CREATING NATIONAL HUMAN RIGHTS INSTITUTION IN LITHUANIA: THEORETICAL AND PRACTICAL LESSONS

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Abstract

In 2011 Lithuanian government decided to reform the Seimas Ombudsmen's Office by expanding its mandate in the field of human rights. In this paper I aim to overview the ongoing reform and to discuss main driving forces and obstacles for its enforcement. I apply an interdisciplinary approach combining legal and political science research methods. The findings suggest that the proposed reform raises serious doubts about its full compliance to Paris Principles. It also leaves unresolved issues of overlapping mandates, financial resources and thus has a risk to fail in establishing an effective national human rights institution.

1. Introduction

It has been more than two decades since the adoption of the Paris Principles by the United Nations General Assembly in 1993. The Paris Principles are recognized as the most authoritative guidelines on the structure and the role of national human rights institutions (NHRIs). There is an extensive literature, based on theory and practice that overview and discuss a variety of questions regarding NHRIs' establishment and their performance worldwide. The most recent discussions on NHRIs focus around several topics.

The first area of discussion among political scientists and legal scholars concerns institutional design and its impact on NHRIs' effectiveness. One of the basic features that differentiates the discussion on NHRIs' design and their effectiveness from other discussions on institutional reforms is that '(...) Unlike other regulatory and market reforms, human rights institutions do not privilege the interest of the authorizing principles, but rather the individuals at risk of abuse by those same principles'[1]. This specific mandate to promote and protect human rights has important implications on the linkage between institutional design and its effectiveness because often NHRIs' establishment is based on conflicting rationales among institutional architects[2].

Secondly, the role of NHRIs' has been continuously developing. Despite the fact that NHRIs are bodies established by domestic law, some scholars envisage NHRIs as links to the international human rights regime in terms of an assigned mandate that is derived from international rather than national standards. The scholars argue[3] that in practice, this function is obtained in two ways: either by an explicit NHRI's mandate to protect and promote internationally guaranteed human rights (common for Eastern Europe) or by an additional function to promote the ratification of treaties or

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1 Katerina Linos and Tom Pegram, (2015) *Interrogating Form and Function: Designing Effective National Human rights Institutions.* Danish Institute for Human rights 5.

2 Ibid 5, 10.

3 Richard Carver, (2010) "A New Answer to an Old Question: National Human Rights Institutions and the Domestication of International Law" *10 Human Rights Law Review* 1, 6-9.

the incorporation of treaty rights in national law.

Thirdly, the potential role of NHRIs in strengthening the promotion and protection of human rights in the EU internal and external policies has recently received more attention from an academic community[4]. As it is expressed in the report of the European Union Agency for Fundamental Rights (FRA)[5], the EU's cooperation with NHRIs is highly important because efficient protection and promotion of fundamental rights at the national level, is coupled with European and international mechanisms. However NHRIs are not structurally integrated into the European human rights working culture yet, even if the various EU institutions and bodies working in the field of human rights expressed support for NHRIs and do cooperate to some extent with these institutions[6].

Currently 71 NHRIs are accredited as A-status (full compliance with Paris Principles) NHRIs by the International Coordinating Committee for National Human Rights Institutions (ICC). B-status (partial compliance with Paris Principles) is granted to 25 NHRIs, and C- status (non-compliance with Paris Principles) is granted to 10 NHRIs. Among 71 A-status NHRIs 12 of them are established in the EU member states and 2 are established in the candidate countries. B-status is granted to 7 NHRIs that are established in the EU member states and 1 NHRI, which is established in a candidate country. Only 1 NHRI has C-status in the EU member states[7].

Lithuania belongs to a group of EU member states together with Cyprus, the Czech Republic, Estonia, Finland, Italy, Latvia, and Malta, which does not have a Paris Principles compliant accredited NHRI yet[8]. However Lithuania, as the other EU member states, has some form of monitoring bodies with a human rights remit. Currently in Lithuania five independent public institutions have some fragmental mandates in the field of human rights: the Seimas (Parliament) Ombudsmen's Office, Office of the Equal Opportunities Ombudsperson, Office of the Ombudsperson for Children Rights, the Office of the Inspector of Journalist Ethics and State data protection Inspectorate. In addition to that a number of governmental, municipal and non-governmental bodies work in the field of human rights protection.

The UN periodically urges Lithuania to establish a national human rights institution with a broad human rights mandate, and provide it with adequate financial and human resources, in line with the Paris Principles. In 2011 it was proposed to set up a coordinating Human Rights Council of Lithuania as part of the Ombudspersons' institution trying to ensure systematic monitoring of human rights while not diminishing the role of specialized bodies in the protection of human rights[9]. The same year the Board of the Parliament set up a working group to draft the necessary legal acts to ensure compliance of the Parliamentary Ombudspersons' Institution with the Paris Principles.

In this paper I aim to present and evaluate the Seimas Ombudsmen's reform and to discuss main driving forces and obstacles for its enforcement. I argue that the Seimas Ombudsmen's Office as NHRI might be effective in promoting and protecting human rights only within certain limits that

4 Jan Wouters et al., (2013) "The European Union and National Human Rights Institutions" Working paper No.112 Leuven Centre for Global Governance Studies <http://www.fp7-frame.eu/wp-content/materiale/w- papers/WP112-Wouters-Meuwissen-Barros%281%29.pdf> accessed 3rd November 2015.

5 FRA (European Union Agency for Fundamental Rights), (2010) *National Human Rights Institutions in the EU Member States: Strengthening the Fundamental Rights Architecture in the EU*. Vienna, Publication Office of the European Union.

6 Wouters et al. (n 4).

7 ICC (the International Coordinating Committee for National Human Rights Institutions), (2014) "Chart of the status of national institutions accredited by the international coordinating committee of national institutions for the promotion and protection of human rights", Accreditation status as of May 2014, http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/Chart%20of%20the%20Status%20of%20NHRIs-%20%2823%20May%202014%29.pdf

8 Ibid.

9 UNHRC, (2011)"Universal Periodic Review Report of the Working Group on the Universal Periodic Review, Lithuania" UN Doc A/HRC/19/15.

are imposed by a domestic context. My argumentation is based on an interdisciplinary approach combining legal and political science research methods.

This paper is dived into two main parts. In the first part I analyse the main pre- conditions set by theory and practice for the effective functioning of NHRIs, and from this perspective evaluate the Seimas Ombudsmen's reform. In the second part, I evaluate national contextual framework of human rights and priority areas of protection and identify main obstacles that may hinder smooth reform process. In addition to that I analyse the views of non-governmental sector, which plays an important role in Lithuanian human rights protection system, about the proposed reform and its direction.

2. Effecttitles of NHRIs: the determining factors

The question of effectiveness of NHRIs falls within the same scope of political theories on institutional performance. Rational choice school advocates that institutional effects will follow design choices meanwhile other schools of thought regard strictly rational choice model as over–determined and suggest to look at social conditions too[10]. In this context such questions of when and why formal design will affect the outcomes of institutional performance become important and the literature provide several answers to it. The classic answer would include resources, interest groups, constituencies, leadership and adaptive capacity among main variables that determine the outcomes of institutional performance meanwhile the recent research also draws attention to such factors as coherence, political implications, capacity and capability[11].

Studies on NHRIs provide contrasting evidence on the existence of the causal linkage between institutional design and outcomes. Some studies show that the formal structure of NHRIs did not determine their performance: many NHRIs that formally respected the Paris Principles were not particularly effective in guaranteeing human rights, meanwhile the others, even if they failed to meet Paris Principles to their whole extend, still achieved significant results[12]. Similar claims have been made in relation to those NHRIs that respected Paris principles. Typically four main models of NHRIs are distinguished: commissions, advisory commissions/committees, institutes and ombudsmen[13]. The research shows that the NHRI's model selected by a state has no direct effect on either its potential for accreditation or its effectiveness as an NHRI[14].

However there have been attempts to prove the assumption that institutional design features of NHRIs matter, especially if they promote greater capability and independence[15]. In addition to that the scholars claim that the effectiveness of NHRI cannot be isolated from domestic political and economic context. Thus, for instance, the strong power of NHRI cannot derive from international pressure but has to be driven by domestic political will to improve human rights standards[16]. According to FRA research[17], the lack of political support for NHRIs is still present in European countries and leads to NHRIs' insufficient independence or effectiveness.

Despite little agreement on the impact of institutional design on the effectiveness of NHRIs,

[10] Linos and Pegram (n 1) 8.
[11] Ibid 8.
[12] International Council on Human Rights Policy, (2005) *Assessing the Effectiveness of National Human Rights Institutions* 7.
[13] FRA, *National Human Rights Institutions in the EU Member States* (n 5) 24.
[14] FRA, (2012) *Handbook on the establishment and accreditation of National Human Rights Institutions in the European Union*. Luxembourg: Publications Office of the European Union. 19.
[15] Linos and Pegram (n 1) 10.
[16] Sarah Spencer and Colin Harvey, (2014) "Context, institution or accountability? Exploring the factors that shape the performance of national human rights and equality bodies", Policy & Politics, Vol. 42.
[17] FRA, *National Human Rights Institutions in the EU Member States* (n 5) 18.

a state establishing a NHRI has to make a choice about the form of its NHRI, having in mind strong and weak points of each model suggested by theory. In addition to that, according to the recent research[18], *scope of the mandate and institutional independence* are the other two the most significant questions that might determine NHRIs effectiveness.

2.1. Models of NHRIs

Commissions and advisory commissions are multi-member bodies however it is recognized that only commissions correspond most closely to the model articulated in the Paris Principles[19]. Commissions are usually granted advisory, monitoring, educational and quasi-judicial functions in the field of human rights. Currently in the EU member states there are five commissions having A-status of this type: Ireland, Northern Ireland, Great Britain, Greece and Scotland[20]. In the EU currently there are only two states: France and Luxemburg that follow *advisory commission/committee model*[21]. The main feature of this model is assistance to the government through expert advice and consultations.

Human rights institute's model is the closest to the advisory commission's model due to their focus on human rights education, information, research and documentation rather than complains investigation and monitoring. The characteristics of their role predetermine that human rights institutes are more suitable for the states where human rights culture already functions well[22]. Human rights institutes as NHRIs having A-status exist in Denmark and in Germany[23]. Since 2014 Netherlands Institute for Human Rights also received A- status[24].

Human rights ombudsman is a hybrid form of the ombudsman institution however as the classic ombudsman is a single-member body. The latter causes some difficulties in meeting the pluralism requirement, in the strict sense of the word, in the make-up of the body set by the Paris Principles. However in practice the principle of pluralism is interpreted in a more creative way, for example, through its application to governing bodies or the election system[25]. The spectrum of human rights ombudsman mandate makes it the closest to the commission's model, because typically it is granted strong investigative (quasi-jurisdictional) and monitoring powers[26]. However the main difference is that normally human rights ombudsman institution's mandate is limited to the cases where public administration has been involved[27]. UN began to accept human rights ombudsmen as NHRIs later in the 1990s and the support for human rights ombudsman model is also expressed by regional organizations such as Council of Europe[28]. Currently fully accredited ombudsperson institutions exist in Poland, Portugal and Spain[29].

The choice of NHRI's model depends exclusively on a national context. However any choice should ensure both: promotion and protection of human rights. The studies note[30] that the promo-

[18] Linos and Pegram (n 1).
[19] Shubhankar Dam, (2007) "Lessons from National Human Rights Institutions Around the World for State and Local Human Rights Commissions in the United States" Executive Session Papers: Human Rights Commissions and the Criminal Justice System, Harvard University 5.
[20] ICC (n 7).
[21] Ibid.
[22] Dam (n 19) 6.
[23] FRA, *National Human Rights Institutions in the EU Member States* (n 5) 6.
[24] ICC (n 7).
[25] FRA, National Human Rights Institutions in the EU Member States (n 5) 28.
[26] Dam (n 19) 6.
[27] FRA, *National Human Rights Institutions in the EU Member States* (n 5) 36.
[28] Linda C. Reif, (2011) "Transplantation and Adaptation: The Evolution of the Human Rights Ombudsman" 31 Boston College Third World Law Journal, Vol. 31, No. 2, 269, 291.
[29] FRA, *Handbook on the establishment and accreditation of National Human Rights Institutions* (n 14) 20.
[30] FRA, *Handbook on the establishment and accreditation of National Human Rights Institutions* (n 14) 22.

tion is mainly about advising the government/the parliament and awareness-raising, meanwhile the protection of human rights includes the monitoring of human rights violations, making recommendations and can also include the power to receive, investigate and resolve complaints. The practice shows that '(...) the absence of a clear mandate to engage in promotional activities would commonly apply to ombudsmen whereas the lack of a mandate to engage in protection activities is typical for institutes and commissions with an advisory role'[31].

2.2. Scope of the mandate of NHRI

The Paris Principles state that the NHRI's mandate should be as broad as possible. Amnesty International emphasizes that '(...) the mandate should not be defined solely in terms of those rights that are specifically provided for in the country's constitution – particularly as some constitutions do not contain key rights such as the right to life. Rather NHRIs should take as their frame of reference the definitions of human rights as set out in international human rights instruments and standards, whether or not the state has ratified the relevant treaties'[32].

The studies show that the broad legal mandate, covering civil, cultural, economic, political and social rights, is one of the preconditions for the effectiveness of NHRI together with a broad jurisdiction, covering also military and special security forces[33]. However the scholars note that a broad range of powers can create expectations that, given resource constraints, cannot be met[34].

The broad legal mandate and financial resources are not the only determinatives of the influence a NHRI can make. Such factor, as willingness to change, plays a significant role. The examples of operating NHRIs show that the power to make recommendations on draft legislation has not proved highly effective in securing amendments, despite the quality of the analysis[35].

The Paris Principles do not require NHRIs to have a "quasi-jurisdictional" function – that is, to handle complaints or petitions from people whose human rights are alleged to have been violated[36]. However complaint-handling power of NHRI is one of a few the most debatable issues in the literature on NHRI[37]. Amnesty International strongly advices that NHRI would be given the mandate to handle individual complains and an investigation power, even to investigate on its own initiative[38]. In the literature it is possible to find a strong statement that complains handling is actually one of the least effective ways of addressing human rights issues meanwhile the most effective mean has to be based on a systematic approach to the most important human rights problems[39]. It is suggested that systematic approach to human rights problems should include:

(i) the identification of priority human rights issues in a country;
(ii) the allocation of resources to work on priority issues;
(iii) progress monitoring;
(iv) legal amendments;
(v) training of officials working in priority areas.

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31 FRA, *National Human Rights Institutions in the EU Member States* (n 5) 13.

32 Amnesty International, (2001) "National human rights institutions: Amnesty International's recommendations for effective protection and promotion of human rights" 5.

33 International Council on Human Rights Policy (n 12) 8.

34 Spencer and Harvey (n 16) 11.

35 Ibid.

36 International Council on Human Rights Policy (n 12) 7.

37 Linos and Pegram (n 1) 29.

38 Amnesty International (n 32) 10-11.

39 Richard Carver, (2011) "National Human Rights Institutions in Central and Eastern Europe: The Ombudsman as Agent of International Law", in Ryan Goodman, Thomas Pegram (eds), *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions* (Cambridge University Press,) 202.

However these remarks do not intend to suggest excluding investigative function from NHRIs' mandate. On the contrary, according to the recent studies complaint-handling power is one of the determinants of NHRI's effectiveness on the condition of favourable contextual setting[40].

2.3. Independence of NHRI

Independence of NHRIs is a broad concept, which can be described by some sub- institutional features. Some scholars suggest to measure independence by three means: (i) budgetary arrangements; (ii) the method of appointment/termination of NHRI's officials; (iii) relationship with government on operational matters[41]. Meanwhile the others[42] supplement this concept by such factors as statutory basis, criteria for membership, conflict of interest provisions, remuneration and immunities. The recent research has proved that constitutional or legislative status is one of the most significant safeguard of independence because it grants NHRI higher stability and recognition than an executive enactment[43].

The question of independence is always related to the question of accountability and the practice shows that NHRI can be accountable to legislative or executive body. It is widely agreed that NHRI's insulation from presidential oversight is desirable[44]. The scholars note that the advantage of direct accountability to the legislator is perceived as having a greater autonomy and may increase the legitimacy of the NHRI in the eyes of elected representatives and the public, meanwhile direct access to an executive branch can, where the relationship is constructive, offer much-needed leverage on policy matters[45].

3. Road to NHRI in Lithuania

3.1. Genertitleeks on human rights situation in Lithuania

The UN Human Rights Committee in its concluding observations in 2012[46] on human rights situation in Lithuania noted that domestic violence against women, corporal punishment in institutional settings, trafficking in persons, discrimination on the basis of sexual orientation or gender identity, discrimination against Roma are among the most serious problematic issues in Lithuania. All those concerns were repeated in 2014 observations by the UN Committee on Economic, Social and Cultural Rights, which also noted serious problems in relation to the social rights, the right to health/healthcare, the right to education and violence against children.

Since 2009 Human Rights Watch issued several letters to Lithuanian government[47] and most of them concerned issues that are related to discrimination. In its letters Human Rights Watch expressed its concern about 'Law on the Protection of Minors against the Detrimental Effect of Public Information, which was designed to censor information available to children and should ban materials that 'agitate for homosexual, bisexual and polygamous relations' from schools or public places where they could be seen by youth, on the grounds that they would have a 'detrimental effect' on the development of minors. In the most recent letter Human Right Watch expressed its concern

40 Linos and Pegram (n 1) 16.
41 Spencer and Harvey (n 16) 3.
42 Linos and Pegram, (n 1) 11, *citing* Richar Carver, (2014)" Measuring the Impact and Development Effectiveness of National Human rights Institutions: A Proposed Framework for Evaluation, Bratislava Regional Centre".
43 Ibid 21-22.
44 Ibid 26.
45 Spencer and Harvey (n 16) 12.
46 UN Human rights Committee (2012) "Concluding observations: Lithuania" UN Doc CCPR/C/LTU/CO/3.
47 Human Rights Watch, (2015) "Lithuania" <https://www.hrw.org/europe/central-asia/lithuania> accessed 9 November 2015.

about the remarks stated by the Minster of Justice of the Republic of Lithuania in relation to a legislative proposal allowing a gender-neutral partnership registration in Lithuania. The problem of discrimination and the rights of lesbian, gay, bisexual, transgender and intersex people in Lithuania was also addressed by Amnesty International in its 2014/2015 report[48].

The rights of the most vulnerable groups such as children are often called one of the most problematic areas in Lithuania due to the lasting stagnation and regress, which have been observed during last decade and especially since the onset of crisis in 2008[49]. The UN Human Rights Committee[50] expressed its particular concern about continuous existence of trafficking in children under 18 years of age, in particular that adolescent girls living in boarding schools, special child-education and care homes, governmental and non- governmental child-care homes, and those in risk families, very often become victims of trafficking. The recent data shows that despite some actions taken by the government to improve well-being of children and youth at risk, the the level of child poverty remains high – around 35%[51]. The UN Committee on the Rights of the Child in its concluding observations of 2013[52] urged Lithuania to take measures to formulate a comprehensive policy on children's rights that would guide the development of programmes and projects that are needed and establish systems to monitor and evaluate them.

These fragmental examples on human rights situation in Lithuania suggest that Lithuania still faces great difficulties in respect to a variety of human rights issues, and some of them directly concern the attitudes of Lithuanian government. The studies on human rights situation in Lithuania identify several factors that hinder progress in this field. One of them is that "human rights failed to appear on political agenda of the Parliament and the Government, except in a few notorious cases that red-flagged the anti-human rights tendencies"[53]. Consequently, there has been a lack of systematic approach to human rights in Lithuania[54].

3.2. The Seimas Ombudsmen's reform

Discussion on the establishment of a NHRI in Lithuania started in 2008 among some academics[55] however only in 2011 Lithuania began official discussions in the Seimas Committee on Human Rights. The contextual analysis shows that the main driving forces for the beginning of this reform were international incentives coming from the UN bodies. Human rights experts[56] share this observation stating that discussions on the establishment of NHRI in Lithuania were perceived as a duty by the legislator rather than was driven by its will. In addition to that there is an opinion

[48] Amnesty International, (2015) *Report 2014/2015. The State of the World's Human rights* 38, 235 <http://www.amnestyusa.org/pdfs/AIR15_English.PDF > accessed 9 November 2015.

[49] Human Rights Monitoring Institute et al. (2012) *Rights of the Child in Lithuania: NGO Report for the UN Committee on the Rights of the Child On the 3rd and 4th periodic reports by the Government of Lithuania. 62nd-63rd pre-sessional working group*, <https://www.hrmi.lt/uploaded/PDF%20dokai/-CRC_Alternative_Report_Lithuania_NGO_Group_20120816_1.pdf> accessed 9 November 2015.

[50] UN Human Rights Committee, 105th session (n 46).

[51] European Platform for Investing in Children, (2015) "Lithuania: developing the childcare system" < http://europa.eu/epic/countries/lithuania/index_en.htm> accessed 9 November 2015.

[52] UN Committee on the Rights of the Child, (2013) "Concluding observations on the combined third and fourth periodic reports of Lithuania" UN Doc CRC/C/LTU/CO/3-4.

[53] Human Rights Monitoring Institute et al. (n 49).

[54] Human Rights Monitoring Institute et al. (2011) "Joint UPR Submission: Lithuania". <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/LT/JS1-JointSubmission1-eng.pdf> accessed 9 November 2015.

[55] Edita Žiobienė, (2008) „Nacionalinės Žmogaus teisių Institucijos Perspektyvos Lietuvoje" 9(111) *Jurisprudencija*, Vol. 9. No 11., 86.

[56] Interview with Karolis Liutkevičius, Legal Officer, Human Rights Monitoring Institute (HRMI) (Vilnius, Lithuania, 28 October 2015). Karolis Liutkevičius is a member of working group for the Seimas Ombudsmen Office's reform becoming NHRI.

that political branches of government understand the protection of human rights in a quite narrow sense: this protection is usually associated with the operation of the legal system, law enforcement institutions, and the courts in reinstating infringed rights[57].

At the very beginning of the reform process three alternatives where considered (i) establishment of new body; (ii) merging three Lithuanian ombudsmen institutions and broadening their mandate according to Paris Principles; (iii) reforming the Seimas Ombudsmen's Office by broadening its mandate according to Paris principles. According to the member of the working group[58] establishment of a new body was considered only as an idealistic model because it was perceived as the project, which requires bigger financial resources than other alternatives. Moreover in 2012 the consequences of the economic crisis were still strongly felt in Lithuania and thus the establishment of a new body was eliminated from the discussions. However, there were no real calculations of the financial resources that would be needed for the establishment and the functioning of this new institution, which might suggest that the financial argument was used just to mask the real political will.

The second option - merging three Lithuanian ombudsmen institutions into one new institution, was also neglected by using the argumentation that the Seimas Ombudsmen's Office is established on a constitutional basis thus the merger of this institution might be incompatible with the norms of the Constitution of the Republic of Lithuania[59]. The literature points out that the mergers proved difficult, creating tensions internally and in external relations and cause competition to retain the features of the previous bodies[60]. In addition to that difficulties might be caused by little prior experience of joint working, different institutional cultures, working practices and staff profiles. The British experience by merging equality and human rights protection in one entity (Equality and Human Rights Commission) faced some challenges coming from different approaches to promoting equality and human rights and an asymmetry in powers[61]. Moreover there is a fear that the reform, merging different institutions working in the field of human rights into one central human rights institution, would cause the marginalization of issues in relation to certain group of rights and thus a loss of expertise in this area[62].

The third option – the reform of the Seimas Ombudsmen's Office by broadening its mandate according to Paris Principles, has become the working option for the preparation of the draft legislation.

Some scholars argue that constitutional provision on the Seimas Ombudsmen's establishes so called Scandinavian or classic ombudsman, which is a mechanism that investigates the activities of the executive branch and its agencies and thus monitors the conduct of public administration to ensure that it is carried out legally and fairly[63]. Due to this human rights ombudsmen model, which is a hybrid form of ombudsmen institutions and is popular in Central and Eastern European countries[64], is not envisaged in the Constitution of the Republic of Lithuania[65]. It must be mentioned that ombudsman institutions with human rights mandate typically differ from country to country but there are two major trends in Europe. Except for Spain and Portugal, most Western European human rights ombudsman institutions more closely reflect the classical ombudsman model of

[57] Human Rights Monitoring Institute et al. Development (n 54).
[58] Interview with Karolis Liutkevičius (n 56).
[59] Adopted 10/25/1992.
[60] Spencer and Harvey (n 16) 8.
[61] Ibid 9.
[62] Eilionóir Flynn, (2015) *Disabled Justice?: Access to Justice and the UN Convention on the Rights of Persons with Disabilities.* Ashgate Publishing, Ltd., 79.
[63] Žiobienė (n 55) 88.
[64] Human rights ombudsmen were established in Poland (1987); Croatia (1992); Slovenia (1995);Hungary (1995).
[65] Žiobienė (n 55) 88.

investigation, recommendation, and reporting. Meanwhile human rights ombudsman institutions in Central and Eastern Europe typically have more extensive powers[66].

Lithuania established the Seimas Ombudsmen's Office on the basis of its constitutional provision (Article 73) stating that complaints of citizens about the abuse of authority and bureaucratic intransigence by state and municipal officials (with the exception of judges) shall be examined by the Seimas ombudsmen. They shall have the right to submit a proposal before a court for dismissing the guilty officials from office. The same article declares that the powers of the Seimas ombudsmen shall be established by law.

The Law on the Seimas Ombudsmen was adopted in 1998[67]. Article 3 of the Law on the Seimas Ombudsmen states that the purpose of activities of the Seimas Ombudsmen is to protect a person's right to good public administration securing human rights and freedoms, to supervise fulfilment by state authorities of their duty to properly serve the people. In 2014 this article was amended by an additional purpose stating that "The Seimas Ombudsmen shall also carry out the national prevention of torture in places of detention in compliance with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment".

Although the Seimas Ombudsmen's Office is an independent institution, which is accountable to the Seimas, the scholars argue that assignation of NHRI's powers to the Seimas Ombudsmen, would require essential amendments regarding its structure, composition, relations with government and may not correspond to its initial constitutional mandate[68].

The discussions about constitutional obstacles for the Seimas Ombudsman's Office to become NHRI where followed by asking review of Law on the Seimas Ombudsmen in terms of compatibility to Paris principles and recommendations from OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR). In its opinion ODIHR stated that the Seimas Ombudsmen are inter alia responsible for protecting human rights and freedoms and investigating complaints of abuse of authority of officials and this brings the Seimas Ombudsmen to fall within the scope of Paris principles[69].

Despite the legal question whether the Seimas Ombudsman is the classic or hybrid ombudsman, the choice of the model of NHRI had also political motives[70] and the first draft on the reform of the Seimas Ombudsmen's Office into NHRI was prepared in 2012. It received a lot of criticism due to its incompleteness[71] and currently the working group drafts a new proposal on the Law on the Seimas Ombudsmen. According to the member of the working group the main disagreements are related to the scope of the mandate, the operationalization of concrete functions, composition of staff and the implementation of the principle of pluralism[72]. It must be mentioned that UN Committee against Torture, is already concerned as to whether the Seimas Ombudsmen will have sufficient financial and staffing resources to carry out both the mandate of the national human rights institution and that of the national preventive mechanism under the Optional Protocol to the Convention[73]. As it was mentioned in the previous chapter budgetary arrangements are one

66 Reif (n 28) 299.

67 The Law on the Seimas Ombudsmen. 1998, No. VIII-950.

68 Žiobienė (n 55) 88.

69 OSCE/ODIHR, (2011), "Opinion on the Law of the Republic of Lithuania on the Seimas Ombudsmen" NHRI–LT/187/2011 (AT).

70 There is an argument that there was no will from political parties for a new body having mandate of NHRI (Interview with Karolis Liutkevičius (n 56).

71 ŽTK (Žmogaus teisių komitetas), (2013) "Pranešimas: Škotijos žmogaus teisių komisijos pirmininko nuomone Lietuvai reikalinga JT kriterijus atitinkanti žmogaus teisių institucija" <http://www3.lrs.lt/pls/inter/w5_show?p_r=4463&p_k=1&p_d=134281> accessed 9 November 2015.

72 Interview with Karolis Liutkevičius (n 56).

73 UN Committee against Torture, (2014) "Concluding observations on the third periodic report of Lithuania" Un Doc

of the preconditions of effectiveness and independence of NHRI. However this can be one of the most difficult tasks for Lithuania to achieve because the mismatch between delegated functions and assigned resources were already observed by the UN not only in the case of the Seimas Ombudsmen. Insufficient financial and human resources were one of the major problems in the cases of the Office of the Children's Rights Ombudsman[74] and the Office of the Ombudsman for Equal Opportunities[75].

3.3. Civil society organisations' (CSOs) views on the Seimas Ombudsmen's reform

The role of CSOs in establishment of NHRI has particular importance because 'NHRI adoption has been characterized less by elite-driven governmental deliberation than vocal mobilization on the part of third party actors'[76]. Human rights monitoring institute (HRMI), as one of the Lithuanian CSOs working in the field of human rights, in its initial proposal advocated for the establishment of a new body to become NHRI. The main argument for this proposal was that the new institution will not have inherited priority areas of competence, working traditions, established relations with the government and thus more closely will correspond to the Paris Principles.

One of the major concerns in the Seimas Ombudsmen's reform expressed by CSOs, is the possibility to achieve balance between complains-handling and human rights mandate. The studies on the ombudsman institutions in Central and Eastern Europe have raised the question whether making complains-handling the top priority, maybe to ignore the most serious human rights issues and to neglect the ombudsman's functions in relation to international law[77]. The results of the studies[78] do not confirm the latter hypothesis by showing that the ombudsman institutions have effectively implemented international law obligations in several ways. Firstly, they have increasingly referred directly to internationally guaranteed human rights, rather than just constitutional rights, in their complaint-handling; Secondly, the EU's human rights conditionality speeded up the internationalisation of human rights protection.

The other key concerns coming from CSO are closely related to the principle of pluralism and the requirement for independence. The Seimas Ombudsmen's Office is governed by two ombudsmen who are appointed by the Seimas following the nomination by the Seimas Speaker. As it is expressed in ODIHR recommendation[79] the Ombudsmen appear to be strongly linked to the Seimas, as their recruitment and appointment procedures are very Seimas-driven, which does not respect neither principle of independence not pluralism requirement. HRMI emphasizes[80] that discussions on the forms of CSOs and other stakeholders' inclusion in the appointment and activities of the Seimas Ombudsmen are one of the major issues in the ongoing deliberations. For instance, HRMI argues for the inclusion of representatives of several religious groups meanwhile other members of the working groups support just the representatives of the Catholic Church[81]. It is interesting to note that, according to recent research, civil society representation in the NHRI is not a widely recognised safeguard of its independence[82]. In other words this observation suggests that CSOs representation in NHRI and their impact on NHRI's effectiveness in promoting and protecting human right might be very context-depending and have significant impact just in certain

CAT/C/LTU/CO/3.

74 UN Committee on the Rights of the Child (n 52).

75 UN Committee on the Elimination of Discrimination against Women, (2014) "Concluding observations on the fifth periodic report of Lithuania" Un Doc CEDAW/C/LTU/CO/5.

76 Linos and Pegram (n 1) 10.

77 Carver, 'National Human Rights Institutions in Central and Eastern Europe (n 39) 182.

78 Ibid 192.

79 OSCE/ODIHR (n 69).

80 Interview with Karolis Liutkevičius (n 56).

81 Ibid.

82 Linos and Pegram (n 1) 16.

countries. The studies are silent about the factors, which might influence CSOs influence on NHRIs' effectiveness and open up a new venue for future research.

However the recent scholarship cautions that the relations with civil society should be balanced. This means that NHRI '(. . .) needs to work constructively with civil society but not be captured by it; nor should civil society be so close that it cannot act as a constructive critic'[83]. Moreover CSOs and their activities can also fall under the scrutiny of NHRI. The balanced interorganisational relations are of particular importance in such small countries as Lithuania, where there is relatively small number of CSO working in the field of human rights.

CSOs effective inclusion in the activities of NHRI is one of the most important aspects for Lithuania because reforming the Seimas Ombudsmen's institution, which is based on complaints-handling, into NHRI, predetermines less active tradition of working with CSOs. In addition to that Lithuanian civil society tradition belongs to so called postcommunist civil society tradition, which is characterised not only by relatively low levels of organizational membership[84], but also by weak collaborative relations between government and CSOs. Thus collaborative governance approach in the field of human rights may only benefit both parties. On the one hand Lithuanian CSOs should overcome a perception of the state bodies as negatively motivated entities that are overcautious in responses to human rights violations. On the other hand Lithuanian government should change its view about CSOs as being just formal consultants rather than knowledgeable experts and partners in policy making and monitoring processes.

4. Conclusions

Effectiveness of NHRI is determined by many factors however, some of them such as political will and ability to prioritize the most problematic areas in the field of human rights (if the case of a narrow mandate of NHRI) are significant determinants even before the establishment of NHRI. Analysis of Lithuanian case shows low speed and the intensity of the ongoing reform on NHRI and suggests that this reform is driven more by an international incentive rather than strong domestic political will to ensuring effective protection and promotion of human rights. This observation is also supported by the perceived unwillingness on a side of the government to have a new established body with the NHRI's mandate. Instead, attempts are made to reform one of the three ombudsmen offices with tradition of dependence on the Seimas. Although the human rights ombudsmen's model is one of the acceptable models by the ICC, the human rights ombudsman has narrower mandate than a human rights commission due to the limitation of its investigative powers to the cases where public administration is involved.

Observations on human rights situation in Lithuania show that current problematic issues cover variety of human rights, which call for a broad mandate and jurisdiction of NHRI. In particular, international community, academics and CSO express serious concerns about discrimination and children's rights situation in Lithuania. Therefore the reform of the Seimas Ombudsmen's into NHRI should fully explore the possibility of consolidating the work and functions of the Equal Opportunity Ombudsperson and the Children's Ombudsperson and clearly address interinstitutional relations with them. Unless Lithuania establishes broadly mandated NHRI, there is less likelihood to become A-status institution and a higher risk to be problematic in terms of its effectiveness.

Legal analysis shows that the Seimas Ombudsmen's reform into NHRI will be based on legislative enactment and thus will meet one of the preconditions of effectiveness set by theory. However

[83] Spencer and Harvey (n 16) 13.

[84] Marc Morjé Howard, (2003) *The Weakness of Civil Society in Post-Communist Europe.* Cambridge University Press, 158.

the mismatch between institutional mandate and assigned resources was a common problem in the previous work of Lithuanian Ombudsmen institutions. Due to this there is a great danger that NHRI will also operate with limited financial resources that might have a negative impact on its effectiveness.

CSOs role in creating NHRI has particular importance not only due to human rights governance particularities but especially due to Lithuanian post communist tradition with relatively weak civil society and its involvement in policy making processes. Although CSOs claim for an establishment of a new independent body acting as NHRI, which seems to be not an option for a legislature, a new platform for deliberation in the field of human rights may not only contribute to shaping new working tradition but also building partnership relations for future work. Balanced relations between NHRI and CSOs might be one of the preconditions for effectiveness in promoting and protecting human rights in some countries, and there is no evidence yet that Lithuania does not belong to this group.

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