

Yermekova Zh.Zh.
**The Strengthening of business
ombudsman's institute in
Kazakhstan**

For support of small and medium-sized business in our country have given considerable attention. One of institutions, which support small and medium business in Kazakhstan is the Institute of business ombudsman. Many entrepreneurs of Kazakhstan are often faced with cases of violation of their rights and legal interests by government authorities. Small and medium-sized businesses with complaints are turning to the National Chamber of Entrepreneurs, which currently performs function of business ombudsman. April 29, 2015 President Nursultan Nazarbayev has been voiced by the Plan of the Nation. In terms of the Nation represented by 100 concrete steps which aimed to implement five institutional reforms. One of these steps is the «Strengthening of the Ombudsman institution for protection business interests of entrepreneurs.» The purpose of the study – business activities of the Ombudsman and his influence on the development of the private sector in our country, identify ways to strengthen this institution. Subject of research: the socio- economic relations of employers and the state institutions of Kazakhstan. The object of research is the defense of entrepreneurs by creating a business ombudsman.

Key words: business, business ombudsman, small and medium enterprises, protection entrepreneurs' rights.

Ермекова Ж.Ж.
**Қазақстандағы бизнес-
омбудсмен институтын
нығайту**

Біздің елімізде шағын және орта бизнесті қолдауға айтарлықтай назар аударылуда. Қазақстанда шағын және орта бизнесті қолдау институттарының бірі бизнес-омбудсмен институты болып табылады. ҚР-да көптеген кәсіпкерлер мемлекеттік өкілетті органдар тарапының өздерінің құқықтары мен заңды мүдделерінің бұзылып жататыны туралы жиі айтады. Ұлттық Кәсіпкерлер Палатасына түскен шағын және орта бизнес шағымдарын қазіргі уақытта бизнес-омбудсмен институты орындайды. 2015 жылдың 25 сәуірінде мемлекет басшысы Нұрсұлтан Назарбаев Ұлт Жоспарын мәлім етті. Бұл Ұлт жоспарында бес институттық реформаға бағытталған 100 нақты қадам көрсетілді. Осы қадамдардың бірі «Кәсіпкерлердің іскерлік мүдделерін қорғау үшін Омбудсмен институтын нығайту» болып табылады. Мақсаты – бизнес-омбудсмен қызметін зерттеу және еліміздегі жеке бизнестің дамуына әсері, осы институттың қызметтерін нығайту. Зерттеу пәні: ҚР-дың мемлекеттік институттары және кәсіпкерлердің әлеуметтік-экономикалық қатынастары. Ғылыми зерттеудің объектісі – бизнес омбудсмен институтын құрылуына кәсіпкерлердің қолдауы.

Түйін сөздер: кәсіпкерлік, бизнес-омбудсмен, шағын және орта кәсіпорындар, кәсіпкерлер құқығын қорғау.

Ермекова Ж.Ж.
**Укрепление института бизнес-
омбудсмена в Казахстане**

Поддержка малого и среднего бизнеса в нашей стране уделяется значительное внимание. Одним из институтов, направленных на поддержку малого и среднего бизнеса в Казахстане, является институт бизнес-омбудсмена. Многие предприниматели РК часто сталкиваются со случаями нарушения их прав и законных интересов со стороны государственных уполномоченных органов. С жалобами субъекты малого и среднего бизнеса обращаются в Национальную Палату Предпринимателей, которая на данный момент выполняет функцию бизнес-омбудсмена. 29 апреля 2015 года Президентом Нурсултаном Назарбаевым был озвучен План Нации. В плане Нации представлены 100 конкретных шагов, которые направлены на реализацию пяти институциональных реформ. Одним из этих шагов является и «Укрепление института бизнеса омбудсмена для защиты интересов предпринимателей». Цель – исследование деятельности бизнес-омбудсмена и влияния его на развитие частного бизнеса в нашей стране, определение способов укрепления данного института. Предмет исследования: социально-экономические отношения предпринимателей и государственных институтов РК. Объектом научного исследования является отстаивание предпринимателей путем создания института омбудсмена бизнеса.

Ключевые слова: предпринимательство, бизнес-омбудсмен, малый и средний бизнес, защита прав предпринимателей.

**THE STRENGTHENING
OF BUSINESS
OMBUDSMAN'S
INSTITUTE IN
KAZAKHSTAN**

Entrepreneurship has positive influence on the development and formation basing on how state and society should be entitled to a fair enforcement of their rights and legal protection. All these assume a dialog between entrepreneurs and the government resulting with effective communication and interaction among them.

Business activity is the object of civil regulation; therefore, civil law governs legal relations which arise in entrepreneurial sphere providing stable activity of business unites.

Commissioner for the entrepreneurs' rights protection in Kazakhstan is to be established aiming to set effective procedures for business progress. It will be a novelty in the business sphere designed to ensure partnership between businessmen and state mechanism.

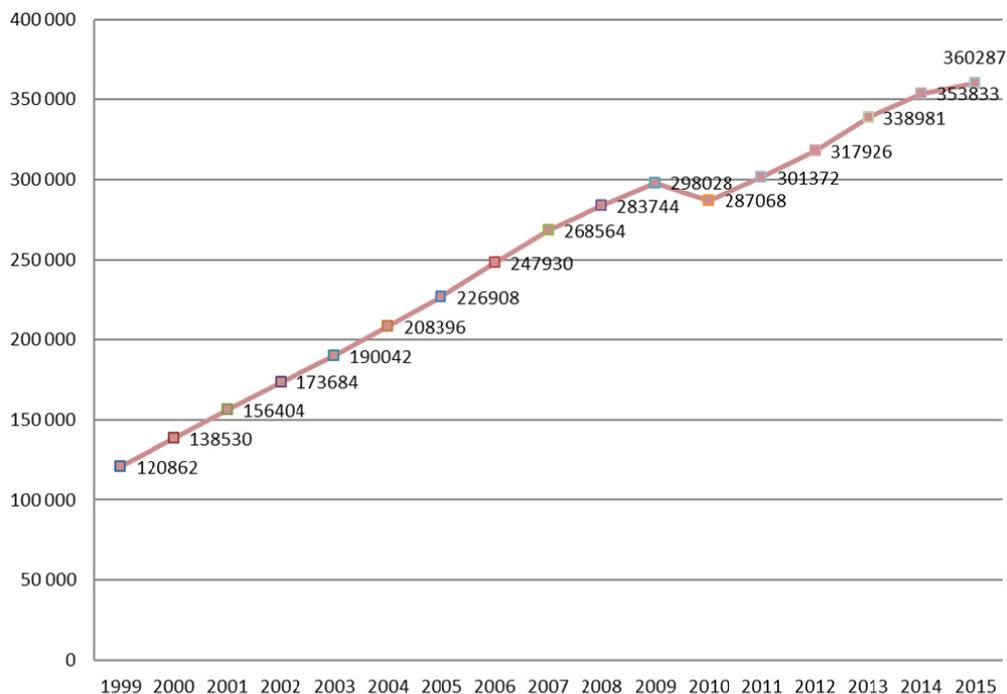
The relevance of this research is quite high and has theoretical and practical meaning. Many entrepreneurs can face with the violation of their rights and legitimate interests when functioning. So, they should have an opportunity to seek the assistance of a business ombudsman. Strengthening the institution of business ombudsman to defend the interests of entrepreneurs has been provided in the plan of the nation – «100 concrete steps.» The plan was set out by the President Nursultan Nazarbayev to implement the five institutional reforms on 20th May 2015.

In Kazakhstan, the development of entrepreneurship is one of the main priorities of economic policy. The Government seeks to build the middle class and competitive dynamic business community.

According to the Statistics Agency of Kazakhstan Graphic 1 is made up which shows the key performance indicators for entrepreneurship since 1999. We suggest considering the following statistics to understand the structure, composition, quantity and status of small and medium business in Kazakhstan: number of subjects in small and medium entrepreneurship increased by 3 times. In January 2015 comparing to January 2014 the number of entrepreneurs increased by 2% from 353 833 to 360 287 entrepreneurs.

Today more than one million enterprises work in Kazakhstan. Almost three thousand people were employed in small and medium sized business sector, which affect significantly on the social welfare of the republic. The development of entrepreneurship, which is a basis of market economy, is a strategic focus of the Republic of Kazakhstan.

Number of entrepreneurs in Kazakhstan in 1999-2015



Graphic 1

Source: Statistics Agency of Kazakhstan (<http://stat.gov.kz>)

The importance of having well-defined and strongly defended entrepreneurs' rights is widely recognized among economists and policymakers world-wide. In declined economic conditions, the necessity of the adequate instruments used for the business support of enterprises becomes more evident. Kazakhstan needs to ensure successful development of business environment. Therefore, our main purpose is to organize a system which helps to ensure entrepreneurs' prosperity. According to Civil Code (Art. 10), the state shall guarantee, protect and support the freedom of entrepreneurial activities.

By the way, institute authorized to defend the rights of entrepreneurs (business – ombudsman) will be established in Kazakhstan. The Ombudsman will be directly subordinate to the President. This is one of the innovations of Entrepreneurial Code, which entered into force in Kazakhstan since the beginning of 2016.

The Entrepreneurial Code reflects all possible ways of out of court and pre-trial settlement of disputes, establishes the general provisions of the investment ombudsman who is authorized to protect the rights of entrepreneurs. It should be noted,

among other things, that the Entrepreneurial Code provides for strengthening of the institute of business ombudsman to defend the interests of entrepreneurs. In particular, it establishes the authority of the Head of the State to appoint the business ombudsman for a term of four years.

The term «ombudsman» is unknown for many local people. The word has the Swedish beginning and means «authorized representative, public defender, lawyer, mediator, representative of someone's interests». However, it has different meanings in different countries. Their main function is the controlling over observance of the rights and protection citizen's interests before the competent authorities.

The institute of Ombudsman is one of elements in the system of public control over the government's machinery, along with other control institutions. It provides a situation in which the state would be appropriate to serve the public and not to himself or higher officials. Its main functions are:

- Protection of citizens' rights, which violated by public authorities;
- Assistance in increasing the efficiency of public authorities;

- Function of a mediator between society and authorities;
- The function of extra-judicial hearing.

International Ombudsman Institute describes fundamental importance of the Institute as follows: «The role of ombudsman to protect people from violations of their rights, abuse of power, error, negligence, unfair decisions and poor management in order to improve public administration and make government actions more open and the government and its employees – more accountable to society».

The business ombudsman is an authorized officer on protection entrepreneurs' rights. The ombudsman has right to defend interests of business in court. Its main task consists in elimination of attempts of pressure upon businessmen from law enforcement agencies and officials.

In developed countries, half of GDP occupies private business. Support small and medium-sized businesses received much attention in Kazakhstan. This is confirmed by adoption of many programs to support SMEs («Road Map of Business 2020», «Agribusiness 2020», «Productivity 2020» and increasing the investment attractiveness of the country and other regions.

Apart from programs in Kazakhstan set a plan for strengthening institute of protection entrepreneurs' rights or business ombudsman. His work nowadays is presented by the National Chamber of Entrepreneurs, which performs all functions of a business ombudsman.

February 27, 2014 President Nursultan Nazarbayev signed a decree «On drastic measures for improvement of business environment in the Republic of Kazakhstan.» The decree is aimed at easing pressure on the business of controlling bodies, enhancing role of the National Chamber of Entrepreneurs (NPP) by introducing a business ombudsman. In turn, in the NPP worked out question of introducing this institution.

The issue of introduction in system of defense entrepreneurs' rights Institute of business Ombudsman was first tabled at the fifth meeting on the Council of protection entrepreneurs' rights at the National Chamber of Entrepreneurs of Kazakhstan. Today the Institute of business Ombudsman is widespread in many countries of the world. The most glaring example is the Ombudsman of small and medium businesses in the United States.\

At the fifth session of the Senate member Gani Kasymov said that it must have a special procedural status. It was also noted that the business ombudsman will be able to make decisions quickly, respond quickly to cases of infringement businessmen'

rights. However, he must exercise control over compliance with businessmen' rights by executive authorities, local self-government. Also questions about legal side of it were discussed, about what legal authority it will have to protect its rights.

In fact, nowadays business functions of the Ombudsman performs NCE. The National Chamber Entrepreneurs of Kazakhstan established September 9, 2013. The NCE created for strengthening bargaining power of business with the Government and public authorities. The National Chamber Entrepreneurs performs business support via the Council of protection of the rights of entrepreneurs, development of youth entrepreneurship, Council of Business Women.

At monthly meetings, members of the Council to discuss ways to solve the specific situations of infringement of the rights of business entities with participation of businessmen and officials of authorized state bodies. Representatives at this site of the business community have possibility to appeal directly to officials to ask them specific questions about their problem.

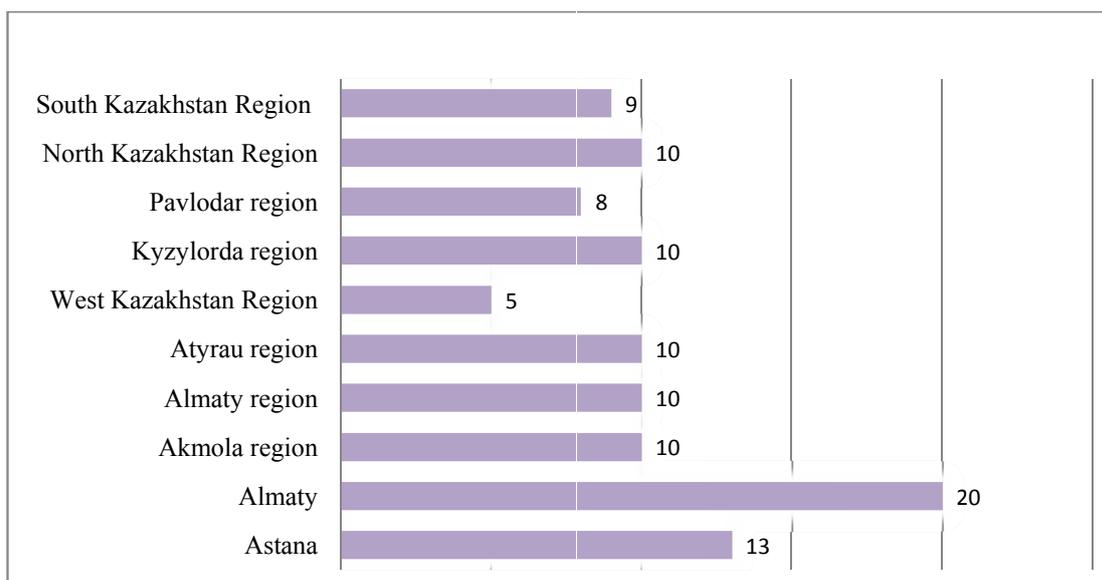
Key objectives of business of the Ombudsman:

- protection of rights and legitimate interests of Kazakh entrepreneurs;
- protection of rights and legitimate interests of entrepreneurs abroad;
- control over the compliance with the rights and legitimate interests of entrepreneurs by the authorities at the national, regional and local levels;
- development of public institutions for the protection of the rights and legitimate interests of entrepreneurs;
- participation in formation and implementation of state policy in the area of business development, protection of rights;
- interaction with entrepreneurial community.

Last year the head of state announced an initiative on carrying out of five institutional reforms and a plan of nation «100 steps». In order to implement this plan developed legislation to enhance business ombudsman to protect interests of entrepreneurs. This law, which is under consideration of Majilis, proposed raising legal status business ombudsman. In order for business activities of the Ombudsman to be effective, this figure will be appointed by the Head of State. Also it provides that the Ombudsman must be a citizen of the Republic of Kazakhstan no younger than 30 years, with higher education and work experience at least five years in the legal profession or in protecting the rights and freedoms of citizens. It is expected that it will be presented in all regions of republic. In turn, it will protect the Kazakhstan

businessmen not only inside but also outside the country. It is important that the ombudsman has right to introduce to state and local authorities for the protection of proposals not only at the national level, but also taking into account regional interests. Business Ombudsman also receives right to appeals to the heads of state in case of systemic violations of rights, and will prepare an annual report to the head of state about work done. Business Ombudsman is a member of the Presidium of of the National Chamber Entrepreneurs of Kazakhstan («Atameken»), and

organization its activities will be provided by a separate unit. Complaints of entrepreneurs will be accepted by the National Chamber of Entrepreneurs, which has offices in all regions. Thus, it will provide maximum geographical and sectoral coverage of entrepreneurship and business ombudsman services. Directly activities for Adoption and consideration of applications involved in the Council for the Protection of the rights of entrepreneurs. The Council is a permanent working body of the National Chamber of Kazakhstan.



Graphic 2 – The demands to the NCE

Source: Official website of the National Chamber of Entrepreneurs

According to schedule 2, we can conclude that the majority of all applications falls on Almaty. This is because, firstly, the private business have most developed than in other cities of Kazakhstan, and secondly, that the majority of entrepreneurs of Almaty have complaints about public bodies that have most violated rights and interests. Smaller amount of applications received from the Kyzyl-Orda region, this suggests that the entrepreneurs of the region is less likely violated their rights.

Each a claimed case review in detail, and then NCE make a decision . Moreover, these problems, which solved by the Chamber, are completely different. Experts relevant units NCE RK prepare legal opinions on the coming issues of concern, and most egregious violations of rights of entrepreneurs are submitted for discussion by the Council. Problems

of regional scale considered by the Council protect the rights of entrepreneurs Regional Chambers.

As an example, we say about problem of LLC «ZAMAN.KZ-XXI». They had problems with coordination of conceptual design in the Department of Architecture and Urban Planning in Astana. March 16, 2015 this issue was resolved positively by NCE.

Activity of Business Ombudsman implemented at two levels: national and regional. The main difference between the Republican and regional authorized bodies is that the Republican is protecting rights of entrepreneurs at the national level, and the Regional Ombudsman carries out its activities exclusively on the territory of its subject of republic within the framework set by the regional law tasks and powers available.

Table 1 – Swot-analysis of activities of the Business Ombudsman in Kazakhstan

<p>Weak sides</p> <ul style="list-style-type: none"> • Difficulty in coverage throughout the country • inability of monitor all regional bodies 	<p>Strengths</p> <ul style="list-style-type: none"> • independence in their activities • Objectivity • State support • Ability to quickly solve applicants' problems • Accountability of the state, namely the Head of State • Special extended powers • Transparency, presentation of all reports in the media • Interaction with the business community
<p>Threats</p> <ul style="list-style-type: none"> • Ability of bribery business ombudsman for selfish purposes • Abusing their powers 	<p>Opportunities</p> <ul style="list-style-type: none"> • Improving conditions for business development in Kazakhstan • Ability to reduce the burden on the court • Ability to improve legislation on entrepreneurship • Providing control over a violation of rights and interests of entrepreneurs

Source: Compiled by authors of scientific works

As practice shows, rights of entrepreneurs often violate executive and supervisory bodies. Mainly – they are illegal money extortions, laying unforeseen duties, numerous inspections by the tax and law enforcement bodies, red tape on receipt various documents. All this creates an obstacle for normal operation of business.

Thus, according to a poll conducted in 2015, for conflict resolution business organizations address at absolute majority (44%) to influential friends who work in the government. That is, the business activities of the Ombudsman in the Republic of Kazakhstan represented by NPP has not yet lived up to all expectations of society.

Naturally, rights and interests of of entrepreneurs are violated, but some of them do not go to the Chamber, but solve this problem in other ways, including illegal.

Therefore, strengthening of the Institute of business Ombudsman and consolidation of its legislative powers will allow entrepreneurs to contact competent authorities with relevant complaints.

In our opinion, the business ombudsman in Kazakhstan should be endowed with special rights and powers, including the right to participate in the development of specific legislation, the right to suspend departmental acts of state bodies, the right to participate in court proceedings, etc. It is important to ensure absolute independence and objectivity in Kazakhstan. But this business ombudsman should report directly to the Head of State.

Thus, the Institute of business ombudsman will help entrepreneurs not only to cope with modern challenges, but also create conditions for their further development.

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