

Jerzy Szukalski*

INSTITUTION OF THE PLENIPOTENTIARY OMBUDSMAN FOR HUMAN RIGHTS IN TAJIKISTAN IN THE NORMATIVE AND PRACTICAL DIMENSION

Summary

The office of the Plenipotentiary Ombudsman for Human Rights was established in Tajikistan on the basis of a relevant bill adopted on March 20, 2008. Statutory regulations normalize every important issue concerning the organization and modes of operation of the ombudsman. Fundamentally they generally meet the standards of analogous acts in force in democratic states. In the normative dimension, one can only object to the method of selecting the Ombudsman, dependent on the President of Tajikistan, which, in turn, questions his independence from the presidential center of power. On the other hand, in the practical dimension, within the reality of the authoritarian system functioning in Tajikistan, the Ombudsman's institution is a façade and is not able to fulfill the functions for which it was appointed. This is evidenced by the Ombudsman's reports, clearly lacking cases relating to first-generation human rights.

Keywords: Tajikistan, Plenipotentiary Ombudsman for Human Rights, president, constitution, act

Introduction

In the introductory remarks, it is necessary to indicate conditions that are characteristic of Tajikistan and had a significant impact on the establishment of the institution of the Plenipotentiary Ombudsman for Human Rights (hereinafter: Ombudsman) in 2008 and determine its functioning. These include, first of all, Tajikistan's constitutional and political system, tribalism and international obligations adopted by the state in the field of protection of freedoms and individual rights.

Tajikistan gained independence in 1991 as a result of „Perestroika” and the subsequent collapse of the Soviet Union. The construction of a sovereign state entity took place in very difficult conditions, because in

* Uniwersytet Przyrodniczo-Humanistyczny w Siedlcach, e-mail: jerzy.szukalski@uph.edu.pl, ORCID: 0000-0001-9960-7571.

the new political realities the former communist party-state elites managed to retain their influence and power. Moreover, the seventy-year Soviet period, when Tajikistan, as a constituent republic under the name of the Tajik Soviet Socialist Republic, was part of the Soviet Union, left very tangible consequences in the form of a lack of civil society, political pluralism and low legal culture¹. Therefore, after attaining independence, the departure from the totalitarian Soviet legacy and the construction of a democratic system in the Republic of Tajikistan (hereinafter: RoT) took place with major resistance. The civil war of 1992-1997, which was a clash between the post-communist nomenclature and an alliance of the Islamic and democratic opposition, was particularly dramatic, which was also overlapped by regional and clan antagonisms². The systemic transformation taking place in Tajikistan ultimately assumed only a normative dimension, the formal manifestations of which were the adoption of a generally democratic legal order and the establishment of new institutions, including the Ombudsman. In practice, however, an authoritarian regime has developed in Tajikistan, embodied by President Emomali Rahmon, who has been in office continuously since November 1994.

As a result of successive constitutional reforms in 1999, 2003, and 2016, Rahmon managed to subjugate the parliament (Majlis Oli), gaining influence on the composition of the upper house and the legislative process. The term of office of the President of RoT was extended from 5 to 7 years, the upper age limit for candidates for the highest office in the state, which was 65, was abolished and the minimum age limit was lowered from 35 to 30 years. The purpose of these reforms was to ensure Rahmon's hegemony in the system of state organs and an election for life³. In internal politics upholding the authoritarian system repressions are used against opponents, including clergy, who are most often arrested and tried on charges of "trying to overthrow the constitutional order

¹ Ж. Искаков, *Специфика политических институтов и процессов в Центральной Азии*, «Научные ведомости Белгородского государственного университета», 2011, № 13, вып. 19, pp. 172-174; A. Bisztyga, *Transformacja ustrojowa poradzieckich państw Azji Centralnej*, [in:] *25 lat transformacji w Polsce i w Europie Środkowo-Wschodniej*, eds. E. Gdulewicz, W. Orłowski, S. Patyra, Lublin 2015, p. 426.

² T. Bodio, T. Moldawa, *Konstytucje państw Azji Centralnej: tradycje i współczesność*, Warszawa 2007, pp. 279-289; S. Akiner, K. Barnes, *The Tajik civil war: Causes and dynamics*, Conciliation Resources, <https://www.c-r.org> (24.04.2022); С. Ивановский, *Гражданская война в Таджикистане*, Cold War, <http://www.coldwar.ru> (24.04.2022).

³ J. Szukalski, *Ewolucja pozycji ustrojowej parlamentu Tadżykistanu w świetle reform konstytucyjnych w latach 1990-2016*, „Białostockie Studia Prawnicze”, 2019, t. 24, nr 4, pp. 241-244.

of the state”. Various types of torture are commonly used in places of detention. Currently, there are several hundred political prisoners in Tajikistan. The last wave of arrests in this country took place in the fall of 2015, after the Islamic Revival Party of Tajikistan, which was accused of terrorist acts and attacks on government forces were banned⁴.

Ethnicity and tribalism are endemic features characteristic of Tajikistan, which helped to build and maintain the authoritarian system and have a significant impact on the functioning of state institutions. In Tajikistan, an important role is still played by ancestral and clan communities, which are linked by genealogy, sub-ethnic solidarity and the patronage dependence of their members on the clan elite⁵. The Leninabad, Kulab, and Garmski clans have the most influential position⁶.

Adopted international obligations, which were a consequence of joining the United Nations and regional organizations in 1992, including in particular the Conference on Security and Cooperation in Europe, transformed in 1994 into the Organization for Security and Cooperation in Europe (hereinafter: OSCE) had a significant impact on the legal regulations established in Tajikistan in the area of individual freedoms and rights. The implementation of international law norms into the domestic legal order in the indicated area was done very reluctantly in Tajikistan. For example such important acts as the International Covenant on Civil and Political Rights (hereinafter: ICCPR) of December 16, 1966 and the Optional Protocol to ICCPR and the International Covenant on Economic, Social and Cultural Rights were ratified there only in 1999, with the Second Optional Protocol to the ICCPR of December 15, 1989, and the Optional Protocol to the Convention Against Torture of December 18, 2002 – have not yet been ratified there at all⁷.

⁴ *Amnesty International Report 2017/2018. The State of the World's Human Rights*, London 2018, pp. 354-356, Amnesty International, <https://www.amnestyusa.org> (25.04.2022); Н. Хамрабаева, *Разбитые жизни: пытки и жестокое обращение в Таджикистане*, «Азия-Плюс», 2012, № 55.

⁵ T. Bodio, *Układy klanowe jako mechanizm polityki (na przykładzie państw Azji Centralnej)*, [in:] *Transformacja społeczeństwa i władzy w postradzieckiej Azji Centralnej: studia i rozprawy*, ed. T. Bodio, Pułtusk 2008, p. 152-162; A. Wierzbicki, P. Załęski, *Trybalizm a władza w Azji Centralnej*, Pułtusk 2008, pp. 282-288.

⁶ О. Шарафиева, *Роль региональных кланов во внутренней политике Таджикистана*, «Вестник Томского университета» 2012, № 359, pp. 99-100, CyberLeninka, <https://cyberleninka.ru> (24.04.2022); W. Jakubowski, S. Szaripov, *Partie polityczne i ruchy społeczne*, [in:] *Tadżykistan: historia – społeczeństwo – polityka*, ed. T. Bodio, Warszawa 2002, pp. 258-259.

⁷ *База данных договорных органов. Статус ратификации – Таджикистан*, United Nations Human Rights Treaty Bodies, <https://tbinternet.ohchr.org> (24.04.2022);

The aim of the study is to present the office of the Plenipotentiary Ombudsman for Human Rights, both in the normative dimension and in its practical activity. This will allow for the formulation of a general assessment of this institution, and in particular a reference to the applicable regulations and the effects of the Ombudsman's work. An attempt to answer the question about the scope of the Ombudsman's independence in the conditions of the constitutional and political system functioning in Tajikistan will also be a very important issue. The following methods were mainly used in the study: legal-historical and institutional-legal.

Establishment of the Ombudsman's Institution

In Tajikistan, the Ombudsman, established on the basis of the Act of March 20, 2008 *on the Plenipotentiary Ombudsman for Human Rights in the Republic of Tajikistan*, is a completely new and unknown institution in the hitherto political tradition of the state. Compared to other Central Asian countries, however, the Ombudsman was established in Tajikistan relatively late. In Uzbekistan, the Ombudsman institution was introduced in 1997, and in Kazakhstan and Kyrgyzstan in 2002⁸. However, the institution of the ombudsman was established later only in Turkmenistan, in 2016⁹.

Suggestions regarding the establishment of an ombudsman office in Tajikistan appeared already in the nineties period of the last century. They came mainly from international organizations, in particular from the United Nations High Commissioner for Human Rights. In February 2006, in Dushanbe, there was even an International Scientific Conference entitled *Prospects for establishing a national ombudsman institution in Tajikistan*, the purpose of which was to indicate the need to establish an institution of the Ombudsman in that country¹⁰.

For the first time, information about the intention to establish an ombudsman institution in Tajikistan appeared in a proclamation of Emomala Rahmon of April 17, 2007, which he delivered to both cham-

L. Leszczenko, *Instytucja ombudsmana w państwach poradzieckich: geneza – status prawny – rozwój*, Warszawa 2011, pp. 324-325.

⁸ L. Leszczenko, *op.cit.*, pp. 321-323.

⁹ J. Szukalski, *Instytucja Pełnomocnego Rzecznika ds. Praw Człowieka w Turkmenistanie – wymiar normatywny i praktyka*, „Przegląd Prawa Konstytucyjnego”, 2019, nr 2, pp. 226-227.

¹⁰ Н. Зокирова, *Уполномоченный по правам человека отчитался перед маджикскими правозащитниками*, Bureau of Human Rights and Rule of Law, <https://www.bhr.tj> (26.04.2022).

bers of Majlis Ola. He stated then that “In order to further develop the democratization process of society, as well as increase the level of human rights protection, it is time to create in our country the institution of the Plenipotentiary Ombudsman for Human Rights. This structure, as one of the democratic institutions, should strengthen communication and cooperation between state bodies and civil society. Adequate organizational and legal measures should be taken in order to create such a structure”¹¹. The president of Tajikistan has secured full control over the work on the ombudsman bill. It was adopted on March 20, 2008, and came into force on April 4, 2008. Until now, the legislator has not granted the Ombudsman the status of a constitutional body. In practice, the Ombudsman began his activities in August 2009, following the establishment of his office¹².

The Act of March 20, 2008 *on the Plenipotentiary Ombudsman for Human Rights in the Republic of Tajikistan* regulates all important issues concerning the organization and operation of the Ombudsman. This law consists of 38 articles and is divided into six chapters, which essentially reflect its systematics. In terms of the level of detail in the regulated matter, it does not differ from the laws on ombudsmen in European countries¹³. So far, the act has been amended five times. The most important changes were introduced by the Act of April 16, 2012, significantly increasing the competences of the Ombudsman¹⁴ and the Act of March 15, 2016, on the basis of which the Deputy Ombudsman - Plenipotentiary Ombudsman for Children's Rights in the Republic of Tajikistan was appointed¹⁵.

The lawyer Zafir Alizoda became the first Ombudsman in Tajikistan, who in the years 2003-2006 was the President of the Constitutional

¹¹ А. Содиков, *Становление и развитие института Уполномоченного по правам человека в Республике Таджикистан*, р. 1, Organization for Security and Cooperation in Europe, <https://www.osce.org> (26.04.2022).

¹² У. Бобозода, *Таджикистан идет по пути защиты и продвижения прав человека*, «Народная газета» от 3 декабря 2020 года.

¹³ *Закон Республики Таджикистан от 20 марта 2008 года № 1424 «Об уполномоченном по правам человека в Республике Таджикистан»* (по состоянию на 30 мая 2017 года), Ministry of Justice of the Republic of Tajikistan, <http://www.adlia.tj> (27.04.2022).

¹⁴ *Закон Республики Таджикистан от 16 апреля 2012 года, № 811 «О внесении изменений и дополнений в Закон Республики Таджикистан „Об уполномоченном по правам человека в Республике Таджикистан”*», Ministry of Justice of the Republic of Tajikistan, <http://www.adlia.tj> (27.04.2022).

¹⁵ *Закон Республики Таджикистан от 15 марта 2016 года, № 1281 «О внесении изменений и дополнений в Закон Республики Таджикистан „Об уполномоченном по правам человека в Республике Таджикистан”*», Ministry of Justice of the Republic of Tajikistan, <http://www.adlia.tj> (27.04.2022).

Court of the RoT, and then an advisor to the President of Tajikistan and his plenipotentiary representative in the parliament – Majlisi Oli. He assumed the position of ombudsman on May 27, 2009 and served for two terms¹⁶. After his term ended, Alizoda again became an advisor to the President of RoT and his plenipotentiary representative in parliament¹⁷. The next Ombudsman was Umed Bobozoda, who took up the position on March 4, 2019. He is a doctor of legal sciences, employed at the Tajik State University in Dushanbe. In the years 2007-2009 Bobozoda was also one of the legal policy advisors to the President of Tajikistan and his representative in the Constitutional Court, and in 2011-2019 he was again an advisor to the President of RoT on legal policy and at the same time he was an advisor to the head of the RoT President's Chancellery¹⁸.

The Ombudsman's systemic position

In the doctrinal assumptions, the systemic position of the Ombudsman is determined mainly on the basis of such elements as: his independence from other state organs, formal requirements for a candidate for the office of Ombudsman and the principles of his appointment and dismissal¹⁹. Personal attributes and qualities of the Ombudsman are also very important, those include: professional qualifications, supported by experience gained in institutions responsible for the protection of individual freedoms and rights, civil courage in exercising the rights, impartiality in performing their functions and objectivity in making deci-

¹⁶ Уполномоченный по правам человека в Республике Таджикистан, Samarkand Forum, <https://www.asianforum.uz> (28.04.2022).

¹⁷ Указ Президента Республики Таджикистан №1225 от 4 марта 2019 года «О назначении Ализода Зарифа Помощником Президента Республики Таджикистан по правовым вопросам – Полномочным представителем Президента Республики Таджикистан в Маджлиси милли и Маджлиси намоёндагон Маджлиси Оли Республики Таджикистан, Ministry of Justice of the Republic of Tajikistan, <http://www.adlia.tj> (28.04.2022).

¹⁸ Уполномоченный по правам человека в Республике Таджикистан, Eurasian Ombudsman Alliance, <https://ombudsmanrf.ru> (28.04.2022).

¹⁹ Por. L. Garlicki, *Polskie prawo konstytucyjne: zarys wykładu*, Warszawa 2017, pp. 451-453; S. Patyra, *Rzecznik Praw Obywatelskich*, [in:] *Polskie prawo konstytucyjne*, ed. W. Skrzydło, Lublin 2010, p. 442; A. Domańska, *Rzecznik Praw Obywatelskich*, [in:] *Polskie prawo konstytucyjne*, ed. D. Górecki, Warszawa 2015, pp. 264-265; Z. Witkowski, *Rzecznik Praw Obywatelskich i Rzecznik Praw Dziecka*, [in:] *Prawo konstytucyjne*, ed. Z. Witkowski, Toruń 2013, pp. 619-622; J. Świątkiewicz, *Rzecznik Praw Obywatelskich w polskim systemie prawnym*, Warszawa 2001, pp. 40-46; I. Malinowska, *Rzecznik Praw Obywatelskich w systemie ochrony praw i wolności w Polsce*, Warszawa 2007, pp. 146-150.

sions²⁰. The listed features and qualities of the Ombudsman acquire special importance in the conditions of an undemocratic state, where human freedoms and rights usually have only a normative dimension.

The act justifies the establishment of the Tajikistani Ombudsman's institution in order to strengthen the "state protection of constitutional guarantees of human and civil rights and freedoms, their observance and respect by state authorities, local authorities, local self-government bodies in towns and villages (the so-called jamatas), their officers, managers of enterprises, institutions and organizations – regardless of their organizational and legal forms"²¹.

The Ombudsman is elected and dismissed by the President of RoT with the consent of the lower house of the parliament – Majlis Namoyandagon, expressed by a majority of votes of the total number of its deputies²². The method of selecting the Ombudsman points to a presidential model of the office. In the post-Soviet area, the presidential model of the Ombudsman still functions in Azerbaijan, Kazakhstan and Uzbekistan²³.

The Act stipulates that the office of the Ombudsman may only be held by a citizen of Tajikistan, not younger than 35 years of age, speaking the state language, i.e. Tajik, having legal education and distinguished by life and professional experience and authority²⁴. Noteworthy is the lack of a domicile requirement - as compared to the ombudsman laws in other Central Asian countries.

The Ombudsman's term of office is 5 years, with the possibility of re-election once. The beginning of his term of office is the day the ombudsman takes the oath at the Majlis Namojandagon meeting, and ends with the new Ombudsman taking the oath. The Act provides for the possibility of an early shortening of the Ombudsman's term of office in the event of: a criminal judgment becoming final in relation to him/her; limitation of legal capacity under a court judgment, incapacitation, recognition as missing or deceased; violation of the provisions of the Act, loss of Tajikistan's citizenship or acquisition of the citizenship of another country; the acquisition of pension rights under the laws of Tajikistan or another country; non-compliance with the legal order of Tajikistan, as well as its traditions and customs; transfer to another workplace; a deci-

²⁰ A. Domańska, *Pozycja ustrojowo-prawna Rzecznika Praw Obywatelskich*, Łódź 2012, pp. 65-66.

²¹ *Закон Республики Таджикистан от 20 марта 2008 года...*, art. 1.

²² *Ibidem*, art. 4.

²³ L. Leszczenko, *op.cit.*, p. 46.

²⁴ *Закон Республики Таджикистан от 20 марта 2008 года...*, art. 5.

sion of the medical commission about the inability to continue to hold the office; appeals; death. The reason for the premature shortening of the Ombudsman's term of office may also be his health condition, which prevents him from exercising his powers for at least three months or the ombudsman leaving the country in order to stay abroad permanently. In the event of one of the above-mentioned cases, the new Ombudsman is appointed by the President of RoT with the consent of the lower house of parliament within two months from the date the office is vacated²⁵.

In executing his powers, the Ombudsman is independent of state authorities, local self-government and officials and is subject only to the provisions of the Act and other normative acts of Tajikistan, as well as international agreements to which Tajikistan is a party. Interference with the Ombudsman's activities in any form is prohibited and may result in criminal liability²⁶. The guarantees of the Ombudsman's independence are: formal immunity, inviolability, apoliticality, incompatibility of the office, appropriate financial salary as well as employee and social rights. Due to the fact that the Ombudsman has immunity, he cannot be arrested or detained without the consent of the President of RoT, except when he is apprehended at the crime scene. The Ombudsman's untouchability includes the prohibition of searching his official and private apartments, means of transport, workplace, luggage, documents and control of means of communication. Conducting a personal search of the Human Rights Ombudsman, a search of the premises, apartments and the seizure of documents as well as the initiation of criminal and administrative proceedings against him may only take place with the consent of the President of Tajikistan. If such consent is obtained, due to the suspicion that Ombudsman has committed a crime, the General Prosecutor's Office of the Tajik-state is competent to conduct the preparatory proceedings, and the substantive jurisdiction belongs to the Supreme Court²⁷.

The Act prohibits the Ombudsman from conducting political activity, belonging to a political party or other social organization with political goals. The Ombudsman may not simultaneously fulfill the mandate of a deputy in representative bodies, remain in any state position or carry out commercial activities, with the exception of pedagogical, teaching and creative work. The Ombudsman is obliged to resign from the previously held position and activities inconsistent with his status within 15 days of his appointment²⁸.

²⁵ *Ibidem*, art. 10.

²⁶ *Ibidem*, art. 2-3, 30.

²⁷ *Ibidem*, art. 8.

²⁸ *Ibidem*, art. 9.

The Deputy Ombudsman is the Plenipotentiary Ombudsman for Children's Rights in the Republic of Tajikistan. The rules of his election, passive voting rights, term of office and all other regulations are analogous to those in the case of the Ombudsman for Human Rights²⁹.

Ombudman's scope of activities

The basic tasks of the Human Rights Ombudsman include assistance in: observing human and civil rights and freedoms; restoring violated rights and freedoms of an individual; improvement of Tajikistan's legislation in the field of human and civil rights and freedoms; legal education of citizens in the field of individual rights and freedoms and the forms and methods of their protection; cooperation of Tajikistan's state bodies and civil society structures for the protection of human and civil rights and freedoms; access to public information; development and coordination of international cooperation in the field of protection of individual rights and freedoms, ratification of international legal acts concerning human rights or the Republic of Tajikistan's accession to them. In carrying out his tasks, the Ombudsman uses information and analyzes obtained from state authorities, local government, social organizations, enterprises, individuals and mass media³⁰.

The Act provides the Ombudsman with a number of powers in the implementation of his goals. He can freely visit state offices and institutions, local self-government bodies, social organizations, military units, prisons, pre-trial detention centers, accommodation centers for foreigners and asylum seekers, as well as institutions providing social, medical and psychological assistance. The Ombudsman may demand the presentation of documents, information and explanations from the indicated bodies, institutions and organizations. He has the right to conduct activities checking their functioning independently or jointly with the authorities responsible for their control. Within his powers, the Ombudsman may participate in sessions of courts of all instances, including closed sessions, read criminal, civil, family, economic, administrative case files and court case law and make copies thereof. The act granted the Ombudsman the right to participate in meetings of both chambers of Majlis Ola, the Government of RoT and other supreme state organs. In regards to the implementation of his statutory activities, the Ombudsman may order relevant expert opinions from scientific and research institutions³¹.

²⁹ *Ibidem*, art. 32¹-32⁶.

³⁰ *Ibidem*, art. 11.

³¹ *Ibidem*, art. 12.

The task of the Human Rights Ombudsman, in the subject aspect is to protect human and civil freedoms and rights guaranteed by the RoT Constitution, legislation and international agreements signed by Tajikistan. On the other hand, the subjective scope of the ombudsman's activities includes citizens of Tajikistan, foreigners and stateless persons, provided that their rights and freedoms have been violated by an action or omission by state authorities, local self-government, their managers and officials, as well as organizations and enterprises - regardless of their organizational and legal forms, and if they were previously challenged by them in administrative or court proceedings and they do not agree with the decisions adopted in this matter. The condition for accepting a complaint is that it meets the formal requirements set out in the act³².

Principles and forms of the Ombudsman's activities

The Ombudsman carries out his tasks through statements and interventions in individual cases, and through statements and conclusions regarding general problems of protection of human and civil rights and freedoms. Appearances and interventions in individual cases are made primarily as a result of complaints and requests from natural persons or social organizations and their representatives.

The Act requires the complaint to be in writing and contain the following data: the applicant's first and last name, his father's name, home address, handwritten signature, and the name of a public authority or official whose actions or omissions, in the applicant's opinion, resulted in violation of his rights and freedoms, or legal interest. The complaint should be accompanied by relevant documents and other evidence confirming its legitimacy. On the other hand, complaints that do not contain reliable data and anonymous complaints are not considered by the Ombudsman.

After examining the complaint, the Ombudsman may: take up the matter; content with indicating to the applicant the means of action to which he is entitled; submit a complaint to a state authority, local government authorities or an official whose competence is to resolve it or to refuse to consider the complaint in the cases specified in the Act. If the case is taken up, the Ombudsman may request public authorities and officials against whose actions or omissions the complaint has been brought to explain the circumstances of the case in writing. These entities have one month to reply. If the complaint does not meet the formal requirements, the ombudsman obligatorily does not take the matter up.

³² *Ibidem*, art. 14.

Unfortunately, the act does not specify deadlines that are important for the individual stages of the Ombudsman's activities – such as the deadline for considering a complaint, counting from the date of its receipt by the Ombudsman's office. The ombudsman notifies the complainant and other interested entities about the method of examining the complaint³³.

After taking up the case, the Ombudsman may conduct explanatory proceedings on his own or request examination of the case in whole or in part from the competent state authorities, local government and individual officials. In order to perform its tasks, the ombudsman may request the presentation of relevant documents and materials and apply to the competent state body or official with recommendations and suggestions regarding the need to conduct an appropriate control. However, in relation to an authority or an official whose action or omission was the reason for lodging a complaint, the ombudsman may apply for remedial actions aimed at ceasing violations of the rights and freedoms of an individual. He may also apply to an authorized state body or a state official with a request to conduct disciplinary, administrative or criminal proceedings against an entity whose actions or omissions have led to the violation of human and civil liberties and rights. In the event of violation of the freedom and rights of the petitioner by the provisions of the normative acts of Tajikistan, the Defender has the right, in accordance with the procedure provided for by the Act, to apply to the Constitutional Tribunal of the RoT with a request to determine their compliance with the Constitution of the RoT. After completing his activities on a specific complaint, the Ombudsman has the right to publish the solutions adopted in its case in a periodical of his choice, financed from the budget³⁴.

As part of the protection of human rights and freedoms in the general dimension, the Ombudsman ensures their compliance with the Constitution of the RoT, legislation and international agreements to which Tajikistan is a party. The Ombudsman has the right to present to the entities with legislative initiative and competent authorities proposals for changes in the area of protection of human rights and freedoms, and to participate in the preparation of draft normative acts of Tajikistan in the indicated area. The Ombudsman may also undertake various activities aimed at increasing the legal culture of citizens by disseminating, through the mass media, information on the protection of individual freedoms and rights, and also make appropriate changes to the curricula in schools and educational institutions³⁵.

³³ *Ibidem*, art. 15-16, 29.

³⁴ *Ibidem*, art. 17-21.

³⁵ *Ibidem*, art. 22-23.

The Act obliges the Ombudsman to submit annual reports on his activities, interventions and analyses of the situation in the area of individual freedoms and rights in the state. These reports, no later than February of the following calendar year, are sent to: the President of Tajikistan, both chambers of Majlis Ola, the RoT Government, the Constitutional Court, the Supreme Court, the Supreme Economic Court and the General Prosecutor of RoT. Moreover, the Act provides for the right of the Ombudsman to submit special reports to the above-mentioned entities, the subject of which are individual aspects of violations of human and civil rights and freedoms. The Ombudsman may present special reports at meetings of the RoT Government, Majlisi Milli and Majlisi Namojandagon³⁶. Regular reports are published on the websites of the Ombudsman and his deputy³⁷.

In carrying out his tasks, the Ombudsman uses the assistance of an office, officially referred to as the Apparatus of the Plenipotentiary Ombudsman for Human Rights (hereinafter: the Human Rights Ombudsman's Apparatus), which provides technical, analytical and organizational and legal security. The apparatus has legal personality and its own bank account. The Ombudsman decides about its structure³⁸. Currently, the Ombudsman's Apparatus has 20 employees, most of whom have higher legal education³⁹. In order to facilitate the access of applicants to his office, the Ombudsman may establish local branches. Such branches may be established in the Gorno-Badakhshan Autonomous Oblast (hereinafter: GBOA), in other oblasts as well as in cities and regions of Tajikistan. The activity of the ombudsman is financed from the state budget, which constitutes the formal independence of this institution and ensures its autonomy in the system of state authorities⁴⁰.

The practical dimension of the Ombudsman's activities

So far, nine annual reports of the Tajik Ombudsman have been published, with the first report covering a period of 16 months – from September 2009 to December 2010, while the remaining reports cover the

³⁶ *Ibidem*, art. 24-26.

³⁷ Доклады Уполномоченного по правам человека, Commissioner for Children's Rights in the Republic of Tajikistan, <http://www.vhk.tj> (10.05.2022).

³⁸ Закон Республики Таджикистан от 20 марта 2008 года..., art. 33.

³⁹ Доклад Уполномоченного по правам человека в Республике Таджикистан за 2009-2010 годы, Душанбе 2011, p. 10, Bureau of Human Rights and Rule of Law, <https://www.bhr.tj> (14.05.2022).

⁴⁰ Закон Республики Таджикистан от 20 марта 2008 года..., art. 34-36.

following years 2011-2018⁴¹. However, there are no reports for 2019-2021. Starting from the 2012 annual report, they are published in Tajik, Russian and English, and from 2015 only in Russian and English. Their circulation is 1000 copies.

The reports show that in the period from September 2009 to December 2010, the Human Rights Ombudsman's Apparatus received 1,543 complaints and petitions, in 2011 – 754, in 2012 – 604, in 2013 – 492, in 2014 – 3252, in 2015 – 3,474, in 2016 – 3,558, in 2017 – 3,864 and in 2018 – 3,522. Written complaints and petitions accounted for approximately 20%. In the case of oral complaints and petitions, the petitioners were received by the Ombudsman himself or his office staff, who provided them with relevant information on the legal basis of the infringement of their rights and freedoms and on the remedies available to them.

Most complaints and petitions came from the capital district - Dushanbe. In the years covered by the reports, it was as much as 42-45%. On the other hand, the smallest number of applicants turned to the Ombudsman from GBWA - only 1-3, which is 0.1-0.4%. The vast majority of complaints and petitions concerned: applicants' employment relations, social and housing matters, access to health care and education, family relations including domestic violence, applicants' dissatisfaction with court decisions in civil and criminal cases, non-enforcement of court decisions, especially in property matters, complaints about unlawful actions or omissions of state officials and law enforcement officials, military service and pension/disability pension security. For example, the 2018 report shows that the number of complaints related to domestic violence has increased significantly⁴². However, the reports lack complaints and conclusions regarding first-generation cases. As the reports show, the Ombudsman, as a result of the petitions and requests he received, usually limited himself to instructing the applicants about the means of redress they were entitled to, and only in a few cases did he make recommendations to state bodies and institutions.

In the period covered by the report, the Ombudsman or employees of his office participated in the activities of working groups preparing draft acts or submitted their comments to them in writing, similarly to other normative acts. For example, in 2011, this concerned 71 proposed bills, 10 draft resolutions of the RoT Government and 10 draft resolu-

⁴¹ All the indicated Ombudsman's reports can be accessed on the website of the Commissioner for Children's Rights in the Republic Of Tajikistan at: <http://www.vhk.tj/ru/publications/vakolatdor> (24.05.2022).

⁴² Доклад Уполномоченного по правам человека в Республике Таджикистан за 2018 год, Душанбе 2019, p. 85-86, Commissioner for Children's Rights in the Republic of Tajikistan, <http://www.vhk.tj> (24.05.2022).

tions of the Plenum of the Supreme Court of RoT⁴³. On the other hand, in 2017, the subject of interest and relevant comments of the Ombudsman for Human Rights was 38 bills, one draft regulation of the President of RoT, 10 draft resolutions and one regulation of the Government of RoT and five draft conventions⁴⁴.

Other manifestations of the Ombudsman's activity were his participation in national and international conferences, as well as seminars for employees of state authorities and officers of legal protection authorities. The topics of the speeches were, among others: *The role of the Institution of the Plenipotentiary Ombudsman for Human Rights in the system of protection of human rights and freedoms in the Republic of Tajikistan*, *The role of information technology in the protection of human rights and freedoms*, *Gender equality issues*, or *Protection of women's labor rights*. The Ombudsman and his office staff also appeared many times in the mass media - television and radio, and presented their positions in the press and internet portals. For example, in 2012, there were 33 appearances on television, 60 radio appearances, 10 press articles and 112 internet articles⁴⁵. In turn, the Ombudsman's meetings with ombudsmen from other countries served to exchange experiences.

However, the reports lack information on the Ombudsman's visits to places of stay of detained persons and serving prison sentences. This is all the more disturbing because several hundred political prisoners, mainly members of the opposition Party of the Islamic Revival of Tajikistan (hereinafter: PIOT), are tortured and deprived of contact with their families in penal colonies and other places of detention. The spokesman himself, in a few interviews for the opposition media, officially explained the failure to intervene in the case of prisoners – members of PIOT – with the lack of appropriate petitions.

The vast majority of citizens of Tajikistan are aware that in the reality of the authoritarian regime operating in their country, not every type of case may be referred to the Ombudsman. This is due to, on the one hand, the applicants' fear of the consequences of submitting such appli-

⁴³ Доклад Уполномоченного по правам человека в Республике Таджикистан за 2011 год, Душанбе 2012, р. 11, Commissioner for Children's Rights in the Republic of Tajikistan, <http://www.vhk.tj> (18.06.2022).

⁴⁴ Доклад Уполномоченного по правам человека в Республике Таджикистан за 2017 год, Душанбе 2018, р. 13, Commissioner for Children's Rights in the Republic of Tajikistan, <http://www.vhk.tj> (18.06.2022).

⁴⁵ Доклад Уполномоченного по правам человека в Республике Таджикистан за 2012 год, Душанбе 2013, pp. 107-111, Commissioner for Children's Rights in the Republic of Tajikistan, <http://www.vhk.tj> (19.06.2022).

cations, and on the other hand, it is the result of skepticism, resulting from the awareness of the limited real possibilities of the Ombudsman⁴⁶. This is confirmed by sources related to the Tajik opposition, such as “Radio Ozodi” and internet portals: “Asia-Plus”, “Eurasianet” and “Fergana”⁴⁷. Moreover, in a society with tribal systems, many matters – depending on their importance – are dealt with informally at the clan, house or family level⁴⁸.

Conclusion

Summing up the deliberations on the institution of the Plenipotentiary Ombudsman for Human Rights in Tajikistan, it should be stated that its establishment in 2008 is formally in line with the state’s efforts to fulfill its international obligations in the field of protection of human rights and freedoms. The Act of March 20, 2008 *on the Plenipotentiary Ombudsman for Human Rights in the Republic of Tajikistan* generally meets the standards of similar acts in force in democratic countries. Objections may only be raised by the method of selecting the Ombudsman, depending on the President of Tajikistan, which in turn calls into question his independence from the presidential seat and, in a broader context, from other central bodies of executive power in the state. The objections in question are all the more justified as the two current ombudsmen – due to their positions – are associated with President Emomali Rahmon.

In practical terms, in the realities of Tajikistan’s political system and the reluctance of its authorities to take any real steps to strengthen the level of protection of individual rights in this country – the real possibilities of the Ombudsman’s actions are small. This is confirmed by the ombudsman reports from 2010-2018, which lack a reference to first-generation human rights cases. This proves both the limited trust of citizens in the new institution and the lack of real possibilities for the Ombudsman to act.

⁴⁶ *Кого защищает таджикский омбудсмен?*, ASIA-Plus, <https://asiaplustj.info> (18.06.2022).

⁴⁷ A. Hug, *Исчезающие права – Таджикистане: Выводы и рекомендации*, The Foreign Policy Centre, <https://fpc.org.uk> (18.06.2022); *Уполномоченный, но без полномочий, по правам человека в Таджикистане*, Payom, <https://payom.net> (18.06.2022).

⁴⁸ А. Грозин, *Элиты Туркменистана и центральноазиатские кланы: общее, особенное и трудности модернизации*, Perspektivy, <http://www.perspektivy.info> (18.06.2022).

Bibliography

- Akiner S., Barnes K., *The Tajik civil war: Causes and dynamics*, Conciliation Resources, <https://www.c-r.org> (24.04.2022).
- Amnesty International Report 2017/2018. The State of the World's Human Rights*, London 2018, p. 354-356, Amnesty International, <https://www.amnestyusa.org> (25.04.2022).
- База данных договорных органов. Статус ратификации – Таджикистан*, United Nations Human Rights Treaty Bodies, <https://tbinternet.ohchr.org> (24.04.2022).
- Biszyga A., *Transformacja ustrojowa poradzickich państw Azji Centralnej*, [w:] *25 lat transformacji w Polsce i w Europie Środkowo-Wschodniej*, eds. E. Gdulewicz, W. Orłowski, S. Patyra, Lublin 2015.
- Бобозода У., *Таджикистан идет по пути защиты и продвижения прав человека*, «Народная газета» от 3 декабря 2020 года.
- Bodio T., *Układy klanowe jako mechanizm polityki (na przykładzie państw Azji Centralnej)*, [in:] *Transformacja społeczeństwa i władzy w postradzickiej Azji Centralnej: studia i rozprawy*, ed. T. Bodio, W. Jakubowski, Pułtusk 2008.
- Bodio T., Moldawa T., *Konstytucje państw Azji Centralnej: tradycje i współczesność*, Warszawa 2007.
- Доклад Уполномоченного по правам человека в Республике Таджикистан за 2009-2010 годы*, Душанбе 2011, Bureau of Human Rights and Rule of Law, <https://www.bhr.tj> (14.05.2022).
- Доклад Уполномоченного по правам человека в Республике Таджикистан за 2011 год*, Душанбе 2012, Commissioner for Children's Rights in the Republic of Tajikistan, <http://www.vhk.tj> (18.06.2022).
- Доклад Уполномоченного по правам человека в Республике Таджикистан за 2012 год*, Душанбе 2013, Commissioner for Children's Rights in the Republic of Tajikistan, <http://www.vhk.tj> (19.06.2022).
- Доклад Уполномоченного по правам человека в Республике Таджикистан за 2017 год*, Душанбе 2018, Commissioner for Children's Rights in the Republic of Tajikistan, <http://www.vhk.tj> (18.06.2022).
- Доклад Уполномоченного по правам человека в Республике Таджикистан за 2018 год*, Душанбе 2019, Commissioner for Children's Rights in the Republic of Tajikistan, <http://www.vhk.tj> (24.05.2022).
- Доклады Уполномоченного по правам человека, Commissioner for Children's Rights in the Republic of Tajikistan*, <http://www.vhk.tj> (10.05.2022).
- Domańska A., *Pozycja ustrojowo-prawna Rzecznika Praw Obywatelskich*, Łódź 2012.
- Domańska A., *Rzecznik Praw Obywatelskich*, [in:] *Polskie prawo konstytucyjne*, ed. D. Górecki, Warszawa 2015.
- Garlicki L., *Polskie prawo konstytucyjne: zarys wykładu*, Warszawa 2017.
- Грозин А., *Элиты Туркменистана и центральноазиатские кланы: общее, особенное и трудности модернизации*, Perspektivy, <http://www.perspektivy.info> (18.06.2022).
- Хамрабаева Н., *Разбитые жизни: пытки и жестокое обращение в Таджикистане*, «Азия-Плюс», 2012, № 55.
- Hug A., *Исчезающие права – Таджикистане: Выводы и рекомендации*, The Foreign Policy Centre, <https://fpc.org.uk> (18.06.2022).

- Ивановский С., *Гражданская война в Таджикистане*, Cold War, <http://www.coldwar.ru> (24.04.2022).
- Искаков Ж., *Специфика политических институтов и процессов в Центральной Азии*, «Научные ведомости Белгородского государственного университета» 2011, № 13, вып. 19.
- Jakubowski W., Szaripov S., *Partie polityczne i ruchy społeczne*, [in:] *Tadżykistan: historia – społeczeństwo – polityka*, ed. T. Bodio, Warszawa 2002.
- Кого защищает таджикский омбудсмен?*, ASIA-Plus, <https://asiaplustj.info> (18.06.2022).
- Leszczenko L., *Instytucja ombudsmans w państwach poradzieckich: geneza – status prawny – rozwój*, Warszawa 2011.
- Malinowska I., *Rzecznik Praw Obywatelskich w systemie ochrony praw i wolności w Polsce*, Warszawa 2007.
- Patyra S., *Rzecznik Praw Obywatelskich*, [in:] *Polskie prawo konstytucyjne*, ed. W. Skrzydło, Lublin 2010.
- Шарафиева О., *Роль региональных кланов во внутренней политике Таджикистана*, «Вестник Томского университета» 2012, № 359, CyberLeninka, <https://cyberleninka.ru> (24.04.2022).
- Szukalski J., *Ewolucja pozycji ustrojowej parlamentu Tadżykistanu w świetle reform konstytucyjnych w latach 1990-2016*, „Białostockie Studia Prawnicze”, 2019, t. 24, nr 4.
- Szukalski J., *Instytucja Pełnomocnego Rzecznika ds. Praw Człowieka w Turkmenistanie – wymiar normatywny i praktyka*, „Przegląd Prawa Konstytucyjnego”, 2019, nr 2.
- Świątkiewicz J., *Rzecznik Praw Obywatelskich w polskim systemie prawnym*, Warszawa 2001.
- Указ Президента Республики Таджикистан №1225 от 4 марта 2019 года «О назначении Ализода Зарифа Помощником Президента Республики Таджикистан по правовым вопросам – Полномочным представителем Президента Республики Таджикистан в Маджлиси милли и Маджлиси намоёндагон Маджлиси Оли Республики Таджикистан»*, Ministry of Justice of the Republic of Tajikistan, <http://www.adlia.tj> (28.04.2022).
- Уполномоченный, но без полномочий, по правам человека в Таджикистане*, Payom, <https://payom.net> (18.06.2022).
- Уполномоченный по правам человека в Республике Таджикистан*, Samarkand Forum, <https://www.asianforum.uz> (28.04.2022).
- Уполномоченный по правам человека в Республике Таджикистан*, Eurasian Ombudsman Alliance, <https://ombudsmanrf.ru> (28.04.2022).
- Wierzbicki A., Załęski P., *Trybalizm a władza w Azji Centralnej*, Pułtusk 2008.
- Witkowski Z., *Rzecznik Praw Obywatelskich i Rzecznik Praw Dziecka*, [in:] *Prawo konstytucyjne*, ed. Z. Witkowski, Toruń 2013.
- Закон Республики Таджикистан от 20 марта 2008 года № 1424 «Об уполномоченном по правам человека в Республике Таджикистан» (по состоянию на 30 мая 2017 года)*, Ministry of Justice of the Republic of Tajikistan, <http://www.adlia.tj> (27.04.2022).
- Закон Республики Таджикистан от 16 апреля 2012 года, № 811 «О внесении изменений и дополнений в Закон Республики Таджикистан „Об уполномоченном по правам человека в Республике Таджикистан”»*, Ministry of Justice of the Republic of Tajikistan, <http://www.adlia.tj> (27.04.2022).

Закон Республики Таджикистан от 15 марта 2016 года, № 1281 «О внесении изменений и дополнений в Закон Республики Таджикистан „Об уполномоченном по правам человека в Республике Таджикистан”», Ministry of Justice of the Republic of Tajikistan, <http://www.adlia.tj> (27.04.2022).

Зокирова Н., *Уполномоченный по правам человека отчитался перед таджикскими правозащитниками*, Bureau of Human Rights and Rule of Law, <https://www.bhr.tj> (26.04.2022).

Inytucja Pełnomocnego Rzecznika ds. Praw Człowieka w Tadżykistanie w wymiarze normatywnym i praktyce

Streszczenie

Inytucję Pełnomocnego Rzecznika do Spraw Praw Człowieka ustanowiono w Tadżykistanie na podstawie stosownej ustawy, przyjętej 20 marca 2008 r. Regulacje ustawowe normują wszystkie istotne kwestie dotyczące organizacji i trybu funkcjonowania Rzecznika. Zasadniczo spełniają one na ogół standardy analogicznych aktów obowiązujących w państwach demokratycznych. W wymiarze normatywnym można mieć jedynie zastrzeżenia do sposobu wyboru Rzecznika, zależnego od Prezydenta Tadżykistanu, co z kolei podaje w wątpliwość jego niezależność od ośrodka prezydenckiego. Natomiast w wymiarze praktycznym, w realiach funkcjonującego w Tadżykistanie systemu autorytarnego, ombudsman jest instytucją fasadową i nie jest w stanie spełniać funkcji, do jakich został powołany. Świadczą o tym raporty Rzecznika, w których wyraźnie brakuje spraw odnoszących się do praw człowieka pierwszej generacji.

Słowa kluczowe: Tadżykistan, Pełnomocny Rzecznik ds. Praw Człowieka, prezydent, instytucja, ustawa