUDSMAN IN IBEROAMERICAN COUNTRIES

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GENERAL DESCRIPTION OF WORK

Relevance of the research topic.

The development of modern constitutionalism is typified, among other things, by a considerable worldwide incidence of an institution of ombudsmen. There are a number of reasons for such incidence. The most important ones are the inability of the traditional vertical structures of rigid government control to provide inviolability of human rights and peaceful coexistence of countries, as well as current preservation of totalitarian and authoritarian regimes, while the public conscience is declaring and accepting the ideas of constitutionalism, the most prevalent of which is the idea of the unquestionable value of an individual self. All these factors caused citizens to be untrusting of the traditional elements of government mechanisms, defined by a rigid vertical interaction between a citizen and a state. Socialization of countries, having caused expansion of government mechanisms, their functions and reasons to invade private life of citizens, which in turn raised the danger of abuse, also contributed to instating the institution of ombudsmen. Traditional "constraining" branches of government – the legislative and the judicial branches – in the circumstances of detracting from the "minimalistic" concept of government proved to be insufficient in controlling the administrative governing process. As a result, the new institution of ombudsmen emerged within the mechanism of government power to advocate for human rights.

In order to build a democratic law-governed state in Russia, as is mentioned in the constitution as one of the pillars of the constitutional regime, it is reasonable to research the international experience in terms of institutions, aimed at protecting human rights as the highest merit. One of such institutions are ombudsmen, currently on the rise. In line with such tendency, it emerged in Russia as well: it was accounted for in the 1993 constitution, therefore being a relatively new development for the country. The way this institution functions raises multiple theoretical and practical

questions, such as: what is their actual and appropriate correlation to the branches of government and other government bodies, i.e. whether ombudsmen should remain an instrument of government control or has their human rights protection potential outgrown its initial aims? What is the correlation between the functions of public prosecutors and the operation of ombudsmen? What is the optimal set of functions and authorities of an ombudsman? What should their instruments be and how could one measure their efficiency? All of these questions require an answer and presuppose careful analysis of the international experience.

Analyzing the genesis of the institution of ombudsmen in Ibero-American countries allows one to define specifics of the institution in different circumstances: under stable democracy, in during the regime change or under preserved authoritarian regime; as well as defining directions and results of the influence of countries with liberal legal values onto those countries, which either started late or have not started moving towards such values while building their political regimes at all. The history of its establishment, along with current trends and legislative regulations of the institution of ombudsmen in Ibero-American countries not only have certain features common for the institution as a whole, but also a set of specific features caused by the authoritarian experience in the researched countries, as well as their economic and cultural circumstances and traditions.

The relevance of researching the special aspects of emergence and development of the institution of ombudsmen in Ibero-American countries also lies the lack of coverage of this topic within the region in Russian literature. In terms of content, the aforementioned processes are of interest for constitutionalist researches because this institution, possessing “soft” power, emerged in Ibero-American countries during the transition from authoritarian to democratic stages of development. Its establishment and entrenchment in legislative systems of Iberian European countries gave a positive result in terms of progress in human rights situation and in turn served as an impulse

for its development in a variety of other countries. Nevertheless, in different countries of Latin America the institution of ombudsmen is legally defined differently, and the efficiency levels in such countries do vary. It is a very valuable material for comparative analysis of its factors of efficiency in countries with different levels of entrenchment of values and varying mechanisms of law-governed state.

In this regard, familiarizing the Russian scientific public with Ibero-American models, in my opinion, holds a strong scientific and practical significance, not least because we are lacking experience in consciously borrowing rights protection institutions that would be effective at protecting individual freedom in interacting with the government bodies. With such, in the process of creating additional mechanisms to aid the citizens in protecting their rights, it is essential to understand the advantages of an institution processing "soft" power.

The term of "Ibero-America" encompasses Spain, Portugal and their former colonies on the American continent – countries of Latin America, excluding Belize, Guyana and Suriname, whose mother countries were not located in the Iberian Peninsula and have culture, languages and traditions differing from Spain and Portugal. In Russian science, the term is used by the Association of Researches of Ibero-American world at the Institute of Latin America of Russian Academy of Science, as well as by Ibero-American Center at Moscow State Institute of International Relations.

In line with the aforementioned observations on the relevance of researching the institution of ombudsmen in Ibero-American countries, here are the defined **goals and objectives of the dissertation thesis:**

– to prove an ombudsman to be an institution of soft power;

– to show the role of an institution of soft power as an intermediary between government bodies and citizens;

– to define the term of ombudsman in regard to its position as an institution of soft power;

– to identify the processes of emergence and development of the institution of ombudsmen in Ibero-American countries, as well as key factors that have influenced the incidence of ombudsmen in Iberian European countries and influenced the entire region of Latin America, where ombudsmen ha ve developed with distinct Iberian features;

– to identify the distinctions of competence of Ibero-American ombudsmen, to analyze the authorities of ombudsmen in initiating remedy of amparo and habeas data, as well as petitioning the constitutional court for verification of constitutionality of legislation acts concerning human rights;

– to evaluate the constitutional law from the perspective of providing guarantees of realizing the authorities and the mission of ombudsmen in researched countries.

The degree of scientific development of the topic.

Various researches of the institution of ombudsmen were conducted in the works of such authors as: N. Abedin, V. Ayeni, F. Alvarez de Miranda y Torres, V.V. Boytsov, L.V. Boytsov, M.L. Wagner, D. Gottehrer, R. Gregory, G. Drewry, D.A. Knyazkin, E. Lentowska, H.M. Mayorano, Nilsson Per E., M. Oosting, D. Rowat, A.I. Sungurov, M.T. Timofeyev, V. Fairen Guillen, B. Frank, A. Stuhmcke, N.I. Khamaneva, P. Hutchesson, A. Gil-Robles, M. Hostina.

Scientists, who have conducted research of the institution of ombudsmen in Ibero-American countries are: M. Aguitar Cuevas, F.J. Acuña Llamas, L. Alvarez de Sotomayor, R.L. Harrel, S.C. Arroyo, J. Aylwin, J. Barragan, F.A. Villena, L. Villalba Benítres, S. García Ramírez, V.F. Guilen, V.L. González, L. Goslinga Remírez, M. Donayre Pinedo, A. De la Cruz, M. Iráizoz, D.A. Calderon, J. Caprizo, P. Carballo Armas, I. Castro Patiño, C.R. Constenla, J. Córdoba Triviño, G. Kucsko-Standlmayer,

C. Lachenal, J.C. Martínez, M. Moguel, G.E. Roca, M.T. Pareja Rosales de Conrad, L.G. Remírez, A. García, M.I. Romo, M. Roccatti, S. Sabrosa, E.L. Cervantes, L. Silveira, A.I. Stroganov, F. Zúñiga, F. Uggla, H. Wuyts, K.P. Fernández-Turegano, H. Fiz-Zamudio, R. Gil Rendón, A.J. Estrada.

There are a plethora of scientific studies on the topic of human rights in general. These studies are featured in the works of S, Aguayo, A.Y. Azarov, I.A. Alebastrova, G. Anuar Ortega, N.V. Vitruk, L.D. Voyevodin, A. Garrido, J.M. García Laguardia, A. Gómez-Robledo Verduzco, S.A. Gracheva, P. Kelley Oquist, D. Kyprianou, O.E. Kutafin, C. Lachenal, E.A. Lukasheva, J. Magalhães Godinho, A. Manuel Pérez, R. Martínez, J.C. Martínez, N.M. Mironov, A.A. Mishin, M. Mogel, E. Martínez, A. Narváez Medécigo, A.B. Nougrères, E.E. Rafalyuk, V. Royter, R. Stavenhagen, B.A. Strashun, R. Witmer, A. Figueruelo Burrieza, G.F. Shershenevich, T.Y. Khabrieva, N.I. Khamaneva, K. Hufner, B.S. Ebseev, S.T. Hernández.

Works of the aforementioned scientists have been used as a theoretical basis for this dissertation research.

The object of research of this dissertation is social interactions in regards to the functioning of the institution of ombudsmen.

The subject of the research are the legislative and doctrinal terms of emergence and operation of the institution of ombudsmen in Ibero-American countries, as well as law-enforcing practices of the aforementioned institution, its interaction with the citizens and government bodies.

The methodological foundation of the research is comprised of general scientific and special cognition methods. In this work the historical, social, formally logical and systematic structured methods were used, along with the special jurisprudential methods: comparative jurisprudential, historical jurisprudential, formally jurisprudential, etc. Such methods were used to identify models and issues of development of the institution of ombudsmen and its legislative regulation. A

considerable attention was paid to comparative analysis (in line with reaching an understanding of the functioning of various jurisprudential systems (or its separate elements), as well as your own, being the initial goal of using comparative analysis). Any object can be understood and adequately evaluated only in comparison with other correlative objects.

In order to identify non-jurisprudential elements influencing the operation of an ombudsman, more all-encompassing methods, i.e. sociological (by way of deep interviewing of experts) and psychological (the observation method, method of poles regarding the choice of behavior patterns) were used, ones that reach out to wider aspects of public life but are closely linked with jurisprudence, in line with jurisprudence being one of the social sciences. As such, based on the formal jurisprudential method, specific features of legislative regulation of the institution of ombudsmen in constitution and law were identified. Herewith, a situation was researched, when the form and content of legislation regulating the status of an ombudsman complies with international standards and principles of a democratic state, but there are doubts that in practice an ombudsman is acting independently. In researching such situation a sociological method was used extensively, i.e. deep interviewing of experts in order to identify the professional opinion in regard to the operation of the institution of ombudsmen in the country:

– What is the extent of the influence of the political regime and balance or lack thereof of branches of government on the legal and factual status of an ombudsman;

– What specific issues emerge when getting an ombudsman involved, when they are carrying out their duties and in carrying out their recommendations by government bodies.

This dissertation also used researches in psychology analyzing the psychology of legal behavior, based on the methods of observation and poles regarding the choice of behavior patterns.

The most **significant new points and conclusions submitted for defense** and making up the conceptual basis of the dissertation are the following:

1. This dissertation offers an authorial definition of an ombudsman, according to which an ombudsman is a rights protecting institution existing within the mechanism of government authority, possessing soft power to protect citizens from illegal and unwarranted acts and decisions by bodies and individuals in authority via administration of complaints and drawing recommendations in accordance with the research conducted, as well as possessing a variety of other authorities in order to improve the quality of actions of bodies of government authority in their interactions with citizens;

2. The notion of an ombudsman being an institution of soft power is explained, firstly, as their decisions are recommendatory as opposed to obligatory, and, secondly, as the ombudsman operation and interaction with government officials is rather flexible, being aimed towards ensuring cooperation and solidarity. It has been proved, that emergence of elements of soft power in the government mechanism is a notorious trend in the development of modern countries. One of the manifestations of this trend is establishment and wide incidence of the institution of ombudsmen in the modern world;

3. The dissertation argues the existence of a separate model of an Ibero-American ombudsman, having features both common to the classic model (securing the status of an ombudsman in a legislation act, possessing higher authority within the country – a constitution and (or) law; political neutrality of an ombudsman ensured by political and legislative mechanisms; autonomy of an ombudsman in their operation and decision-making as an intermediary between a person and a government aimed at

efficient protection of human rights; authorities of ombudsmen to administrate citizen's complaints concerning actions or lack thereof by the government officials; reaching recommendatory decisions; a parliament granting authority to ombudsmen) and specific features, such as initiating remedy of amparo in Bolivia, Venezuela, Spain, Costa-Rica, Nicaragua, Panama, Paraguay, Uruguay, Peru and Ecuador; as well as authority to initiate habeas data in Venezuela, Peru and Ecuador; authority to petition the constitutional court for verification of constitutionality of the legislation acts concerning human rights in Bolivia, Venezuela, Spain, Colombia, Costa-Rica, Mexico, Nicaragua, Peru, Portugal, Ecuador; and, finally, close cooperation with the public prosecution office. In Honduras, Colombia, Mexico, Peru and El-Salvador ombudsmen were included into the legislation system as an institution of the executive branch, appointed by the president or attorney general (who in turn would be given authority in case the president's role is decisive). This distinction is explained by history of dictatorship in Latin-American countries, where the executive branch was not only the strongest, but actually the only branch to hold actual power.

4. A conclusion was drawn, that organizational unity of ombudsmen with public prosecution offices has a variety of conceptual and technical deficiencies that puts the efficiency of ombudsmen in jeopardy. Firstly, despite the public prosecution office possessing the rights protection function in the form of overseeing compliance with human rights and freedoms by various elements of government, the rights protection potential of this institution is conceptually narrow. It does not fully correlate logically with the function of representing public prosecution in court, which in its operation makes unavoidable the emphasis on protecting the interests of the government and society and ensuring legitimacy. Secondly, a public prosecution office is tightly built into the system of hard power, which makes unavoidable its adherence to the corresponding methods of action, as opposed to ombudsmen. An ombudsman by definition is an institution of soft power, therefore uniting it with

public prosecutors compromises preservation of its very essence. Thirdly, uniting a public prosecution office with ombudsmen within the same ministry as an element of executive branch is undesirable, since the majority of complaints, administered by ombudsmen, concern human rights violations by executive branch bodies' representatives.

5. Based on the research of the legislative norms in Ibero-American countries and the doctrine, the following functions of Ibero-American ombudsmen were identified:

a. Symbolical, according to which an ombudsman is a symbol of humanization of the relationship between a citizen and a government;

b. Rights protecting function, including in separate specific areas;

c. Instrumental, which includes conducting investigations and reinstating of rights in specific cases, as well as eradicating general deficiencies in various segments of the administrative system in order to improve it;

d. Representative, according to which ombudsmen operate on super-national and international levels;

e. Educational, presupposing developing and carrying out events to promote human rights.

6. Researching the legislation in Ibero-American countries allowed for identification of conditions of granting authorities to ombudsmen, which ensure efficient realization of these authorities:

a. Representatives of the executive branch and a powerful leader of the country should not be involved in the ombudsman appointment procedure. Involvement of a branch that features in most complaints from citizens to an ombudsman does not allow for ensuring full autonomy. Some of the consequences of such involvement of the executive branch in granting authority to ombudsmen can be receiving directions from a strong leader of the country or the ministers, or general

political limitations of ombudsmen's rights protecting operations by the aforementioned institutions. It can have a negative effect on an ombudsman rendering them inefficient and not allowing for fulfilling its mission, as well as lead to decrease in trust levels of the citizens towards ombudsmen;

b. Only the parliament should be involved in appointing an ombudsman;

c. It should be ensured that, firstly, the civil society and especially representatives of the rights protection organizations are involved in the nomination process, in order to identify and nominate candidates whose experience in the rights protection activities and commitment to human rights as the highest merit are enough to ensure efficiency in correlative functions. Secondly, political opposition should be involved in order to elect a candidate, which a wide specter of political forces and civil society agrees on;

d. Parliamentarians should be making a decision of granting authority to ombudsmen by a qualified majority;

e. Requirements for a candidate should ensure professional operation in relation to exercising values the institution was created to exercise.

7. A conclusion was drawn, that reasonable requirements for an ombudsman nominee are:

a. Being a citizen of a respective country, as according to the law of all Ibero-American countries an ombudsman has the right to unrestricted access to government bodies and organizations;

b. Capacity to act;

c. A scientific degree in jurisprudence, specifically in the human rights protection field;

d. Not less than five years of practical operation in the human rights protection field.

8. It has been determined, that apart from the aforementioned guarantees in regards to granting authority to an ombudsman, other guarantees of the ombudsman's status are:

a. Legislative security of autonomy of an ombudsman in their operation, prohibiting intrusion from government bodies into ombudsman's investigations with the intent to influence their decisions or to impede such investigations and conceal the results;

b. Granting an ombudsman authorities sufficient to realize their potential, including the authority to initiate the investigation, initiate remedy of amparo and habeas data, as well as petition the constitutional court for verification of constitutionality of legislation acts, with the aim of protecting fundamental human rights in countries where such procedures are provided for by the law. Another guarantee of sufficiency of ombudsmen's authorities is legislative prohibition of limitations of human rights fields, in which ombudsmen may operate (i.e. Mexico, where an ombudsman cannot get involved with voting rights violations);

c. Ensuring permanent operation of ombudsmen (concerning, among other, sufficient funding of an ombudsman's office);

d. Legal immunity of an ombudsman, i.e. special complex arrest procedure, as well as a special procedure for applying other coercive measures. An ombudsman protects citizens from violations of their human rights by public authority figures, including law enforcement officers. Publicly revealing such violations can cause an actively negative reaction and even countermeasures from the violators. Therefore, the threat of false accusations and thin criminal cases against ombudsmen is quite high. Thereby it seems right to apply the same immunity rules to an ombudsman that apply to parliamentarians, as established in the constitution and/or legislation.

9. Given the experience in legal regulation of the institution of ombudsmen in Ibero-American countries, it seems reasonable to make the following amendments

into the Russian legislation in order to fulfil and enrich the humanitarian potential of the institution:

a. Exclude the provision about the president of the Russian Federation having the authority to nominate an ombudsman from clause 1 of section 7 of Federal Constitutional law №1-ФКЗ as of 26 February 1997 “About the Human Rights Commissioner in the Russian Federation”, and design it the following way: “Human Rights Commissioner nominations can be put forward into the State Duma by the Council of Federation of the Federal Assembly of the Russian Federation, State Duma Deputies and deputy unions within the State Duma”. This proposition is based in the fact that the involvement of the President in granting authority to the Human Rights Commissioner violates the legislative norm in clause “e” of part 1 of section 103 of the Constitution of the Russian Federation, which states that the appointment and relieving of the Human Rights Commissioner duties, acting in accordance with the federal constitutional law, is under the jurisdiction of the State Duma. The legislative provision regarding the authority of the President of the Russian Federation to appoint the Human Rights Commissioner unfoundedly broadens the President’s authority, since the Constitution of the Russian Federation does not provide for such involvement;

b. With the aim of providing the representatives of the civil society the ability to take part in appointing an ombudsman at the stage of consulting the houses of parliament, it is reasonable to add clause 7.1 to section 7 of the Federal Constitutional Law №1-ФКЗ including the following provisions: “The stage of nominating an ombudsman into the State Duma by the Council of Federation of the Federal Assembly of the Russian Federation, State Duma Deputies and deputy unions within the State Duma is preceded by consultation procedures with the representatives of the civil society with the goal of discussing nominees for the position of the Human Rights Commissioner in the Russian Federation”;

c. Grant an ombudsman the authority of legislative initiative in the field of human rights. Therefore, it is reasonable to amend the part 1 of section 104 of the Constitution of the Russian Federation for it to state the following: “The authority of legislative initiative is possessed by the President of the Russian Federation, members of the Council of the Federation, State Duma deputies, the Government of the Russian Federation, bodies of legislative branch. Legislative initiative authority is also possessed by the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and the Human Rights Commissioner in their field of competence”. Section 33.1 should be added to the Federal Constitutional Law №1-ФКЗ with the following provision: “The Human Rights Commissioner possesses the legislative initiative authority in their field of competence”.

The practical value of the dissertation lies in the ability to use positive experiences in implementing of the institution of ombudsmen into legislative systems of different countries with authoritarian traditions, as well as in taking into account the negative experiences in the development process of the aforementioned institution in a variety of countries with the aim of improving Russian legislation in that field and enforcement of law practices, including operation of courts and Russian ombudsmen themselves.

Approbation of the research results. Theoretical conclusions, practical recommendations and propositions in this dissertation were applied in the process of teaching courses on public and constitutional law in Russia as part of getting the doctoral degree.

Approbation of research results was carried out while speaking at conferences, including international ones:

– XV International Conference of Young Scientists “Traditions and innovations in the modern system of Russian jurisprudence”, taking place on 8-9 April 2016 at Kutafin Moscow State Law University;

– XVI International Conference of Young Scientists “Traditions and innovations in the modern system of Russian jurisprudence”, taking place on 6-7 April 2017 at the Kutafin Moscow State Law University;

– XIII International scientific-practical conference “Kutafin Readings” “Modern Russian jurisprudence: interactions of science, law-making and practice”, held within the framework of the VII Moscow Jurisprudence Week on 21-23 November 2017 at the Jurisprudence department of the Lomonosov Moscow State University at the Kutafin Moscow State Law University.

Discussions on the issues in regulation of the institution of ombudsmen were held also during the UN Internet Governance Forum within workshops on the protection of human rights, taking place in Guadalajara, Mexico.

The main results of the research are reflected upon in the resume and other scientific publications of the author.

The structure of the dissertation.

The dissertation is comprised of an introduction, two chapters comprised of eight paragraphs, a conclusion and a reference list.

GENERAL CONTENTS OF THE DISSERTATION

The **introduction** is dedicated to explaining the relevance of the research topic, general aims of the dissertation, the degree of the degree of scientific development of the topic, identification of the object and subject of the research, methodological basis of the research, as well as establishing significant innovative provisions and conclusions submitted for defense, justifying the practical significance of the research results with approbation data and brief summary of the structure of the dissertation.

The first chapter of the dissertation “General characteristics of the institution of ombudsmen in Ibero-American countries: history, distinct features

and models” is attributed to researching the essence of an ombudsman as an institution of soft power and its mission. It analyzes the process of establishing the institution of ombudsmen in European Iberian countries and the influence of establishment and constitutionalization of the aforementioned institution on the entire region of Latin America, where this institution has emerged and developed with a variety of distinct features. This chapter also researches the sources of law regulating the status of ombudsmen in Ibero-American countries, with a conclusion drawn in regard to the influence of legislative regulation on the practical facilitation of ombudsmen’s operations. The chapter also features the analysis of types of ombudsmen in Ibero-American countries and their distinct features.

The first paragraph “An ombudsman in the system of institutions of constitutional law: definition, mission and features” of the first chapter of the dissertation reveals the definition of the institution of ombudsmen, identifies its classic model and different approaches to understanding the essence of the institution. It explains the notion of an ombudsman possessing soft power, the governmental significance of which lies in satisfying the expanding need in establishing mutual understanding both between the government bodies, and between government officials and the citizens; improving the understanding of the ethical standards of exercise of power; stimulating cooperation and solidarity in dispute settlement to simplify the procedure, which can lead to faster results. The paragraph also concludes that the existence of ombudsmen as an institution of soft power within the government mechanism is explained by the government’s new attempt at cooperating with citizens in compliance with the constitutional principles. The paragraph contains the analysis of reasons for the incidence of the institution of ombudsmen all over the world.

The second paragraph “Establishment and historical evolution of the institution of ombudsmen in Ibero-American countries” of the first chapter of

the dissertation provides the research of distinctions in emergence and establishment of the institution in Ibero-American countries. The paragraph is spit into two parts: **“Distinctions in emergence and establishment of the institution of ombudsmen in European Iberian countries”** and **“Distinctions in emergence and establishment of the institution of ombudsmen in Ibero-American countries of Latin America”.** The first part analyzes the process of establishment of the institution in Spain and Portugal. It draws a conclusion that the establishment of the institution of ombudsmen in these countries played a major role in their successful transition from authoritarian regimes, which is typified by neglect of human rights, to constitutionalism, which is followed by institutional, ideological and psychological entrenchment of human rights as the highest merit. In turn, the success of the institution of ombudsmen in these countries is determined by a variety of factors, which were in play during its creation. Firstly, the research of the experience of the two countries shows, that social science (especially jurisprudence) and journalism representatives can play a major role in democratization and improvement of human rights situation, having in their possession a number of efficient tools of influence on the public opinion – both mass public and the elite – in accordance with a wide expertise in the field of human rights protection and the public nature of their work. The realization of the special responsibility of these professional societies for the human rights situation is their primary task under the conditions of authoritarian, hybrid and transitional regimes, for it is their active position that increases the probability in a positive shift. Secondly, the establishment and evolution processes of the institution of ombudsmen in Spain and Portugal display the importance of the strive towards the compromise between all political powers, for the ability to compromise from both leading and opposition political forces in many ways allowed for the efficient institution of ombudsmen to be established in these countries. Thirdly, the desire of the developers of the institution in European Iberian countries to both research the international experience with the aim

of using the best models and features and enrich it with their own original ideas and mechanisms (i.e. the authority to petition the constitutional court for verification of constitutionality of legislation acts regarding human rights, to get involved in remedy of amparo and habeas data procedures) deserve attention and praise. Finally, the expansion of the geography of the institution of ombudsmen, owing to successful entrenchment in the aforementioned countries, presents important evidence of increased importance of institutions of soft power in the modern society, including the field of dispute settlement between the public authority officials and the citizens – a trend in need of a thorough and comprehensive analysis. The readiness to accept soft power and to comply with its recommendations is one of the signs and guarantees of the enrichment of the atmosphere of cooperation between the citizens and the government with solidarity and mutual respect. The part **"Distinctions in emergence and establishment of the institution of ombudsmen in Ibero-American countries of Latin America"** researches the conditions and processes of emergence of the institution in each of the analyzed countries of Latin America, and draws a conclusion that establishing the institution was aimed not only at protecting human rights from illegal and unwarranted actions by the government officials, but also at comprehensive improvement of the human rights situation in these countries, as well as expansive improvement of the operation of the public authority mechanism. Current constitutions of Latin American countries provided guarantees of political and legislative stability, and adherence to human rights. As of now, the governments of these countries aspire to realize constitutional norms via an open dialogue with the international society, improvements in education levels and jurisprudential culture among the citizens, etc.

The third paragraph "Sources of law regulating the status of Ibero-American ombudsmen: types and content basis" of the first chapter of the dissertation analyzes the types of sources of law regulating the status of Ibero-

American ombudsmen, which include the constitution, international and internal agreements, organic legislation, other legislation and ombudsmen's rules of procedure. With that, meetings and other international events dedicated to human rights, which helped design official documents containing norms, and principles regulating the institution of ombudsmen had significant influence on the creation of the institution in these countries. In the majority of Ibero-American countries (excluding Costa Rica and Uruguay) this institution is accounted for in the constitution, which signifies the acceptance of the importance of the institution in the researched countries.

The fourth paragraph "Types of ombudsmen in Ibero-American countries" of the first chapter of the dissertation is dedicated to the analysis of the variety of types of ombudsmen in Ibero-American countries. During the democratization process in almost every country of Latin America, as well as Spain and Portugal, the institutions of ombudsmen were created with varying authorities and territorial limitations. Private local ombudsmen are almost not provided for in this group of countries. It is explained by the socio-economical features of Latin American countries falling behind the more developed countries in terms of low quality of life, which explains an insufficient sense of self-worth levels of workers and their realization of their own rights, as well as not aiding the implementation of the private institutions, which have been established in the more developed countries, that ensure guarantees for the citizens in their interactions with administrations of local organizations, such as establishing local ombudsmen in organizations. On the other hand, the researched countries possess a significant variety of specialized ombudsmen, including ombudsmen protecting women's rights, indigenous population's rights and migrant's rights. It is important to note the distinctions of the types of ombudsmen in relation to the appointment procedure. On the contrary to the other countries, where the parliament alone is involved in the appointment procedure,

in Colombia and Panama the executive branch bodies are involved in the aforementioned procedure. In many instances (Bolivia, Colombia, Costa Rica, Nicaragua, Panama, Paraguay, Peru, Portugal, Uruguay, El-Salvador and Ecuador) the term of an ombudsman correlates with the term of the government body involved in the appointment procedure. The countries where these terms do not correlate are Argentina, Venezuela, Guatemala, Honduras, Spain and Mexico.

The second chapter "Elements of the constitutional legal status of ombudsmen in Ibero-American countries" of the dissertation is dedicated to analyzing the distinctions of the most important aspects of the status of ombudsmen in Ibero-American countries, as well analyzing the guarantees of realizing the rights protection potential of the institution of ombudsmen.

The first paragraph "Appointment of ombudsmen in Ibero-American countries" of the second chapter of the dissertation puts under the microscope the distinctions of appointment procedures for ombudsmen and the terms of their service in the researched countries from the perspective of ensuring their autonomy and efficiency. It features the analysis of different approaches to requirements to candidates for the ombudsman position, as well as the models of appointing ombudsmen in the researched countries: the parliament model (typified by the parliament being solely involved in all stages of the appointment procedure) and the model with the involvement of the executive branch. It brings up the distinction of the nomination stage in a number of Ibero-American countries, where the institutions of the civil society take part in the aforementioned procedure. Such involvement is provided for in the legislation of Bolivia, Nicaragua and Ecuador.

The second paragraph "Functions and competence of ombudsmen in Ibero-American states" of the second chapter of the dissertation highlights the functions of Ibero-American ombudsmen manifested in different authorities of ombudsmen, which make up their competence. Depending on the amount of

authorities granted to an ombudsman, there is a distinction between ombudsmen of general competence and ombudsmen of special competence. The paragraph contains the analysis of authorities of each group. It also features the analysis of distinct features typical exclusively for Ibero-American ombudsmen of general competence. Most notable, it is the authority to get involved in the remedy of amparo and habeas data procedures. Another one of the more significant distinctions of ombudsmen's competence in these countries is the authority to petition the constitutional court for verification of constitutionality of legislation acts. Another important feature is the authority to of ombudsmen in Bolivia, Venezuela, Honduras, Mexico, Panama, Paraguay, Uruguay, Ecuador and El-Salvador to monitor the implementation by the government bodies and officials of the international agreements in the field of human rights protection ratified by the government, as well as monitoring the compliance with the agreements made during international ombudsmen symposiums.

The third paragraph "Administration and operation procedure of Ibero-American ombudsmen, forms of reactions to recognized human rights violations" of the second chapter of the dissertation researches different ways of organizing the service of an ombudsman and identifies general stages of the ombudsman's investigation procedure. It analyzes the reasoning behind the provisions in the legislation of a number of Ibero-American countries stating that during the investigation government officials must provide an ombudsman with any information not threatening the judicial, government or other classified and protected by law information, as well as cooperating with an ombudsman through other means. The conclusion has been reached, that the liability of the officials for refusing to cooperate with an ombudsman should not be provided for in the law, as an ombudsman possesses soft power, and cooperation with this institution (in accordance with the idea behind its creation) should be based in respect of the law and of an ombudsman's authority, and not rigid mechanisms. It has been noted, that legislation of Honduras

and Mexico contain provisions regarding the interaction between the public prosecution office and an ombudsman in respect to fulfilling the ombudsman's recommendations. The notion of the binding force of the ombudsman's recommendations is explained by insufficient levels of legal awareness, lack of experience with democratic institutions, as well as establishment of human rights protection institutions under pressure from the international society. These institutions are implemented and aimed at improving the quality of life and protecting human rights, but their functions are not fully understood within these countries. Therefore, ombudsman's recommendations, undoubtedly, should not possess binding force provided for in the law.

The fourth paragraph "Guarantees of the status of ombudsmen as a legal factor of their effectiveness; liabilities of ombudsmen, relieving an ombudsman of their duties" of the second chapter of the dissertation researches the guarantees of on ombudsman's status, aimed at ensuring the realization of their authorities and mission: autonomy of operation; involvement of the institutions of civil society in the discussion process as provided for in the law; granting an ombudsman sufficient authorities to realize their potential; ensuring permanent operation of ombudsmen (in regard to sufficient funding of an ombudsman's office, especially in terms of the ability receive donations from intergovernmental and non-governmental organizations within the framework of international cooperation of rights protection organizations, as well as from international organizations and other donations); ombudsman's immunity; ability to establish autonomous bodies within the country, as well as on the super-national and international levels. A conclusion was drawn, that organizational unity of ombudsmen with public prosecution offices has a variety of conceptual and technical deficiencies that puts the efficiency of ombudsmen in jeopardy.

The conclusion sums up the results of the research within the dissertation, as well as defining some of the recommendations concerning improving the legislative regulation of the institution of ombudsmen in the Russian Federation.

The volume of 3.2 printed sheets worth of studies on the dissertation topic:

Articles in the publications, recommended by the Higher Attestation Commission of the Ministry of Education and Science of the Russian Federation:

1. O. Gavrilova “The correlation with a public prosecution office as a distinctive feature of a Latin American ombudsmen: issues of ensuring autonomy and efficiency // Comparative constitutional review” 2016 № 6 (115). C. 123-134. – 1.2 printed sheets
2. O.A. Gavrilova “Distinctions in competence of Ibero-American ombudsmen // Constitutional and municipal legislation” 2017 № 9. C. 70-73. – 0.6 printed sheets
3. O. Gavrilova “Distinctions of emergence of the institution of ombudsmen in European Iberian countries // Comparative constitutional review. 2018. № 3 (124). C. 33-46. – 1.4 printed sheets