

ROBERT TABASZEWSKI

POLISH FINANCIAL OMBUDSMAN'S RESPONSIBILITIES WITHIN PROTECTION OF ECONOMIC HUMAN RIGHTS AND LIBERTIES

INTRODUCTION

The purpose of economic human rights is to protect existential human needs, whose safety and development not only improves their material situation but especially develops citizens' entrepreneurship¹. Possessions, the sense of ownership and property rights are extremely vital for people and provide the basis for economic human rights². An effective way of pursuing one's rights is through judicial proceedings. However, laws of numerous European countries recognise extra-judicial procedures, which include hearing a case by an ombudsman and, so-called specialised ombudsmen, one of which was an Insurance Ombudsman³, function-

Dr ROBERT TABASZEWSKI – asystent Katedry Praw Człowieka na Wydziale Prawa, Prawa Kanonicznego i Administracji Katolickiego Uniwersytetu Lubelskiego Jana Pawła II; adres do korespondencji: Al. Raławickie 14, 20-950 Lublin; e-mail: robert.tabaszewski@kul.lublin.pl

PhD ROBERT TABASZEWSKI – assistant in the Department of Human Rights; Law Institute; Faculty of Law, Canon Law and Administration of the Catholic University of Lublin; mailing address: Al. Raławickie 14, 20-950; robert.tabaszewski@gmail.com

¹ K. MACHOWICZ, *Prowadzenie działalności gospodarczej a przestrzeganie praw człowieka (aspekty wybrane)*, w: *Warunki podejmowania i prowadzenia działalności gospodarczej w rejonach przygranicznych Polski i Ukrainy*, red. R. Biskup, M. Ganczar, Lublin: Lubelska Szkoła Biznesu 2007, s. 72-79.

² Zob. M.G. KALADHARAN NAYAR, *Human Rights and Economic Development: The Legal Foundations*, "Universal Human Rights" 1980, No. 3(2), p. 55-81.

³ Ustawa z dnia 8 czerwca 1995 r. o zmianie ustawy o działalności ubezpieczeniowej, o zmianie rozporządzenia Prezydenta Rzeczypospolitej – Kodeks handlowy oraz o zmianie ustawy o podatku dochodowym od osób prawnych, Dz.U. z 1995 r. Nr 96, Poz. 478; J. GREY, *Financial Ombudsman's*

ing since 1995 and now it is the Financial Ombudsman. A client is a distinctive individual in terms of economic human rights, whose interests' protection shall be prioritised, as he does not participate in professional business trading⁴.

The aim of this paper is to define the responsibilities of the Financial Ombudsman, an ombudsman institution created in 2016 and functioning in order to protect economic human rights and liberties⁵. It shall be achieved by means of critical analyses of national laws compared with international standards and verified against source literature. The dogmatic method shall help define the scope of economic rights and liberties, which is the main subject of interest for the Financial Ombudsman and his office. This work will also include the competences of the Financial Ombudsman and actual ways of pursuing individuals' rights before the Ombudsman. The paper will also include an evaluation of effectiveness of these new, extrajudicial means of a client's financial interest protection.

PROTECTION OF ECONOMIC RIGHTS AND LIBERTIES

The obligation of respecting economical rights is one of the oldest ones developed by the legal doctrine. French declaration of the Rights of Man and of the Citizen of 1789 comprised laws which contemporary may be defined as economic; those include the right of equal taxation (art. 13) and property right (art. 17)⁶. The Declaration stated that the purpose of every political community is to preserve natural and ever-lasting human rights, including the basis of all economic rights, i.e. property. The final distinction of economic human rights took place in the twentieth century. The notion of social justice is essential for this category of rights. It is based upon a notion that a person may enjoy his existence provided that a certain level of his prosperity is ensured through protecting his

statutory powers: Successful High Court challenge by financial adviser firms, "Journal of Financial Regulation and Compliance" 2007, No. 4(15), p. 487-491.

⁴ A. WIŚNIEWSKA, *Konsument jako podmiot rynkowy. Misja i wizja konsumenta*, "Independent Economic Experts' Journal" 2015, No. 1, s. 9.

⁵ Ustawa z dnia 5 sierpnia 2015 r. o rozpatrywaniu reklamacji przez podmioty rynku finansowego i o Rzeczniku Finansowym, Dz.U. z 2016 r. Poz. 892 tekst jedn.), next as Act on Financial Ombudsmen.

⁶ N. STAMMERS, *A critique of social approaches to Human Rights*, "Human Rights Quarterly" 1998, No. 20, p. 459-514; J. HOŁDA ET AL., *Prawa człowieka. Zarys wykładu*, Warszawa: Wolters Kluwer 2014, s. 23.

property rights and defining certain employment liberties⁷. The state has been burdened with the legal obligation of ensuring a certain living standard of all its citizens, including the participants of business trading.

This tendency is reflected in Universal Declaration of Human Rights (art. 17, art. 23-25); in International Covenant on Economic, Social and Cultural Rights (art. 6-9); and in Revised European Social Charter (art. 1-19)⁸. In order to implement economic human rights, the state has to undertake integrated positive actions, which may require much effort and costs⁹. A decision of the court does not ensure the fulfilment of the rights. It requires specific, coordinated measures undertaken by the authorities. Taking it into consideration, many national protection systems, economic human rights are not treated as human rights as such. Compared to personal and political rights, which force the state to provide immediate results, economic rights create the obligation of diligent actions¹⁰. The same applies to economic human liberties which require the state to refrain from interfering with the sphere of the individual's economic performance.

The Constitution of 1997 also ensures the protection of economic human rights and liberties, prioritising the protection of a consumer, being an individual functioning under human rights¹¹. Following its provisions, public authorities protects consumers against actions threatening their health, privacy, safety as well as unfair business practices. The scope of the protection is stipulated in certain laws, although the majority of rights and liberties is included in chapters one and two of the Constitution; they include: the right to participate in social market economy (art. 20), the property and inheritance protection right (art. 21), freedom of business activity (art. 22), undertaking and conducting professional activity, safeguarding of employee's rights (art. 24). In terms of safeguarding the consumers using financial instruments the law defined in art. 64, i.e. the property right as well as other proprietary and inheritance laws apply.

⁷ K. ZAMORSKA, *Prawa drugiej generacji a dyskurs społeczny*, w: *Wokół współczesnych problemów ochrony praw człowieka*, red. W. Waclawczyk, Warszawa: Erida, 2009, s. 139-149; G. MICHAŁOWSKA, *Prawa człowieka i ich ochrona*, Warszawa: WSiP 2000, s. 98.

⁸ *Universal Declaration of Human rights, Paris, 10.12.1948.*, U.N. Doc. A/810 at 71; *International Covenant on Economic, Social and Cultural Rights, New York, 16.12.1966.*, U.N. Treaty Series, Vol. 993; *European Social Charter (Revised), Strasburg, 3.5.1996*, E.T.S. No. 163.

⁹ P. SIEGHART, *The International Law of Human Rights*, Oxford: Oxford University Press 1983, p. 25.

¹⁰ D. SEYMOUR, J. PINCUS, *Human Rights and Economics: The Conceptual Basis for their Complementarity*, "Development Policy Review" 2008, No. 4(26), p. 387-405.

¹¹ *Konstytucja Rzeczypospolitej Polskiej z 2 kwietnia 1997 r.*, Dz.U. z 1997 r. Nr 78, Poz. 483 ze zm.

FINANCIAL OMBUDSMAN AS A QUASI-OMBUDSMAN INSTITUTION

For the specificity and complicated character of economic rights, in many European countries additional specialised institutions are created to hear consumers whose rights have been violated¹². The Financial Ombudsman functions in Poland as such institution¹³. It deals with specialised cases concerning breach of individual and collective financial rights and functions independently from the Polish Ombudsman¹⁴, although they both have similar competences. Currently, his duties including regulations concerning the Ombudsman's supervisions over recognising customers' complaints or claims directed to a financial legal person by its client are set forth in the Act of 5 August 2015 This regulation has replaced the Act on Insurance Ombudsman¹⁵. The Act of 2015 makes the Ombudsman capable to supervise many entities of financial market: national insurance institutions, common societies, national payment institutions, national electronic payment institutions, payment service offices, credit and savings unions (SKOK), investment funds, alternative investment companies, investment companies, credit institutions¹⁶.

The aim of the Financial Ombudsman is to support natural persons in disputes with four types of entities of financial market: insurance, retirement, banking, capital. Thus, the Ombudsman is responsible for a wide scope of economic cases. As other Ombudsmen, the Financial Ombudsman is a legal entity with a registered office in Warsaw¹⁷. The Ombudsman is appointed by the Prime Minister

¹² J. MEADE, *Rzecznik ds. usług finansowych w Republice Finlandii*, „Rozprawy Ubezpieczeniowe” 2007, nr 1, s. 116-120.

¹³ L.C. REIF, *Transplantation and Adaptation: The Evolution of the Human Rights Ombudsman*, “Boston College Third World Law Journal” 2011, No. 2(31), p. 290.

¹⁴ R. KOSIŃSKA, P. WOLTANOWSKI, *Specyficzne kryteria kontroli prawa finansowego przez Rzecznika Praw Obywatelskich*, w: *XXV lat przeobrażeń w prawie finansowym i prawie podatkowym – ocena dokonań i wnioski na przyszłość*, red. Z. Ofiarski, Szczecin: Uniwersytet Szczeciński. Wydział Prawa i Administracji 2014, s. 67-76.

¹⁵ *Ustawa z dnia 22 maja 2003 r. o nadzorze ubezpieczeniowym i emerytalnym oraz Rzeczniku Ubezpieczonych*, Dz.U. z 2003 r. Nr 124, Poz. 1153 i Nr 170, Poz. 1651; *Zarządzenie Nr 126 Prezesa Rady Ministrów z dnia 26 października 2015 r. w sprawie zakresu zadań Pełnomocnika Prezesa Rady Ministrów do spraw przekształcenia Biura Rzecznika Ubezpieczonych w Biuro Rzecznika Finansowego oraz środków niezbędnych do ich realizacji*, M.P. z 2015 r. Poz. 1054.

¹⁶ *Rozporządzenie Ministra Finansów z dnia 21 marca 2016 r. w sprawie terminów uiszczania, wysokości i sposobu obliczania należności na pokrycie kosztów działalności Rzecznika Finansowego i jego Biura*, Dz.U. z 2016 r. Poz. 397.

¹⁷ Art. 16 Act on Financial Ombudsmen.

pursuant to the motion of the Minister of Finance. A person who may become the Financial Ombudsman must have a distinctive knowledge in the field of financial market and applicable laws, at least seven years of professional experience in this field and meet all other requirements for fulfilling public functions. the term of the Financial Ombudsman begins with the day of his appointment and lasts four years. The same person may serve for two terms as the Financial Ombudsman and may be dismissed before the end of the term as well. The requirements are obviously very high and the scope of responsibilities of the Financial Ombudsman has been modelled on the institution of Patient's Ombudsman¹⁸.

Financial Ombudsman represents a clients of the financial sector and undertakes actions to protect them; such as examining motions filed in individual cases resulting from dismissing customer's claims by a financial institution or examining motions concerning non-performance of actions under a complaint settled by the customer's advantage¹⁹. The Ombudsman gives opinion on legal acts regulating the organisation and functioning of the financial market entities, as well as moves for exercising legislative initiative, issuing or amendment of other acts of law concerning the financial market²⁰. The Ombudsman is also obliged to notify institutions of supervision and control about discovered malfunctions of the financial market, including filing a motion for settling discrepancies in applicable laws to the Supreme Court²¹. Moreover, the Ombudsman is bound to initiate and organise educational and information campaigns concerning the protection of financial market's clients.

There are no more than three deputies appointed by the Minister of Finance and they help the Ombudsman fulfil his duties²². The Ombudsman is also supported by the staff of his office. The Ombudsman's Office comprises the following divisions: Client of Insurance and Pension Market, Client of Bank and Capital

¹⁸ R. TABASZEWSKI, *Prawo do zdrowia w systemach ochrony praw człowieka*, Lublin: Wydawnictwo KUL 2016, s. 206.

¹⁹ BIURO ANALIZ I DOKUMENTACJI SENATU RP, *Opinia prawna na temat zgodności z konstytucyjną zasadą równości przepisów ustawy z dnia 10 lipca 2015 r. o rozpatrywaniu reklamacji przez podmioty rynku finansowego i orzeczniku finansowym dotyczących opłat wnoszonych przez podmioty rynku finansowego*, „Opinie i Ekspertyzy” (OE-237), 2015, s. 4.

²⁰ A. DĄBROWSKA, *Ochrona klienta usług ubezpieczeniowych - nowa ustawa o działalności ubezpieczeniowej i reasekuracyjnej oraz ustawa o rozpatrywaniu reklamacji przez podmioty rynku finansowego i o Rzeczniku Finansowym – wybrane zagadnienia*, „Rozprawy Ubezpieczeniowe” 2015, nr 2, s. 69.

²¹ T. Młynarski, *Wnioski Rzecznika Ubezpieczonych do Sądu Najwyższego o rozstrzygnięcie rozbieżności w wykładni prawa*, „Rozprawy Ubezpieczeniowe” 2015, nr 19(2), s. 6.

²² Art. 18 Act on Financial Ombudsmen.

Market, Extrajudicial Settlement of Disputes, Financial and Administrative. Such structure reflects the complex nature of competence serving the purpose of protecting economic human rights. The first two Divisions are the most essential ones, they take care of a clients of insurance and pension market and a clients of bank and capital market respectively. The staff of the Office consists of civil servant, who provide the Ombudsman with substantive and organisational support in his duties. Their work is coordinated by the Ombudsman, which means that they their task is to protect the guaranteed rights and liberties of an individual²³.

MEANS OF ECONOMIC RIGHTS PROTECTION

The Financial Ombudsman serves all natural persons, who use financial services as they function as holders of economic human rights. The Polish law states that such holders are natural persons, both a clients and the self-employed. Thus, the Act of 2015 does not mention „customers”, as this notion has the meaning broader than just “natural person”. While a consumer means a person not conducting any business, concluding and executing financial agreements for its individual needs, the natural person comprises the meaning of a consumer and a person conducting its own business and using services provided by the financial market²⁴. The Act sets forth two basic means of human rights and liberties protection: proceedings before the Ombudsman preceded by obligatory complaint procedure and proceedings before the Ombudsman which results in legal proceedings becoming the ultimate action²⁵. All these procedures are launched against the entities of financial market by their clients supervised or monitored by the Ombudsman.

The Ombudsman may undertake the actions ex officio or under a motion filed by a monitoring institution or other body of official authority, as well as by an individual client of the financial market. It means that everyone may file such motion once he feels that a financial institution violated his rights and liberties²⁶. Thus it is enough to prove that such institution has not settled the complaint by a client's favour in a regular complaint procedure. Should such a situation take

²³ Zarządzenie Nr 127 Prezesa Rady Ministrów z dnia 26 października 2015 r. w sprawie nadania statutu Biuru Rzecznika Finansowego, M.P. z 2015 r. Poz. 1055.

²⁴ A. DĄBROWSKA, *Ochrona klienta*, s. 70.

²⁵ BIURO ANALIZ I DOKUMENTACJI SENATU RP, *Opinia*, s. 5.

²⁶ A. DĄBROWSKA, *Ochrona klienta*, s. 71.

place, the Ombudsman acknowledges the filed motion and may: undertake actions, present the moving individual with its rights and means of action or suggest the extrajudicial mediation. The case may be directed to other institutions or no actions may be undertaken. In such case the Ombudsman notifies the moving person or a person concerned by the case. The Ombudsman needs to provide grounds for his decision.

If the Ombudsman decides to examine the case, he investigates whether any actions or negligence on the side of a financial institution could lead to breach of a client's rights and interests²⁷. In this matter, the Ombudsman holds a wide range of measures, i.e. address a financial institution and other entities connected to the case in order to obtain information or statements, to obtain access to files and documents. Such information or statements in individual cases may take place under a client's consent. The Ombudsman may also demand access to information concerning internal regulations of the concerned financial institutions which he considers harmful for clients and the information concerning defective customer service provided by financial institutions. The institutions are obliged to respond to the Ombudsman's demands within thirty days from receiving the motion and inform him about undertaken measures or position taken in respect with the case, as well as deliver the required documents²⁸.

What is worth noticing is the fact that the Ombudsman may, on behalf of a client, bring an action against financial institutions in cases concerning unfair business practices preformed by the institutions²⁹. Under the claimant's consent, the Ombudsman may act as the prosecuting attorney in the pending cases. Should the breach of a client's rights and interests be proven, the Ombudsman may address a financial institution to re-examine the complaint³⁰. Basing on the conducted actions the Ombudsman may address to the authority having jurisdiction in such cases, especially Polish Financial Supervision Authority, to the Head of the Office for Competition and Consumer Protection, prosecutor's office, bodies of state, professional and social supervision. *Pro futuro*, he may also move for amending the acts of law regulating functioning of institutions of financial market to the Minister of Finance. The Ombudsman may also commence and execute research

²⁷ BIURO ANALIZ I DOKUMENTACJI SENATU RP, *Opinia*, s. 45.

²⁸ Art. 30-31 Act on Financial Ombudsmen.

²⁹ Financial Ombudsmen does not represent commercial companies, associations, foundations, churches and religious associations, the Treasury, public authorities, local government units, cooperatives, state-owned enterprises, health care facilities, and organizational units without legal personality. A. DĄBROWSKA, *Ochrona klienta*, s. 71.

³⁰ Art. 26 Act on Financial Ombudsmen.

on the situation on the financial market in order to protect a clients of the market³¹.

COMPLAINT PROCEDURE SUPERVISED BY THE FINANCIAL OMBUDSMAN

Complaint procedure supervised by the Financial Ombudsman is a completely new means of economical rights and liberties protection, which has been recently introduced to the Polish law³². It is essential to launch an action before the Ombudsman. A complaint may be filed by every client of financial institutions: national insurance institutions, common societies, national payment institutions, national electronic payment institutions, payment service offices, credit and savings unions, investment funds, alternative investment companies, investment companies, credit institutions³³. In order to achieve that, a client must address the institution of financial market and define his complaints concerning the services provided to him so far. Such complaints may be submitted in any form: in writing, orally, in electronic form by means of electronic communication³⁴. The place, form and manner of notifying a client about examining his complaint should be stipulated in the agreement concluded between a client and a financial institution.

After a client submits the complaint, a financial institution examines it and responds to a client in a written form or by means of read only data media. The complaint must be responded without delay and not later than within thirty days from receiving the complaint³⁵. In the case of a delayed response a financial institution should provide the reason for the delay and define circumstances necessary for the complaint to be settled, as well as set forth the term within which the case is to be settled and response to the complaint within sixty days from receiving it³⁶. The response should include legal and actual grounds, comprehensive statement of the institution's position concerning the case, to indicate applicable parts of the draft of the agreement or the agreement, define the term of executing a client's complaint, no shorter than thirty days. Irrespective of the type of finan-

³¹ Art. 27 Act on Financial Ombudsmen.

³² B. BRONISZ, *Ustawa o rozpatrywaniu reklamacji przez podmioty rynku finansowego i o rzeczniku finansowym*, „Monitor Prawa Bankowego” 2016, nr 3, s. 68.

³³ Art. 20 ust. 1 Act on Financial Ombudsmen.

³⁴ Art. 3 Act on Financial Ombudsmen.

³⁵ Art. 6 Act on Financial Ombudsmen.

³⁶ Art. 7 Act on Financial Ombudsmen.

cial institution, the response must comprise the following elements: full name and position of the responding person, the signature is not necessary³⁷.

Should the complaint be settled against a client's advantage, the response should include information on other means of protection of a client's rights and liberties. Moreover, a financial institution should inform a client about the possibility to appeal against the decision included in the response, provided that a financial institution entitles a client to do so, as well as to inform how to appeal against the decision, use mediation, arbitrary tribunal or other extrajudicial means of settling the dispute, provided that a financial institution entitles a client to do so. a client should also be informed that he may submit the motion to the Financial Ombudsman, bring the action to the court of law and define which institution is to be sued, as well as the court which has the jurisdiction for examining the case³⁸. The Financial Ombudsman shall supervise the above mentioned procedure. Unless the procedure of settling complaints is not followed properly by a financial institution, the Ombudsman has the right to charge the institution with an administrative penalty of PLN 1000, which shall not prevent the person from seeking justice in judicial and extra-judicial institutions³⁹.

EXTRAJUDICIAL PROCEDURES

A dispute which cannot be settled between a client and a financial institution may be solved by means of procedures before the Financial Ombudsman. He is an institution qualified to execute mediation defined in the Act on extrajudicial resolution of consumer disputes⁴⁰. An additional procedure is also included in the mechanism of extrajudicial resolution of disputes. However, it is not a regular mediation as it involves elements characteristic for administrative and arbitrary proceedings⁴¹. The procedure is conducted by a person authorised by the Ombudsman⁴². The Act guarantees that the mediation before the Ombudsman is objective and independent. The procedure can be conducted only by a person

³⁷ D. MAŚNIK, *Znaczenie ustawowych zasad wnoszenia reklamacji i powołania Rzecznika Finansowego dla rynku ubezpieczeniowego*, „Prawo Asekuracyjne” 2015, nr 4(85), s. 25.

³⁸ Art. 9 Act on Financial Ombudsmen.

³⁹ Art. 32 Act on Financial Ombudsmen.

⁴⁰ Art. 17 ust. 2; art. 35a Act on Financial Ombudsmen.

⁴¹ B. BRONISZ, *Ustawa o rozpatrywaniu*, s. 76; A. DĄBROWSKA, *Ochrona klienta*, s. 75.

⁴² Art. 35 Act on Financial Ombudsmen.

highly qualified in the field of functioning of institutions of financial market and experienced in such profession.

Proceedings before the Financial Ombudsman are not obligatory⁴³. They are executed under the motion submitted by a client of an institution of financial market, although the participation of a financial institution is mandatory. The motion for executing the procedures shall stipulate parties to the dispute, claims, the type of procedure, as well as feature a hand-written signature of the moving party⁴⁴. Moreover, the motion may include a wish of the moving party to facilitate the approximation of the parties' positions in order to resolve the dispute by the parties or to provide the parties with options of resolution of the dispute. The motion should be supplemented by a description of the case, information concerning the course of the dispute, as well as copier of documents proving information included in the motion. Upon submitting the motion, the injured party must pay a fee of PLN 50 to the Ombudsman account⁴⁵.

Submitting the motion is not equivalent with immediate execution of the procedures⁴⁶. The Ombudsman may refuse to examine the dispute if the matter exceeds the scope of disputes under the Ombudsman's jurisdiction, the motion for starting the procedure results in preventing a financial institution from functioning properly; the case concerning the same dispute between the same parties is pending or has already been resolved by the Ombudsman, an arbitrary tribunal or other institution or court having jurisdiction over the case or if resolving the case would disturb the Ombudsman's actions. Moreover, the case will be refused if a client does not exhaust all means of settling his complaint, or the fee for the motion was not paid and a client was not exempted from such payment. It is worth mentioning that the act does not define any charges for a financial institution which did not participate in the proceedings⁴⁷.

So far we observe a medium interest in the proceedings before the Ombudsman. During the proceedings the Ombudsman presents a client's claims to a financial institution, defines the applicable laws to the parties and undertakes actions facilitating approximation of the parties' positions in order to resolve the dispute. The parties may be represented by the holders of power of attorney and

⁴³ *Rozporządzenie Ministra Finansów z dnia 14 stycznia 2016 r. w sprawie pozasądowego postępowania przed Rzecznikiem Finansowym*, Dz.U. z 2016 r. Poz. 92.

⁴⁴ *Art. 33 ust. 2 ustawy z dnia 23 września 2016 r. o pozasądowym rozwiązywaniu sporów konsumenckich*, Dz.U. z 2016 r. Poz. 1823.

⁴⁵ *Art. 38 Act on Financial Ombudsmen*; A. DĄBROWSKA, *Ochrona klienta*, s. 75.

⁴⁶ *BIURO ANALIZ I DOKUMENTACJI SENATU RP, Opinia*, s. 4-5.

⁴⁷ *B. Bronisz, Ustawa o rozpatrywaniu*, s. 75.

the course of proceedings is recorded in a report. All parties involved in the proceedings are bound not to reveal any information obtained during the proceedings. Unless an extrajudicial resolution of a dispute is achieved, the Ombudsman draws an opinion including legal evaluation of factual state of the case and options for its resolution⁴⁸. Should it be the case, such an opinion shall be used as evidence in the judicial proceedings⁴⁹. The Ombudsman prepares annual statistics on conducted proceedings finished in the previous year⁵⁰. The institutions of financial market provide the Ombudsman with reports concerning the settled complaints and the data concerning their clients seeking help in judicial proceedings due to their complaints being settled against their will⁵¹.

FINAL REMARKS

Although it is too soon to evaluate the fulfilment of the Financial Ombudsman duties, the sole idea of appointing an institution responsible for protection of clients of financial institutions is remarkable. In the past there was no specialised institution which would investigate breach of client's rights and liberties by the financial market and capabilities of the Polish Ombudsman in this respect were limited. From a client's perspective it is inconvenient for him to go through the complaint procedure, which must be undertaken before one may turn to the Financial Ombudsman. It is especially the case when a client's rights has already been breached by a financial institution and a client has no trust for the institution and is anxious about contacting it again. Fortunately, such procedure is not complicated, does not require any additional actions or costs.

The wide scope of the Ombudsman's competences is yet another advantage. Apart of examining clients' claims, the Ombudsman holds a wide range of tools providing access to information concerning functioning of financial institution necessary to prevent unfair business practices. The Ombudsman's main responsibility is to investigate whether any actions or negligence on the side of a financial institution could lead to breach of a client's rights and interests. It is important that in spite of numerous malfunctions of the financial sector, neither clients nor the

⁴⁸ Art. 40 Act on Financial Ombudsmen.

⁴⁹ B. BRONISZ, *Ustawa o rozpatrywaniu*, s. 76.

⁵⁰ Art. 42 Act on Financial Ombudsmen.

⁵¹ Art. 33 Act on Financial Ombudsmen.

state budget have been encumbered with any charges. Costs of the activity of the Financial Ombudsman and his office are incurred by the following institutions.

The reporting obligations is, to my mind, an important element of the Ombudsman's activity. The Ombudsman prepares annual report on his activity and commentary concerning observing a clients of the financial sector rights and interests for the Prime Minister no later than ninety days from the end of the calendar year⁵². He is also obliged to prepare objective reports⁵³. So far there are four such reports. Such obligation shall motivate the Ombudsman and his office to undertake reliable and diligent actions for the sake of protection of rights and liberties of a client of the financial market.

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⁵² Art. 34 Ustawy.

⁵³ *Raport Rzecznika Finansowego w sprawie skarg kierowanych do Rzecznika Ubezpieczonych dotyczący problematyki ubezpieczeń gospodarczych oraz zabezpieczenia emerytalnego* (data publikacji 27.11.2015 r.); *II Raport Rzecznika Finansowego – Ubezpieczenia na życie z ubezpieczeniowym funduszem kapitałowym* (data publikacji 31.03.2016 r.); *Raport Rzecznika Finansowego: ubezpieczenia sprzętu elektronicznego* (data publikacji 15.11.2016 r.); *Raport Rzecznika Finansowego: Klauzule niedozwolone w umowach kredytów „walutowych”* (data publikacji 06.06.2016 r.).

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ZADANIA RZECZNIKA FINANSOWEGO W ZAKRESIE OCHRONY EKONOMICZNYCH PRAW I WOLNOŚCI CZŁOWIEKA

Streszczenie

Tematem rozważań uczyniono problematykę ochrony praw i wolności ekonomicznych człowieka za pomocą instrumentów przysługujących Rzecznikowi Finansowemu. W artykule przedstawiono zadania Rzecznika Finansowego w zakresie ochrony praw i wolności ludzkich. Przedstawiono jego kompetencje w odniesieniu do podmiotów rynku finansowego, a także wskazano, w jaki sposób jednostka może zwracać się do Rzecznika o pomoc, jeśli podejrzewa, że naruszono jej prawa i wolności finansowe. Zauważono, że obecnie zakres możliwości Rzecznika uległ znaczącemu rozszerzeniu w stosunku do dawnego urzędu Rzecznika Ubezpieczonych. Z drugiej strony jako podmiot wyspecjalizowany, odznacza się większą skutecznością w dochodzeniu ekonomicznych praw klienta, niż dotychczasowe instytucje sądowe i rzeczniofskie.

Słowa kluczowe: rzecznik finansowy; prawa człowieka; prawa ekonomiczne; społeczna odpowiedzialność przedsiębiorstw; prawo biznesu; klienci.

POLISH FINANCIAL OMBUDSMAN'S RESPONSIBILITIES WITHIN PROTECTION OF ECONOMIC HUMAN RIGHTS AND LIBERTIES

Summary

The subject of this paper is the issue of protection of economic human rights and liberties by means of instruments disposed of by the Financial Ombudsman. The work presents responsibilities of the Financial Ombudsman with regard to protection of human rights and freedoms. The paper features his competences in relation to the institutions of the financial market and indicates the options of the individual while seeking help of the Ombudsman in the case of breaching its economic rights and freedoms. It has been observed that the scope of the Ombudsman's tools has been greatly expanded comparing to the institution of the Insurance Om-

budsman from the past. On the other hand, as a specialised institution, the Financial Ombudsman is characterised by increased effectiveness in pursuing economical rights of a client comparing to previous judicial and extrajudicial institutions.

Key words: financial spokesperson; human rights; economic rights; corporate social responsibility; business law; clients.