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**FROM INFORMATION TO INNOVATION:
ACTIVITIES OF POLISH OMBUDSMEN FOR THE LAWS OF DISABLED PEOPLE**

Abstract

Human rights are one of the cornerstones of a democratic state. They have character: natural and inalienable. Human rights also apply to specific moments in which is a specific person, which is: a child, employee, patient and a person with a disability. The last two categories have a special character. They relate to moments in human life, in which he experiences pain and suffering. In Poland, for nearly thirty years operating office of the Ombudsman. Thanks to the work of successive ombudsmen, society was (and still is) learned in the field of human rights and freedoms. In recent years, it can be seen changes in the Polish system of human rights protection. There are new types of ombudsmen. With regard to persons with disabilities, there is new, innovative form of action. It is a method of training the skills of being a "spokesman own rights". How work the above, still forming the Polish system of ombudsmen? How individual spokesmen work? Are their initiatives effective?

Keywords

ombudsman, disabled, human rights, innovation, self-advocate

Introduction

Almost thirty years of functioning of the ombudsman's institution in Polish law system had shown a magnitude of actions undertaken to protect laws and freedoms of Polish citizens and foreigners staying on its territory. Bringing to live and then functioning of the highest office, had been connected to many controversies since its beginning. For many years the authorities of Polish People's Republic had regarded that the institution like an ombudsman is unnecessary, which was contend that in Lenin's conception the prosecutors are responsible for protection of human's laws. After 1989 the institution was attacked with further allegations, that this was nothing more but the relic of the past, unnecessary in democratic society [9].

However, over twenty years of Polish ombudsman's actions contributed foremost to a dissemination of human rights in Polish society. The amount of cases carried by the following ombudsmen's proves that in a society there appeared, and after that prevailed the notion that a citizen has the right for subjective treatment by a country [20].

The appearance of the office in a Polish law system brought a need to create institutions responsible for taking various kinds of complaints, questions and requests from the citizens. In last mentioned twenty years, in Poland there were created offices, independent from Civil Rights Advocate, however focused on protection of law's and freedom's of a human. The offices to greater or lesser degree referred and they still refer to the Scandinavian conception of ombudsman. Ombudsman, who is an advocate in this case, is a highly located officer, who has strict connection to legislative authority, having control power. In this conception an advocate is reachable for citizen and he or she should focus on evaluating legitimacy and legality of actions taken under by the authorities, with no right for self-determination of the case [13].

Nevertheless, *The Dictionary of Foreign Words* by Władysław Kopaliński pays attention to a fact that "ombudsman" in English is an agent, trustee of the population; civil rights advocate; guard of all citizens' general and special interests; spokesman of complaints, full-time defender of the citizen against improper government's action. As for the etymology of this word, it is derived from the Swedish language and means: the trustee, commissioner, supervisor, expert [19].

In current, broadly understood law system, apart from Human Right Defender (HRD) there do function advocates like: Children's Ombudsman, Insurance Ombudsman, Consumer Ombudsman, Ombudsman for Patient Psychiatric Hospital, spokesman for People with Disabilities, Ombudsman for Pupil / Student and Customer Ombudsman.

In last more than twenty years, in Poland we can see, apart from the development of institutions specializing in the topic of human rights, also a crucial development of special group of innovative actions (legal education, legal counseling, psychosocial support) referring to concrete group of people in need for special support. Such a group are the disabled people.

As regards rights protection of previously mentioned people, we can see in Polish law a clear development of essential law's acts. There are specially mentioned the documents like an acts on: mental health protection, social assistance, the occupational and social rehabilitation and employment of disabled persons, etc. [5].

To the above mentioned it has to be added that in Polish Constitution art. 69 pays special attention to disabled people saying that: "for the disabled people, the public authorities give, in accordance to the law, help in securing their existence, adaptation to work and social communication." What is important, a previous article underlines that public authorities are obliged to pay special attention in relation to "guarantying special health care" for the above mentioned group of people [2]. While observing the above development of initiatives concerning laws of disabled people, with satisfaction should be adopt the ratification by Poland, of Convention on disabled people's rights, created by United Nations. The mentioned Convention in a precise way defines i.e. what the discrimination or universal projecting are. The document imposes general rules on respect for dignity, non-discrimination, full participation of disabled people in social life, equal chances, the need for respecting disabled children's rights, etc. The whole Convention in a precise way defines rights connected to: personal safeness, freedom from tortures, exploitation and violence, protection for personal integrity, freedom of movement, independent life, mobility, access to the information, etc.[10] For sure it can be said that the mentioned rights have been already described in Constitution, ratified conventions and imposed laws. It is hard not to agree with the presented opinion, at the same time, however, it should be addend that ratification of the mentioned convention is an expression of acceptance for legitimate expectations of growing number of disabled people environment. Besides, the document imposes institution of a Committee for disabled people's rights, which is to have international competences in analysis of disabled people's situation in specified regions of the world [10].

A large group of advocates of detail and taking the debate on operations of each ombudsmen points out that such a form of institutional protection of human gained great popularity in Poland. There are however so many different and heterogeneous "advocates' institutions" raises a question for a sense of their functioning. There comes a question whether the existence of such pluralism of actions aimed at human rights protection, in that a disabled person, does not lead to lessening the power of undertaken actions? It is worth considering, what is the sense of existence of ombudsmen who have no tough legal tools? In other words, it there is a sense of paying for an institution, which main goal, and at the same time power, is paying attention to a problem and raising alarm in a situation of violation of a definite person or group of people? At the end it is worth considering, whether it is not the optimum solution to function in Polish legal system a single ombudsman, concentrating in him or her full competence of taking actions also for such groups as homeless, sick, or also disabled? To answer these questions, the literature should be studied to say on which bases do the single rights advocates operate. The scope of powers should be traced. At the end there is a necessity to ask a question: whether those institutions have positive influence on the situation of petitioners, who report to them and whether they influence the local or national situation related to compliance of certain rights and freedoms. On canvas of below presented considerations, it is hard to investigate a way of functioning of all ombudsmen in Poland. Ones to highlight this problem sufficiently, it should be focused on the functioning of several of the above ombudsmen. The following discussion will focus on the office of: Civil Rights Advocate, Ombudsman for Patients of Psychiatric Hospital, the Commissioner for the Disabled, Commissioner for people with autism, and so-called. self-advocates. This division seems to reveal most fully the way of functioning of Polish ombudsmen, called into existence by virtue of: the Constitution, laws, decisions / resolutions of the local government, activities of NGOs and the person's own actions. This division also reflects the area in which the specific individual advocates operate: national, local and national-local and personal. The analysis of way of functioning of those institutions would present also the way of operating, depending on the powers which they have. It would be the most appropriate to start the above considerations from the "eldest" of all ombudsmen, who is Civil Rights Advocate.

Civil Rights Advocate

As it was preciously mentioned, the HRD is the oldest public institution functioning in Poland and considering the human rights protection. From the moment of appointing HRD in 1988 till the present times, in this office there have been enormous changes. At the beginnings of its existence, the Human Rights Defender had at his disposal one single room in a parliament building. As Ewa Łętkowska recalls, creating such an institution was first of all aimed at gaining by communistic authorities the support of public opinion. In the opinion of the first ombudsman, the goal which was strengthening institutional protection of human rights was secondary [20]. Twenty years of functioning of subsequent Civil Rights Advocates led to a serious development of the institution. The scope of actions taken by each of a few substantive teams functioning in CRA's Bureau is very broad. The actions taken by HRD and the substantive employees concern e.g.: children's rights, uniformed officers' rights, the rights of foreigners and the rights of disabled people [24]. As K. Motyka states, since the beginning of functioning of the HRD institution in Poland till 2003 there were 700.000 cases reported to the office. In just 2003 there were more than 55.000 cases [21]. In 2007 in HRD Bureau, out of 34.000 cases, 13.000 of them was led [24]. Such a broad scope and large scope of taken cases is possible for a numerous group of substantive employees of the Bureau and of very broad powers, that the presented ombudsman has.

The legal act on Human Rights Defender in art. 1 pays attention that HRD "safeguards the rights and freedoms of man and citizen, which are specified in the Constitution and in other normative acts." This formulation points out that within the HRD may find interest in all matters relating to human rights, regardless to the sphere, which they relate. *Conditio sine qua non* for the Ombudsman to take action in accordance with normalization of 8th Act of the Law on the Civil Rights Advocate, is a message indicating a violation of freedom and human and civil rights. It is worth adding now that "each violation of rights justifies taking actions by the ombudsman, but only those, on which the violation of freedoms and rights indicates. For HRD is not only a guard for broad rule of law, but a controller of respecting rights and freedoms. For that reason a clearly "forensic" attitude of the ombudsman to cases reported to him, which means concentrating only on the mechanical analysis of violations of law, with no deeper reflection on whether the violation does any results in a sphere of protection of laws and freedoms of an individual, would be improper" [24].

Civil Rights Advocate, in accordance with the idea of Swedish ombudsman is appointed by the Parliament (Seym with agreement of Senate). The ombudsman in his or her actions has the right to appeal directly to such organs of public power as Seym¹, prosecutors, professional local organs, Constitutional Court, Supreme Court, etc.

In the discussed legal act there often appears a statement, that an Ombudsman has the right to "request..." e.g.: the initiation of proceedings: civil, criminal, administrative. It is also important that the authorities, to which the ombudsman appealed, have, defined in the Act, 30 days to provide the Ombudsman some specific explanations. The possibility of: controlling, also with no warning, asking questions to Supreme Court, possibility to join judicial or administrative proceeding, right to the application process for analysing the accordance of some specific legal acts with Constitution in the Constitutional Court are a part of strong powers of Ombudsman, by which RPO can fight for respecting rights and freedoms of a human. Those actions are taken e.g. by appealing to the highest executive, legislative and judicial authorities [4]. It should be noticed that HRD in his actions, in accordance of Constitution, is independent from any other public offices [6]. Situating the RPO's institution in Constitution, which as art. 8 states is the highest law in Polish Republic, what makes it the highest legislative act in Poland, is of immense importance and rank of the above office.

Such a detailed description of CRA's actions is justified by the awareness, that the mentioned office for its situation and competences has the highest powers to help, also interesting for us – the disabled. We would try to present below the examples of actions of HRD relating to the mentioned group.

Even the initial analysis of the Human Rights Defender's web site pays attention to actions of the current HRD – prof. Irena Lipowicz – in protection of suffrage for disabled people. The portal presents, how to vote by proxy, and tells how to complete a formal proposal to this action. It is also the mentioned Defender who lately took plenty of initiatives which were aimed at drawing attention to the necessity of ratification of Convention on disabled people's rights. Last times, by the office of HRD the Commission of Experts for People with Disabilities

¹ Via its advocacy the Ombudsman has the right to request an audit commissioned by the Supreme Chamber of Control.

was created [24]. It is also worth noticing, that HRD takes his actions not only in a form of great educational actions. It is the specificity of the discussed office to represent specific people very often, also those people who are in difficult health situation. An excellent example of these activities is the intervention of former Commissioner – dr. Janusz Kochanowski in case of Tomasz Sowiński, directed by the court for forensic psychiatric observation, during which his dignity was clearly violated by the arbitrary placement of the observation in the psychiatric ward, despite the absence of any signs of disease or mental disorder. As a result of HRD's and The Helsinki Foundation's for Human Rights actions there appeared a great positive modification of criminal law in terms of punishing people for the kind of observation.[11] It is also worth recalling, that the actions of the mentioned ombudsman in a meaningful manner are approaching the situation of a disabled child. For example, in 2007, the Defender in a correspondence to a Health Minister discussed the improper care on disabled minors. He emphasized the need to formulate rules that will not discriminate against the chronically ill children, as people who can not function independently in school. The Defender has also intervened e.g.: in a situation in which the National Health Fund refused financial support concerning purchase of wheelchair for a child [25]. In the orbit of HDR's interest are also children with disabilities due to intellectual, mental or developmental dysfunction. The result of this interest is drawing up by the Ombudsman for Children, based on a careful analysis of HDR, a comprehensive report on the situation of children in psychiatric hospitals. Those documents in an important manner presented the basic needs of Polish children-youth psychiatry [7].

Ombudsman for Patients of Psychiatric Hospital

In the literature it is noted that the effect of such a large body which is currently HRD causes that particular groups of people living in remote areas of Poland may have difficulties in accessing legal aid offered by the above office. Jędrzej Duda points out that in such a situation there also may be people living in insulation institutions, which further include psychiatric hospitals listed above [12].

Ombudsman for Patients of Psychiatric Hospital (further OPPH) is one of the youngest institutions operating for human rights and freedoms. The above institution was created in 1st January 2006 by the novelty of an Act on protecting psychiatric health from 1st July 2005 (Journal of Laws Nr 141, item 1183)[5]. Since 2008, in Polish health care system there could also be noticed an Ombudsman for Patients Rights, referred to in § 5. 1 point 10, § 7. 3 point 8 of the Regulation of the Prime Ministers of 29th September 2004 on the statute of the National Health Fund (Journal of Laws of 2004. No. 213, item 2161, as amended), and attorneys appointed by the order of the director of particular hospital. In 2008, under the Act, in Poland there was set up the office of the Ombudsman for patients having extensive powers of control and monitoring [8]. Employees of this office have become OPPH employees, working previously in the Office of Patient's Rights. But just in the case of above mentioned ombudsmen organizing their tasks in psychiatric hospitals and exercising supervision over them by Patient's Rights Ombudsman can we spoken as normalization of the statutory guarantee of independence behaviour.

The mentioned Ombudsman was established here to protect the rights of people enjoying the benefits provided by psychiatric hospital. The help of this ombudsman can be used by the legal guardian or actual patient. Appointment of the Ombudsman only on psychiatric wards is associated with the specificity of hospitalization of patients in these wards. With few exceptions only in the psychiatric ward patients can be hospitalized without their consent. Also on these branches *de jure* can be used so-called direct coercion, including incapacitation of dangerous patient using physical force or a pharmacological agent. Fact is, therefore, that the above will affect the greatest danger is potential infringement of the rights and freedoms.

In contrast to the above described Human Rights Defender, the function of the Ombudsman for Patients of Psychiatric Hospital, is not held by one person but by a dozen of people. According to the above-mentioned Act, attorneys are employed by the recruitment of staff for Patients' Rights Ombudsman's Office. Their amount successively changes. It is worth mentioning that in the period from early 2006 until the end of 2008, all concerned attorneys received a total of 28, 842 cases. In turn, during 2009 the working then in 14 provinces attorneys received 4,657 cases [26].

J. Duda points out that similar institutions exist in other European Union countries. In Holland, in each of the psychiatric hospital an advocate works. Those ombudsmen are employed by the National Foundation Patient Advocates. Citing the experience of other European countries J. Duda points out that the work of discussed here is the most effective when the following conditions are met:

- an advocate must be easily accessible to patients,
- an advocate has to spend most of his or her time in psychiatric units being “under his care”,
- an advocate must be independent from the director of the institution.

Jędrzej Duda also points out that these conditions can not be achieved by e.g.: Human Rights Defender. For that reason *de facto* the possibility of patients to appeal to these bodies is limited [12].

Ombudsman for Patients of Psychiatric Hospital (OPPH) in most cases was equipped by the legislator in soft tools. Under the cited Act, an Ombudsman, while explaining the reported complaints, questions and requests regarding patient rights violations, has the right to: request the authorities of the hospital / ward, hospital-makers to change the situation causing certain violations, insight into the patient's medical records for his approval or consent of his representative statutory audit.

Particularly noteworthy is the fact that the Ombudsman has been statutorily authorized to cooperate with such bodies as the Human Rights Defender, Ombudsman for Children, as well as Regional / National Consultant in the Field of Psychiatry. Moreover, in accordance with § 3 of the disposal of the Health Minister in the case of detailed procedure and method of work of the Ombudsman for Mental Hospital Patient Advocate [11] is entitled to his or her own initiative to analyze the situation “in particular” of patients who, among others: have been admitted to hospital without consent, coercion have been used against them directly, they are incapacitated. Nevertheless, the phrase “in particular” points out that the Ombudsman is not “closed road” to other patients who are less particular situation.

The fact that the legislature did not limit the catalogue of potential actions is a manifestation of exhaustive rational assumption that he was not able to identify all potential situations in which personal initiative of the Ombudsman might be necessary for the effective protection of the psychiatric hospital's patients. The advisability of this seems to be confirmed by OPPH's experiences and it is resulted from the diversity of the target group, who we are in this case, patients with psychiatric disorders.

The use of this right has an extremely important influence on the legal awareness of patients and their relatives. During individual meetings with the patient, ombudsman is able to analyze calmly patient's legal situation. Patient can be informed by the Ombudsman about asserting his or her rights in situations as incapacitation or use of restraint. These tasks can also be performed by the advocate during educational meetings held in psychiatric wards [18].

It is worth noting that those who wish to serve an ombudsman function in the psychiatric hospital can not in any way be related to the pharmaceutical or medical industry. Potential ombudsman can be in no professional relationship with the National Health Fund and he or she may not provide any medical services, which are paid by the Fund. These prohibitions imposed on people acting as OPPH and the fact that the Advocate is employed by the Office of the Commissioner for Patients' Rights guarantee its independence in carrying out their duties in a psychiatric hospital, to which, in accordance with the law, he or she has got the right of unlimited entrance, which was also fleshed out in the amended Act on mental health [15].

Ombudsmen working in psychiatric hospitals and psychiatric wards of general hospitals are involved in providing assistance, primarily to people who are mentally ill or those experiencing other mental disorders, which may in a significant way lower the level of daily functioning. It is worth mentioning that the situation above mentioned group, makes them able to be defined as disabled. This fact causes that a mentally ill people, as disabled people, in accordance with the recommendations of the United Nations require specific support from independent human rights bodies [16]. However, it is worth adding that the daily functioning of an ombudsman in the hospital's reality, creates a situation in which the ombudsman may be to intervene in case concerning not only the people affected by mental and intellectual disabilities, but also those physical ones [17].

A similar group of visitors is also directed to another specific ombudsman, whose main task is to provide support and assistance to people having distinct health problems. That ombudsman is an Advocate for Disabled People (ADP).

Advocate for Disabled People

Advocates for Disabled People are appointed by the majority of the City / County Council or the local Assemblies of Disabled People. Currently, these institutions operate, among others in Bytom, Płock, Kalisz, Poznań, Łódź and Jelenia Góra [28].

Analyzing the scope of activities of the mentioned institution, you may come to conclusion that the main task for ADP is serving the interests of disabled people through constant contact with the highest local executive authorities. Their scope of activities includes, among others: collaboration with Non-governmental organizations (NGOs) dealing with people with disabilities and their families, conducting “hotline” for people with disabilities, issuing parking cards, assistance in obtaining a residential unit under the applicable law, assistance in obtaining appropriate orthopedic equipment, housing assistance in adjusting to the needs of disabled people, etc. The scope of the foregoing Ombudsmen also includes activities of a legislative nature. The Advocates issue opinions on matters of relevance in the lives of people with disabilities and participate in the development of local laws concerning living conditions of the group of people. The analytical activities undertaken by the advocates and their staff are also worth emphasizing. These activities are designed to continuously monitor the rights of people with disabilities, which in turn is of vital importance in relation to initiatives, constantly taken by ombudsmen, aimed at preventing discrimination against people with disabilities [27]. The basis for actions of Disabled People Advocates are records of organizational rules in specific cities or, as is the case of Jelenia Góra, provisions of the Charter of Fundamental Rights of Disabled People, adopted by the Polish Sejm, on 01st September 1997, and the UN Standard Rules for Equalization of Opportunities for People with Disabilities. (M. P. 97 No. 50, item 475).

You cannot take this opportunity to miss an extremely important aspect of work that is ADP cooperation with NGOs, understood as a non-profit civil society important elements of taking a partnership cooperation with state bodies. In the actions of individual Disabled People Advocates we can see in that regard a actions like: supporting centres created by the association of early intervention services, organizing courses which are a financial support for the mentioned type of organizations, supporting occupational therapy workshops and self-help homes, monitoring an access to protected housing for people with disabilities, co-organization scientific and cultural events, significantly contributing to the breaking of stereotypes formed around people with disabilities. While taking the topic of NGOs, in the context of the wider advocacy, there can not forget about the special Polish Foundation, whose activities led to the appointment of another interesting Ombudsman. This refers to the Synapsis Foundation, through which the function of the Ombudsman for Rights of the People with Autism.

Ombudsman for Rights of the People with Autism²

The function mentioned above was established at the ending of 2003 due to the Synapsis Foundation. At the beginning of 2004 the agreement Autism Poland, gathering more than forty non-governmental organizations forwarded to the discussed ombudsman its attorney, giving access to the system operations to protect the rights of children affected by listed developmental disorder. Establishment of the Ombudsman for Rights of the People with Autism function (further ORPA) was made possible by funds collected from the European Union under the project: “Good practice in civil advocacy for communities affected with autism.”

Establishment of ORPA is a clear consequence of Synapsis Foundation actions for protection of the rights of discussed here group of people. Since the mid-90s the Foundation has consistently given legal advice equally to the families of people with autism, and other organizations involved in this issue. At the beginning of this existence, the function has already considered that its duties will include: “Monitoring of help to people with autism in Poland, the collection of information about pathologies in Polish law and practice. Exerting influence on the shape of the Polish law in the area for people with autism and their families. Maintaining regular contacts with the Parliamentary Group on Autism. Support for advocacy at the local level. Development and implementation of system standards help people with autism and their families” [34].

² Presented fragments on Ombudsman for Rights of People with Autism and Self-advocates are a part of doctor al thesis written in Department of Sociology of Law and Human Rights, Catholic University of Lublin, under the direction of prof. K. Motyka.

As can be seen clearly, ORPA takes the actions reserved for political advocacy. These forms of lobbying activities are supported by the Polish parliament after active operations of the Parliamentary Group on Autism. It is thus clear that ORPA activities are aimed at achieving a system change. While analyzing information presented on Synapsis Foundation website, you can find out that the current Ombudsman did not take actions aimed at providing assistance to a particular person or the family. It is emphasized that an ORPA is designed above all to provide a system of legal assistance for organizations involved in the topic of autism. What is interesting, there was underlined that “the Advocate will (...) deal with problems signaled by several organizations, with the problems of whole environment of people with autism in Poland...” As the main areas of ORPA’s actions are: improvement of the situation of people’s with autism education, the struggle for decent conditions in the independent existence or functioning in nursing homes, statistical analysis of current amount of people affected by the type discussed disorder in Poland [29].

A quite opposite pole of analysis are taken by so called self-advocates in their way of activity.

Self-advocates

Self-advocacy means “own advocacy”. This is an unusual phenomenon in shaping in disabled people ability to fight for their rights. The presented idea, like the ombudsman support concept in protecting human rights and freedoms, was born in Sweden. It has began there in the 60s of the twentieth century with organizing the first integration meetings for people with disabilities. During those meetings, transforming themselves into regular discussion clubs, people with disabilities supported by their assistants, for the first time began to loudly voice their opinions about their own life situation. These opinions were directed toward caregivers and others who want to organize their lives. The need to “speak out” led to the fact that people with disabilities began to occur at scientific conferences telling the society what they feel on this occasion and highlighting the importance of their own rights.

Specific feature of self-advocacy movement is to provide support to people with disabilities (intellectual, but not only) in the successful fight for their rights. It is important at this point that people here do not undertake the decision for a disabled person. Support is understood here as a help to learn by himself or herself: his or her “strengths and weaknesses”, needs, dreams, etc. Cited support is also based on teaching responsibility. Making self-advocates aware of their rights, entails providing them with knowledge of the duties. In a sense we can say that education is the ability to take responsibility for their own actions. The action is usually taken in a group. The group consists of self-advocates and assistants supporting them.[22] It is worth mentioning that here it is about the assistants, who can support, but they can not decide. Recalled precious groups are an integral element, by which it is possible to get to know effectively the own rights and ability to fight for it successfully. In Polish conditions at the present moment we cannot say about educating a few thousand of self-advocates on courses, in which, what is crucial, there take part not only assistants and trainers having not only law education important to present the topic in a competent way, but also pedagogical skills very precious in presenting effectively the way of transferring knowledge [32].

The appearance of self-advocates movement, from other (socio-law) perspective is an amazing phenomena. This is because there is a group of people, who actively struggles for achieving the guaranteed rights. Moreover, those people present an important magnitude of law. They note that the right of a person represents the value for which you should peak up. On one hand, self-advocate, actively draws attention to the injustice experienced by him or her, he or she shows us how the attitude of non-conformism looks in practice. This person is opposed to the experienced patent injustice e.g. in access to certain services, shows that the rules and standards are grossly unfair. On the other hand, this nonconformity falls within the limits of legalism. Self-advocate does not undertake the revolutionary actions aimed at the destruction of a particular social order. Speaking in his own case, he or she shows that people who break the law clearly show disrespect for social norms [23].

Conclusions

Already invoked in the above considerations, Jolanta Arcimowicz pointed out that the establishment of the institution of the Ombudsman in the Polish legal system has filled a gap at the interface between civil and authority.[9] Advocate has become popular, new and effective mean of exerting pressure on the power in people’s awareness. Analyzing the functioning of mentioned above advocates, you can reach similar conclusions. In the above considerations, each of the attorneys was named ombudsman. Naming this fact is related to the appeal of each of the attorneys for the Scandinavian ombudsman concept. Most of the presented above “actors for human rights” is appointed by decision of the highest authorities of the national or local decision or

a substantial part of the environment representing the interests of the group. The fact that relations with the Sejm, Chancellery of the Prime Minister, Office of the City or a specific agreement between the organization makes office-holders or filling function of the Ombudsman include the highly positioned among the national or local experts. This location makes the customers can have the hope that the ombudsman deciding to explain of the issue will be able to refer them to the highest authorities. On the other hand, the appointment of advocates by the highest authorities of the national or local government provides them with broadly understood independence. Advocates in their initiatives always have greater freedom of action than, let us say, an official of the complaints' office and requests a specific office. In this sense, one can not forget the self-lawyers. In a sense we can say that they are appointed by the most independent power, which are own dreams and desires. These people are also independent, because the fundamental right of every man is entitled to respect for his freedom [33].

The greatest power, and also have the highest degree of independence is given for the Human Rights Defender. Nowadays the office of HRD is a highly efficient body of human rights protection. Regular inspections, among others in insulating institutions, such as social welfare homes and psychiatric hospitals, as well as the occurrence in certain cases before the Constitutional Court, are an example of how extremely valuable, yet indispensable guardian of the law is the ombudsman. The activities of the HRD may lead directly to positive legislative change relating to people with disabilities.

In the above considerations there was shown a group of ombudsmen who do not have as tough legislation tools as the HRD. Each ombudsman, however, has some features which cannot be found in the oldest of all ombudsmen.

The functioning of the young institution of the Ombudsman for Patients of Psychiatric Hospital shows the important role, played by direct meeting with a petitioner, (particularly the one who is suffering) of the Ombudsman. This advocate, working daily in the psychiatric unit has a possibility to constantly analyze, e.g. of how patients are inoperative: how long they lay attached to the bed, or are under the care of medical personnel, or immobilization as well as a place where they are without prejudice to their rights to respect the dignity and intimacy. Daily contact with me and the incapacitated people, adopted without the consent gives the Advocate the possibility to control observance of the rights of sick and disabled, in a place with distinct features of total institutions, and often also the institution of insulation. At the moment there are particular violations the ombudsman has the ability to take immediate action. For the same patient, in turn, the possibility of a personal interview with an independent officer may be a positive effect of educational and therapeutic. Advocate taking these actions is also a clear positive impact on shaping the legal awareness of patients. It is worth emphasizing that this effect occurs in a growing number of hospitals because of the increasing number of persons occupying the above function.

A similar effect of operations there appears in the moment of meeting an applicant with the Advocate for the Disabled People. Functioning of that local bridging institution gives disabled people awareness, that they have on place – in a specific city – ability to get support in solving, sometimes very complex problems. For disabled people, so the people who have specific and important health problems, existence of the institution that takes care for their affairs is an ease in overcoming the barriers. Advocates for Disabled People are *de facto* the only functioning in Poland advocate institution pointing out in a direct way that they serve not only the laws, but also the interests of a specific group of people.

Tadeusz Zieliński, the second Human Rights Defender, answering the speculations saying that he will be denied the right to refer matters to the Constitutional Court stated: *"Had I been taken away the powers to refer matters to the Tribunal, would I scream and shout to the whole world. Let them not count that if I take it away, it will not be known that the Ombudsman has reservations. I will then do even more and even stronger."*[35] This opinion clearly points out that the protection of human rights and freedoms can be effectively taken as having a seemingly soft powers of inference, questions, calls, or education. This is where we see the huge role of an Ombudsman for Rights of the People with Autism. This person does not have hard tools of action. NGOs have established it. This affiliation gives, however, the mentioned person the right to speak. This voice can be taken in a very loud way, it may be "intrusive" and unyielding. Similarly, self-advocates. Although they do not have their offices, secretariats and staff, nevertheless, it is their voice, spoken with awareness of their rights can best be heard, due to the fact that he is the most "inconvenient for power." Their action have therefore the most innovative character.

The above-described state of the Polish advocacy human rights protection system, including people with a disability, notes that its diversity is a very positive element, which should have a civil society. It also fulfills the commitment being imposed in 1985 on member states by the European Union Council of Europe Committee of Ministers drawing attention to the need for appointment of special advocates in the fields of public administration. Thanks to this pluralistic approach to the issue of human rights there is no danger that the country will be a single “super authority” ombudsman office, which in time could become a pattern of discriminatory actions which are the result of an extensive bureaucracy, which is very poorly recognizes the human subjectivity. It is therefore extremely³ valuable that in Poland there are many rights advocates, who in their actions should remember the words of Eve Łętowska speaking, that: “Every ombudsman, if he wants to do his or her job well, must first of all oppose the government (mainly government ministers, but not only ...) and he shall do it as hard as possible” [33].

Bibliography:

- [1] Act of 2 April 1997 Polish Constitution *OJ of 2001, No. 28, item. 319, as amended*)
- [2] Act of 27 August 1997 on occupational and social rehabilitation and employment of disabled persons, (OJ 1997 No. 123 pos. 776),
- [3] Act of 12 March 2004 on social assistance (OJ No 64, pos. 593 with later. amended).
- [4] Act of 15 July 1987 on the Ombudsman. (Journal of Laws 1987 No. 21 pos. 123)
- [5] Act of 19 August 1994 on mental health (Journal of Laws No 141, pos. 1183),
- [6] Article 210 of the Act of 2 April 1997 Polish Constitution OJ of 2001, No. 28, item. 319, as amended)Source: <http://www.brpo.gov.pl/index.php?md=8870>
- [7] Analiza Rzecznika Praw Dziecka w związku z opublikowanym w dniu 25 lipca 2007 r. Raportem Rzecznika Praw Obywatelskich dotyczącym pobytu wychowanków placówek opiekuńczo-wychowawczych w szpitalach psychiatrycznych w latach 2004- 2006, Biuro Rzecznika Praw Dziecka, Warszawa 2007.
- [8] Augustynowicz A., Budziszewska Makulska A., Ustawa o prawach pacjenta i Rzeczniku Praw Pacjenta-komentarz, Wydawnictwo Cedewu.pl, Warszawa 2010.
- [9] Arcimowicz J., Rzecznik Praw Obywatelskich- aktor sceny publicznej, Wydawnictwo Trio, Warszawa 2003.
- [10] Convention on the Rights of people with disabilities adopted by the United Nations on 13th December 2006.
- [11] Dispose of the Minister of Health dated 13 January 2006 in the weld detailed procedure and method of work of the Ombudsman for Patient Psychiatric Hospital (Journal of Laws No. 16 pos. 126)
- [12] Duda J., Komentarz do ustawy o ochronie zdrowia Psychicznego, Wyd. Lexisnexis, Warszawa 2006.
- [13] Garlicki L., Ewolucja instytucji Rzecznika Praw obywatelskich (ombudsmana) w świecie współczesnym [in:] Rzecznik Praw Obywatelskich, edited by Leszek Garlicki, Instytut Wydawniczy Związków Zawodowych, Warszawa 1989.
- [14] Kęskrawiec M., Kelpiński J., Sześć tygodni w piekle, „Newsweek”, No 41, 2006
- [15] Kmiecik B., Nowelizacja ustawy o ochronie zdrowia psychicznego z dnia 3 grudnia 2010r⁽¹⁾, analiza socjologiczno- prawna. „Psychiatria i psychologia kliniczna”, No 2,2011.
- [16] Kurowski K., Ewolucja regulacji prawnych Organizacji Narodów Zjednoczonych w zakresie problematyki praw osób niepełnosprawnych, [in:] D. Podgórska- Jahnik (ed.) Ruch na rzecz lepszej przyszłości osób niepełnosprawnych Problemy rzecznictwa i reprezentacji osób niepełnosprawnych. Vol. 2, Łódź 2010.
- [17] Kmiecik B., Prawa pacjenta szpitala psychiatrycznego – historia i współczesność, [w:] „Ochrona zdrowia psychicznego- wybrane zagadnienia społeczno- prawne”, (red.) Justyna Maciaszek, Paweł Bucóń, Janów Lubelski 2011.
- [18] Kmiecik B., Rzecznik Praw Pacjenta Szpitala Psychiatrycznego jako strażnik ładu społecznego. in: E. Moczuk. I B. Sagan (red.), III Forum of Sociologues of La, lus et Administratio. Zeszyt Specjaln,, Rzeszów 2010.

³ The article uses the materials collected in the work of the author with the title.: Rzecznowski system ochrony praw człowieka rozproszenie w działaniu, czy też różnorodność w dążeniu do wspólnego celu?,(in:) D. Podgórska Jahnik „Problemy rzecznictwa i reprezentacji środowiskowej osób niepełnosprawnych, T. 1” Wydawnictwo WSP, Łódź 2009r. s. 105- 129.

- [19] Kopaliński W, Słownik wyrazów obcych i zwrotów z almanachem, Wydawnictwo Świat Książki, Warszawa 1999.
- [20] Łętowska E., Baba na świeczniku, Wydział Prawa i Administracji, Warszawa 1992.
- [21] Motyka K., Prawa człowieka- wprowadzenie, wybór źródeł, Wydawnictwo Verbam Lublin 2003.
- [22] Medveeowa A., Czym jest self- adwokatura, w: Samodzielne występowanie we własnych sprawach (self- adwokatura)- jak to robić?, (collectiva work), Polish Association for People with Mental Retardation, Warszawa 2008, (training materials).
- [23] Osiecka J., Opinie o przestrzeganiu prawa w życiu społecznym (w świetle badań sondażowych), Chancellery of the Sejm Office of Studies and Analyses, Warszawa 1995.
- [24] Public Information Bulletin of the Ombudsman, www.brpo.gov.pl-site visits on 08.09.2008. (materials are located in the archive of the author),
- [25] Raport o korespondencji i kontaktach między Rzecznikiem Praw Obywatelskich i Ministrem Zdrowia w sprawie przestrzegania praw obywateli do ochrony zdrowia w okresie od 14 lutego 2006 do 30 kwietnia 2009, Biała Księga, prepared by J. Szyborski, Warszawa 2009.
- [26] Sprawozdanie wynikające z zadań wynikających z ustawy z dnia 6 listopada 2008 r.o prawach pacjenta i Rzeczniku Praw Pacjenta (Coll. Laws of 2009 No 52, pos. 417, as amended) oraz przestrzegania praw pacjenta na terytorium Rzeczypospolitej Polskie (It covers the period from 21st May 2009 to 31st December 2009, p. 9-10 and 131-143), and Praktyczny aspekt funkcjonowania Biura Praw Pacjenta przy Ministrze Zdrowia, p. 12, PDF- presentation, source: luszczycza.org.pl/stowarzyszenie/files/publikacje/ppp.pdf (16th August 2011).
- [27] Ściborska E., Rzecznik Osób Niepełnosprawnych przy Urzędach Miejskich, w: D. Podgórska Jahnik (ed.), Problemy rzecznictwa i reprezentacji osób niepełnosprawnych, Vol.1 , Wydawnictwo WSP, Łódź 2009.
- [28] See: http://bip.ump.pl/index.php?show_cat=15Ji8tmB (Płock), <http://bip.uml.lodz.pl/index.php?str=177> (Łódź), oraz <http://www.calisia.pl/articles/1374-rzecznik-ds-osob-niepelnosprawnych-w-dzialaniu> (Łódź),
- [29] See. http://www.synapsis.waw.pl/synapsis_1/index.php/content/blogcategory/50/61/
- [30] See. <http://pl.wikipedia.org/wiki/Ombudsman> [online]
- [31] Szreniawska M. Znaczenie ratyfikacji Konwencji o Prawach Osób Niepełnosprawnych, „Niepełnosprawność , zagadnienia, problemy rozwiązania”, No. 3 2014.
- [32] Tłoczkowska D., Podgórska Jahnik D., Ruch self- adwokatów jako rozwijanie kompetencji w zakresie rzecznictwa, [w:] D. Podgórska Jahnik (ed.), „Problemy rzecznictwa i reprezentacji środowiskowej osób niepełnosprawnych, p. 182
- [33] Tutu D. Słowo wstępne, [in:] Wolność- istota bycia człowiekiem, (collection of short stories), Grumer+Jahn Polska, Warszawa 2009.
- [34] Wygnańska J., Rzecznik Osób z Autyzmem Porozumienia Autyzm Polska przy Fundacji Synapsis, [in:] A. Rojner, J. Wygnańska (ed.) „Rzecznictwo- jak skutecznie zabiegać o realizację praw osób z autyzmem i innymi całościowymi zaburzeniami rozwojowymi”, SYNAPSIS Foundation, Warszawa 2004.
- [35] Zieliński T. „Nie będę skrzynką zadań”, „Trybuna”, Warszawa, 1st November 1992.

**OD INFORMACJI DO INNOWACJI.
DZIAŁANIE POLSKICH OMBUDSMANÓW NA RZECZ PRAW OSÓB NIEPEŁNOSPRAWNYCH**

Streszczenie

Prawa człowieka stanowią jeden z fundamentów państwa demokratycznego. Posiadają one charakter: przyrodzony oraz niezbywalny. To dzięki nim człowiek może upominać się o przynależne mu dobra. Prawa człowieka odnoszą się także do szczególnych momentów, w jakich znajduje się konkretna osoba będąca: dzieckiem, pracownikiem, pacjentem oraz osobą niepełnosprawną. Dwie ostatnie kategorie mają wyjątkowy charakter. Dotyczą one chwil w życiu człowieka, w których doświadcza on bólu oraz cierpienia. W Polsce od prawie trzydziestu lat funkcjonuje urząd Rzecznika Praw Obywatelskich. To dzięki pracy kolejnych rzeczników, społeczeństwo zostało (i nadal jest) edukowane w zakresie praw i wolności człowieka. W ciągu ostatnich lat można zauważyć zmiany w polskim systemie ochrony praw człowieka. Pojawili się nowi, „specjalni” rzecznicy praw. W odniesieniu do osób niepełnosprawnych pojawiła się z kolei nowa, innowacyjna forma działania. Mowa o trenowaniu umiejętności bycia "rzecznikiem własnych praw". Jak zatem działa powyższy, nadal kształtujący się system polskich rzeczników? W jaki sposób poszczególni rzecznicy działają? Czy ich inicjatywy są skuteczne?

Słowa kluczowe:

Rzecznik Praw Obywatelskich, osoba niepełnosprawna, prawa człowieka, innowacja, self-adwokat