

Magdalena Łukawska-Malicka

Legal position of the Ombudsman for Small and Medium-sized Entrepreneurs.

Administrative and legal study.

Abstract

The guarantee of the country's economic development is the creation of appropriate conditions for entrepreneurs to conduct business activities. For at least several years, the need to support entrepreneurs in their development has been noticed and the need to create institutions constituting a kind of link in the relations between administrative bodies and entrepreneurs, which will defend the interests of entrepreneurs, has been emphasized. There is a noticeable process of changes in the structures of the state apparatus, the aim of which is to create a regulatory and institutional environment friendly to entrepreneurs. The creation of new institutions is intended to enable effective protection of business entities. Protection takes various forms and has a different nature, for example protection provided by both public and local government bodies as part of their statutory activities.

The general legal framework for this protection is set by the legal solutions contained in the package of laws introduced in 2018, the so-called the Constitution of Business, as well as judicial protection. The Business Constitution was a breakthrough in the legislator's approach to the economy, making entrepreneurs the central object of interest in terms of support and protection, which was manifested in the establishment of a new legal protection institution - the Ombudsman for Small and Medium-sized Entrepreneurs (hereinafter referred to as the Ombudsman for SMEs). It should be emphasized that until 2018, this competence belonged exclusively to the Commissioner for Human Rights, and the wide range of his duties and activities did not guarantee sufficient support for entrepreneurs.

The subject of the analysis of this work is the SME Ombudsman. The institution analyzed in the dissertation was established under the Act of March 6, 2018 on the Ombudsman for Small and Medium-sized Entrepreneurs, which is part of the Business Constitution package. The changes introduced into Polish legislation by these acts are often considered to be fundamental reforms of economic law that improve the legal environment for entrepreneurs. The legislator intended the institution of the SME Ombudsman to ensure the proper implementation of the principles of the Business Constitution in practice. Its main task is to protect the rights and interests of entrepreneurs in disputes with public administration. The

SME Ombudsman is therefore intended by the legislator to be the "guardian" of entrepreneurs' rights.

The main aim of the work is to analyze the legal position of the SME Ombudsman in the structures of legal protection bodies against the background of the position of other bodies with similar competences in this apparatus and to present his competences in the sphere of protecting the rights of entrepreneurs. One of the fundamental intentions is to examine whether and how the current political position of the Ombudsman affects the level of effectiveness of his activities in shaping the relations of small and medium-sized entrepreneurs with public administration bodies in the perspective of 5 years of operation of this institution. Moreover, it is essential to explicate the activities undertaken so far by the SME Ombudsman in individual spheres of competence, taking into account individual sectors of the economy, and then to assess whether and how they contributed to improving the position of entrepreneurs in relations with economic administration bodies.

For the purposes of the research, the following research hypotheses were formulated:

1. The Business Constitution introduces significant changes for entrepreneurs in terms of relations with the administrative apparatus, imposing new obligations on administrative bodies. Therefore, the institution of the SME Ombudsman is tasked with monitoring whether the changes have been correctly implemented.
2. As a new institution, the SME Ombudsman does not inspire full confidence in the sector of small and medium-sized enterprises (SMEs for short), which results in a low number of cases undertaken by the SME Ombudsman. The SME Ombudsman should therefore initiate educational and information activities.
3. Increasing the effectiveness of the SME Ombudsman's activities for the SME sector requires organizing a wide field base of this institution.
4. The SME Ombudsman cannot be considered a classic, fully independent legal protection body.

Due to the complexity of the issues, in order to achieve the adopted research goals, the following research methods were used in the work: comparative legal, formal-dogmatic, historical and general theoretical.

Based on the research problems formulated, the main thesis of the dissertation was formulated: The SME Ombudsman is a modern legal protection body for entrepreneurs

supporting business entities in relations with public administration bodies with a hybrid status in the state apparatus.

In addition, an auxiliary thesis was formulated: The statutory powers of the SME Ombudsman of an interventional, opinion-giving and mediation nature enable effective assistance to entrepreneurs in administrative matters involving government or local government administration bodies or other state institutions.

The considerations presented in this monograph confirm the thesis that the Ombudsman for Small and Medium-sized Entrepreneurs is a modern legal protection body for entrepreneurs, supporting them in relations with public administration bodies, with a hybrid status in the state apparatus. The SME Ombudsman's statutory powers of intervention, consultancy and mediation enable him to provide effective assistance to entrepreneurs in administrative matters involving government or local government administration bodies or other state institutions. Formulating conclusions in the discussed area was preceded by analyzing selected solutions from a historical and comparative legal perspective. This allowed us to identify the circumstances in which the currently functioning legal protection bodies and public administration bodies were shaped. The analysis of the structure of public administration bodies and legal protection bodies allowed us to confirm that the SME Ombudsman is a hybrid body in this structure.