

Equal opportunities for women and men in the activities of the Ombudsman

Doctoral dissertation by Anna Kordik

The subject of the dissertation attempts to answer the question of whether the existing legal norms, which determine the directions of the Ombudsman's activities, allow us to say that we are dealing with an already formed model of equal opportunities, or whether this model has not yet been developed within the framework of the indicated activities. It should be emphasized, therefore, that the fact of implementation of EU equal rights directives into national law not only contributed to the adoption of the Act of 3.12.2010 on the implementation of certain provisions of the European Union on equal treatment (hereinafter: the Implementation Act), but also gave the Ombudsman new prerogatives. In the author's opinion, women's and men's rights in the sphere of equality were the subject of the Ombudsman's protection, even before the anti-discrimination law itself came into force. This regulation is reflected in the 1997 Basic Law in the norm of Articles 32 and 33, as well as operated in the previous political system and in international law. This premise is therefore worth resolving, demonstrating to what extent the legal system remains "airtight" and where there are legal gaps and it is necessary to amend already existing legislation, in terms of fulfilling the legal norms of the principle of equal opportunity. Going, as it were, further in the deliberations, the necessity of raising another question imposes itself, whether there is a sense and validity (expediency) of conducting the analysis in combining, in fact, two issues of the principle of equal opportunity on the one hand with the institution of protection of individual rights and freedoms, which is the Ombudsman, on the other. The answer to the question posed in this way is the undeniable fact that it is the Ombudsman who the legislatively designated body for equal treatment is to promote, monitor, analyze and support the equal treatment of all persons. Thus, narrowing the subject matter only to the principle of equal opportunities for women and men, without an in-depth analysis of this issue at the level of the Ombudsman institution, in the author's opinion, does not give a chance to assess the reality and actual use of this principle, as well as its implementation in relation to the individual himself. It should be mentioned that the Implementation Law has led to increased activity of the doctrine in the plane of the principle of equality. Confirmation of the above is provided by the numerous literature on the subject, for example, indicate: A. Śledzińska-Simon, The principle of equality and non-discrimination in the European Union, M. Ziolkowski, The principle of equality in law, I. Lipowicz, Offences and the principle of equality, J. Podgórska-Rykała, The principle of gender equality: selected regulations of national law, A. Kordik, Multifacetedness of the principle of equality.

The author of the work in question a priori did not accept the thesis that the principle of equal opportunities is a separate, "entity" in law from the general principle of equality and equal treatment. The basic research assumption was to find common, "connecting points" in terms of constitutional rights and freedoms. The analysis also aimed to determine whether the Ombudsman, as the body upholding the principles of equal treatment within the framework of its prerogatives, realizes the principle of equal opportunities, as well as realized it before the implementation of the equality directives.

The research paper is divided into five chapters.

The first chapter is a general introduction to the history of the Ombudsman institution and its development in the world. Within the framework of this chapter, the historical aspect of the establishment of the Ombudsman institution in Poland is included, taking into account its special features, i.e. its essence and mission. The above introduction is intended to show not only the

historical form of the Ombudsman institution but is intended to indicate how the institution has evolved in the world and in the country, with particular attention to the Polish normativization in this plane. The second chapter contains a detailed analysis of the institution of the Ombudsman in the drafts of the Constitution of the Republic of Poland in 1989-1991 and 1993-1997 with particular attention to its legal and constitutional evolution. Within the scope of the indicated chapter, the author individually analyzed the 2010 amendment to the Law on the Ombudsman, which expanded the Ombudsman's prerogatives in the plane of equal treatment. The third chapter covers the matter of the principle of equal treatment and equal opportunities for women and men. In this regard, the author conducted an analysis of the evolution of the principle of equality, as well as an interpretation of the understanding of the principle of equality, equal treatment, equal opportunities for women and men, discrimination and compensatory favoritism, since all of these mentioned concepts are determinants for the idea of equal opportunities. In the chapter, the author conducted a legal analysis of the Anti-Discrimination Law, which was intended not only to meet the EU requirement to implement the equality directives into national law but was also intended to further tighten the system of national law on the principle of equality in the broadest sense. The above chapter also discussed the issue of horizontal and verticality of constitutional norms in the Ombudsman's activities.

The analysis was intended to indicate whether the Ombudsman uses both of these norms, i.e. vertical and horizontal, in his activities, or only one of the aforementioned. The fourth chapter divides the issue in question into the scope of normativization of international, European and EU law. The division adopted does not preserve a purely historical chronology but indicates that the plane of the subject matter in question already had its beginning after World War II. On the plane of this chapter came the interpretation of the understanding of the principle of equality in international law, as well as the normative scope of international law and the measures of protection of the individual applied. In addition, the division of international law into the scope of general regulations in the supra-individual standardization of human rights and specific regulations for the protection of women was adopted. In the European system and the EU system, the author interpreted the system in terms of assessing the further evolution of the principle of equality, equality of opportunity and the scope of applied measures for the protection of the individual. The chapter interprets the jurisprudence of the Court of Justice on the principle of equality in the broadest sense, with particular emphasis on equality of opportunity. The final subsection of the fourth chapter is a legal analysis of the equality directives. The final fifth chapter covers issues of the Ombudsman's activities in implementing the principle of equal opportunity. The chapter followed with a detailed analysis of the implementation of the equality directives into national law and a reminder of the role of the institution of the Ombudsman, as an equal treatment body.

The dissertation culminates with empirical research in the plane of the ROP's activities in the field of equal opportunities. In the matter of the above discussion, the subject of interest was the subsection relating to the Ombudsman's ability to apply to the competent authorities to take legislative initiative or to issue or amend legal acts in matters relating to human and civil liberties and rights and the principles of equal treatment, including equal opportunities. On this basis, a model for the protection of equal gender opportunities and a definition of this principle was created.

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