

# INVOCATION OF THE EDUCATIONAL OMBUDSMAN AS A LEGAL INSTRUMENT FOR THE PROTECTION OF NON-PROPRIETARY PERSONAL RIGHTS

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**Annotation.** This scholarly paper investigates the application of self-defense as a legal mechanism designed specifically to safeguard the civil rights of participants within educational settings, with a special focus on minors. The study meticulously outlines the operationalization of self-defense, delving into its procedural subtleties and the varied contexts in which it can be applied within educational environments. This exploration helps elucidate the nuanced ways through which individuals can assert their rights in educational contexts, highlighting both the potential and the limitations of self-defense as a protective legal measure.

Expanding the scope of the analysis, the paper also examines the role of educational ombudsmen in navigating judicial disputes. It offers a comprehensive review of the functional impacts and procedural roles these ombudsmen play within the legal frameworks governing educational institutions. This segment of the study assesses how educational ombudsmen contribute to the resolution of conflicts and the enforcement of legal standards, thereby enhancing the protection of students' rights.

Incorporating a robust comparative analysis, the research extends into the international arena, exploring the praxis of educational ombudsmen across different jurisdictions.

It assesses the legislative outcomes of their involvement in judicial proceedings and scrutinizes how these vary across diverse legal systems. This comparative approach not only underscores effective strategies but also identifies best practices that could be emulated to bolster the legal protection of educational rights through judicial processes.

By synthesizing theoretical frameworks with empirical research, this paper contributes significantly to the scholarly discourse on educational law and civil rights protection. It critically examines the intersection of education, law, and civil rights, proposing necessary refinements to existing legal mechanisms and suggesting new areas for in-depth research. These recommendations aim to enhance the effectiveness of educational ombudsmen and to ensure more robust legal protections for all participants within the educational sector.

**Key words:** Educational ombudsman, students' rights, non-jurisdictional protection of rights, legal mechanisms in education, judicial disputes in education.

## 1. Introduction.

In Ukraine, appealing to the Educational Ombudsman is a crucial mechanism for safeguarding the rights of education seekers. This role is integral to addressing violations of non-pecuniary personal rights within the educational sphere, such as the right to education, the right to dignity, and other related rights that emerge during the educational process.

The Educational Ombudsman operates as an independent official, appointed specifically to oversee the protection of the rights and freedoms of those within the educational sector. The ombudsman's



responsibilities include monitoring these rights and reviewing any complaints pertaining to their infringement.

Globally, the institution of the ombudsman is well-established, existing in over 140 countries and tracing its origins back to Sweden in 1809. The designation and scope of the ombudsman's role vary significantly across different countries, reflecting diverse legal and cultural contexts. For instance, in the United Kingdom and Cyprus, this role is termed as the Commissioner for Administration; in Spain, Georgia, and Colombia, it is known as the People's Defender. France uses the term "Mediator" for this role, while in the Czech Republic and Slovenia, it is known as the Public Defender of Rights. In Moldova, the equivalent role is the Parliamentary Advocate, and in Albania and Romania, it is called the People's Advocate. Meanwhile, in Lithuania, the ombudsman is referred to as the "Controller," in Estonia as the Chancellor of Justice, in Poland as the Human Rights Commissioner, and in Kazakhstan, Iceland, and Thailand, as the Human Rights Ombudsman. Despite these varied titles, the core mission of the ombudsman across the globe remains consistent: to protect the rights of citizens, with a particular focus on the educational context in the case of the Educational Ombudsman. This institution plays a pivotal role in ensuring that educational processes are conducted in a manner that respects and upholds the rights and dignities of all participants [1, c. 166].

## **2. Analysis of scientific publications.**

The research on the institution of the educational ombudsman has been extensively documented in the scholarly works of academics such as T. Koval, O. Kulynych, O. Martseliak, O.F. Melnychuk, T. Obolenska, Yu. Ryzhuk, Ya. Tytska and O. Chabaniuk.

## **3. The purpose of the work.**

The primary objective of this article is to critically examine the application and implications of self-defense as a legal mechanism for protecting civil rights within educational settings, with an acute focus on the rights of minors. The study aims to provide a comprehensive analysis of how self-defense is operationalized in educational environments, delineating its procedural intricacies and the contexts in which it is deployed to safeguard the educational rights of individuals.

Further, this paper seeks to explore the significant role of educational ombudsmen in navigating and resolving judicial disputes that affect students and other educational stakeholders. Through a detailed examination of the procedural roles and impacts of these ombudsmen within various legal frameworks, the study intends to assess their effectiveness in conflict resolution and legal standard enforcement within educational institutions.

Additionally, by incorporating a comparative approach, the research aims to examine the practices of educational ombudsmen in different legal systems internationally. This segment of the study will assess the legislative outcomes and variations in the judicial engagement of ombudsmen across diverse legal jurisdictions, identifying effective strategies and best practices that could potentially enhance the legal protection of educational rights. Ultimately, this article strives to contribute to the broader scholarly discourse on educational law and civil rights protection. By integrating theoretical perspectives with empirical findings, the paper proposes necessary refinements to existing legal mechanisms and suggests new areas for in-depth research. These recommendations are intended to bolster the effectiveness of educational ombudsmen and ensure more robust legal protections for all participants within the educational sector.

## **4. Review and discussion.**

The ideological and legal foundations of the domestic institution of the educational ombudsman in Ukraine are rooted in international acts, including: the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the Declaration of the Rights of the Child (1959), the Convention against Discrimination in Education (1960), the Recommendation on the Development

of Adult Education adopted by the General Conference of UNESCO on Education, Science, and Culture at its 19th session (1976), the ILO/UNESCO Recommendations concerning the Status of Higher-Education Teaching Personnel (1977), the Convention on Technical and Vocational Education (1989), Recommendation No. R1281 on Gender Equality in Education (Council of Europe, 1995), and the Declaration of Principles on Tolerance (UNESCO, 1995) [2].

In Ukraine, the role of the Educational Ombudsman is a critical legal mechanism designed to ensure the protection and enforcement of the rights of education seekers. This procedural tool is integral for addressing the breaches of non-pecuniary personal rights within the educational sector, encompassing fundamental rights such as the right to education, the right to dignity, and other rights that inherently arise during the educational journey of individuals.

The Educational Ombudsman is appointed as an independent statutory official with the specific mandate to oversee and protect the rights and freedoms of education seekers. This role involves the assessment and adjudication of complaints related to the infringement of educational rights. The powers and responsibilities of the ombudsman are explicitly defined in Ukraine's "Law on Education," which guarantees the ombudsman's operational independence and objectivity [3]. The societal mandate of the Educational Ombudsman is articulated through his function of legal protection. This primary role encompasses activities aimed at the protection and restoration of violated rights, for which the state endows this official and his Service with the necessary authority. Within the scope of his protective function, the Educational Ombudsman possesses certain powers—direct means of influence over entities under his jurisdiction and indirect capabilities to facilitate the improvement of rights implementation in the educational sphere.

Direct means include responding to complaints, examining them, and verifying the facts presented, which constitute the principal mode of operation for the Educational Ombudsman (Sec. 4, Art. 73 of the "Education Law"; para. 9 of the Regulations). Individuals who have the right to submit complaints about rights violations in education include students, their parents, legal guardians, as well as educational, pedagogical, and research staff (para. 3 of the Procedure).

The role of the Educational Ombudsman is thus to act as a mediator and an advocate for educational rights, serving as a vital link between the educational community and the legal protections afforded to them under the law. This position ensures that any breaches of rights within the educational sector are not only addressed but also rectified in accordance with legal standards.

Furthermore, the ombudsman's ability to exert indirect influence through advocacy and policy recommendation plays a crucial role in shaping educational standards and practices. By promoting compliance with legal norms and enhancing the awareness of rights among educators and students, the Educational Ombudsman contributes significantly to the overall governance and quality of education.

In summary, the Educational Ombudsman's blend of direct and indirect powers forms a comprehensive framework for safeguarding educational rights. This dual approach not only resolves individual grievances but also fosters a broader cultural and systemic improvement in the educational sector's adherence to legal and ethical standards, thereby reinforcing the rule of law and promoting a more just educational environment.

Engaging with the Educational Ombudsman provides a critical avenue for education seekers to assert and protect their rights without resorting to the formal judicial system. This is particularly significant for the prompt and effective resolution of disputes. The ombudsman evaluates complaints regarding the actions or inactions of educational institutions and their personnel, which may potentially violate the legal rights of students and other educational participants [4, p. 57].

The process of appealing to the ombudsman is initiated through the submission of a detailed written complaint that must clearly articulate the facts of the alleged violation and include supporting evidence. The ombudsman conducts a thorough investigation into the complaint, following which they issue findings and recommendations aimed at rectifying the identified breaches. The efficacy of the Educational Ombudsman in Ukraine has proven significant in fostering a greater understanding of legal rights among education seekers, enhancing the mechanisms for their protection, and ensuring adherence to legal standards. The intervention of the ombudsman has led to a notable

decrease in rights violations within educational settings, thereby contributing to the enhancement of the overall legal and educational climate.

Globally, the institution of the ombudsman is recognized in over 140 countries, tracing its roots back to 1809 in Sweden. While the title and specific duties of the ombudsman may vary across different jurisdictions, the foundational goal remains consistent—to safeguard the rights of citizens, with a particular focus on the educational sector in the context of the Educational Ombudsman.

For instance, in the United Kingdom and Cyprus, the position is termed as the Commissioner for Administration, focusing on administrative justice and fairness in public services. In Spain, Georgia, and Colombia, known as the People's Defender, the ombudsman plays a crucial role in defending the rights and freedoms of the general populace, including those within educational institutions. Similarly, in France, the Mediator facilitates dispute resolution between public agencies and citizens, ensuring that educational grievances are addressed efficiently. In Eastern Europe, such as the Czech Republic and Slovenia, the ombudsman is known as the Public Defender of Rights, emphasizing a broad spectrum of human rights protection, including those related to education. Meanwhile, in nations like Moldova and Albania, termed as the Parliamentary Advocate or the People's Advocate respectively, the ombudsman not only addresses educational disputes but also broader civil rights issues.

This diversity in roles and responsibilities highlights the adaptable nature of the ombudsman institution, tailored to meet the specific legal and cultural needs of different countries while maintaining a uniform commitment to the protection of rights. This comparative insight underscores the universal relevance of the Educational Ombudsman in promoting legal conformity and protecting the rights within the educational sector across different legal frameworks and cultural contexts.

## 5. Conclusions.

Appealing to the Educational Ombudsman constitutes a fundamental legal mechanism for safeguarding the non-pecuniary personal rights of education seekers. This regulatory framework not only facilitates the restoration of infringed rights but also serves a crucial preventative function in mitigating future violations. Thus, it ensures adherence to the elevated standards of the educational process and the legal protection of students.

The intervention of the Educational Ombudsman plays a pivotal role in the educational jurisprudence system, ensuring that educational institutions adhere to statutory and regulatory frameworks. By providing a non-judicial recourse for grievances, the ombudsman enhances the transparency and accountability of educational entities. This mechanism contributes significantly to maintaining a balance between administrative authority and the rights of the individual, thereby fostering an environment conducive to educational fairness and legal compliance.

Furthermore, the proactive engagement of the Educational Ombudsman in monitoring and evaluating educational practices aids in the early detection and resolution of potential legal issues. This preemptive approach not only reduces the burden on the judiciary by decreasing the volume of cases that escalate to formal legal disputes but also promotes a culture of respect for rights within educational settings.

In summary, the Educational Ombudsman is instrumental in enforcing legal norms within the educational sector, protecting the rights of participants, and ensuring that educational governance is conducted within the ambit of the law. This role is crucial in upholding the integrity of educational processes and safeguarding the rights of all educational stakeholders, thereby enhancing the overall quality and legality of educational administration.

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