

SUMMARY

Report on the activities
of the Commissioner
for Human Rights
in 2021



RZECZNIK
PRAW OBYWATELSKICH

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Report on the activities
of the Commissioner for Human Rights
in 2021
and on the state of observance
of human and civil rights and freedoms



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FOR HUMAN RIGHTS

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Report on the activities of the Commissioner for Human Rights in 2021 and on the state of observance of human and civil rights and freedoms – summary

In 2021 the office of the Commissioner for Human Rights was managed by:

Adam Bodnar – to 15 July 2021

Stanisław Trociuk – 16–22 July 2021

Marcin Wiącek – from 23 July 2021

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Table of Contents

Foreword	5
Introduction: duties and powers of the CHR	7
Overview of key problems relating to human rights in Poland	17
Crisis on the Belarusian border	25
Problems related to the COVID-19 pandemic	35
Justice system and the rule of law	45
Freedom of speech and freedom of the media	49
Education	53
Prohibition of torture and inhuman treatment	54
Equal treatment	56
Rights of persons with disabilities	60
Health care system	64
Other important problems	68
Special duties of the Commissioner for Human Rights	73
CHR as an independent equality body	74
National Mechanism for the Prevention of Torture	84
Organization system of Commissioner for Human Rights' activities	89
CHR's regional offices and citizen reception points	90
CHR activities in the field of social communication	95
Human rights education	99
Expert Committees	103
International-level activities	104
Cases before European Courts	108
Calendar of main events in 2021	115
List of selected subject areas covered by the Constitution of the Republic of Poland	127

Foreword

Dear Readers,

2021 was a special year in the history of the Office of the Commissioner for Human Rights in our country. It saw a record number of 74 279 cases submitted to the Commissioner. The work of the office was managed successively by three persons, due to several reasons set out in the introduction to this report.

Nevertheless, let me also take this opportunity to make two other statements.

Firstly, I would like to thank the citizens for their trust. It is very encouraging that at the time of crisis emerging nationally and globally so many people turned to the CHR Office to seek assistance with their problems. They sought help in solving various issues impacting their lives, asked for legal information or simply looked for support with a kind word. This reinforced our conviction that our work is necessary and important. The Constitution and the *Act on the Commissioner for Human Rights* require us to perform it, but what really matters to us is whether it truly serves the citizens.

Secondly, I cannot let the unique team working in the Office of the Commissioner for Human Rights go unmentioned here. It consists of many outstanding experts brought into the fold over decades by successive Commissioners. These people deeply identify with the goals of our institution. They believe that the fight for human and civil rights and freedoms is profoundly important, as it leads our civilization in the right direction by strengthening respect for human dignity. This



is why the team has persevered and overcome numerous difficulties (including low budgets, remote work and changes in the Commissioner's term of office) while responding to a record inflow of cases submitted by citizens. I feel honoured to have joined this team in mid-2021. I wholeheartedly thank all of the Office's employees, including those working on the Annual Report, for their great attitude and effort. Thanks to you, citizens can feel at least a little safer at a time when they face so many new threats to their rights. I would also like to thank all those in Poland and abroad who cooperated with the Office of the Commissioner and supported our efforts in 2021.

I hope that reading this report will be a fruitful experience for you.

Marcin Wiącek

Commissioner for Human Rights

Introduction: duties and powers of the CHR

Despite the formal end of his five-year term of office, Adam Bodnar continued to serve as the Commissioner for Human Rights, due to several unsuccessful attempts to appoint his successor, until 15 July 2021. From 16 July 2021, the day on which the Constitutional Tribunal ruled the performance of the Commissioner's duties by the outgoing Commissioner to be unconstitutional, until 23 July 2021 when his successor was duly appointed, the Office of the Commissioner was managed by Deputy Commissioner Stanisław Trociuk. Since taking his oath of office before the Sejm on that date, Marcin Wiącek has served as the Commissioner.

Throughout 2021, the number of applications for assistance submitted to the Commissioner remained very high and reached 74,279, the most in the Office's history. The CHR Office received 917 persons seeking help, and answered 40,941 telephone calls, providing explanations and advice to citizens. The substantial increase in the number of applications submitted to the Office in 2020 and 2021 stemmed inter alia from the state of epidemic declared by the government, which significantly disrupted the normal operations of public administrative bodies and courts and led to very frequent changes in regulations governing the everyday life of citizens. The state of epidemic was also inextricably linked to restrictions on a number of fundamental freedoms and human rights. People who suffered as a result of these restrictions often requested the Commissioner to determine whether their freedoms or rights had been excessively restricted.

Figure 1. Inflow of applications to the CHR Office, 1988–2021

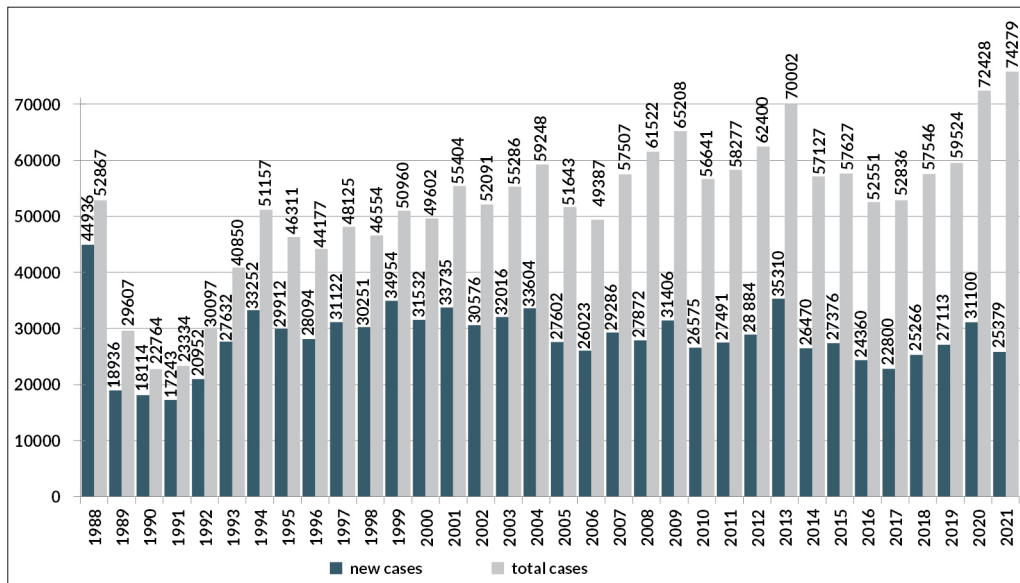


Figure 2. Applicant visits to the CHR Office, 2004–2021

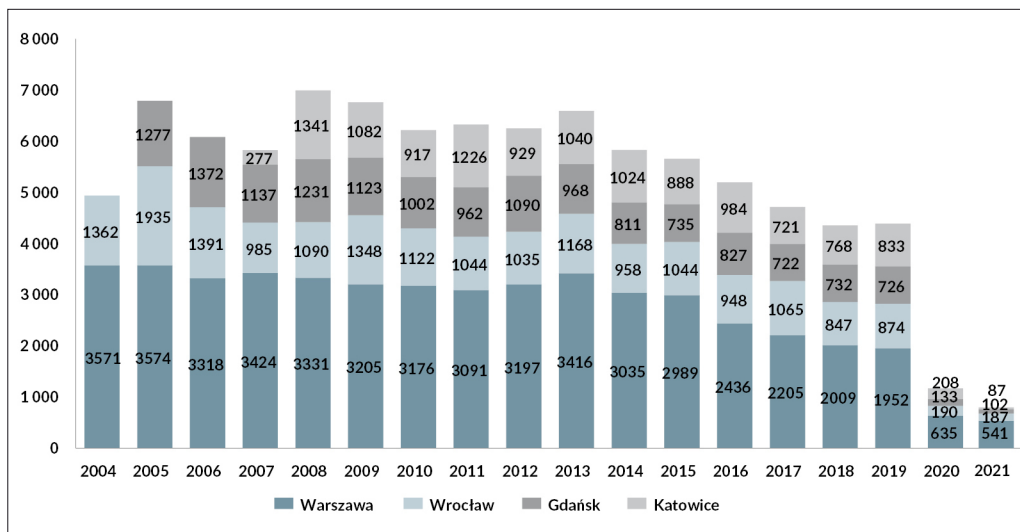
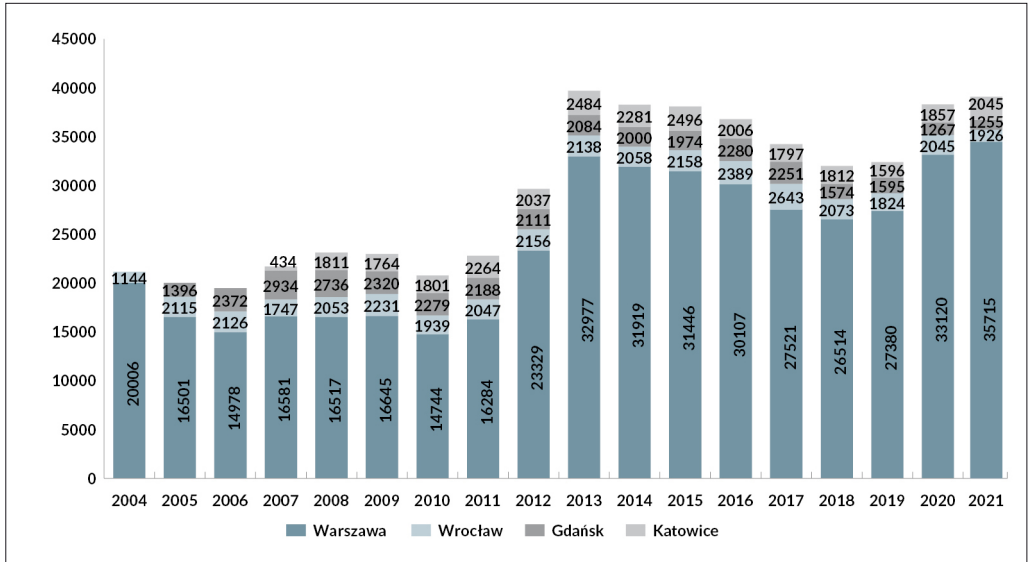


Figure 3. Advice provided to applicants by telephone, 2004–2021



■ What matters does the Commissioner for Human Rights deal with?

People whose matters have been dealt with to their satisfaction by public authorities do not seek assistance by the Commissioner for Human Rights. Such assistance is sought by persons whose claims or expectations have not been met and who therefore consider themselves disadvantaged. This annual report is, therefore, drawn up based on the opinions of persons dissatisfied with the functioning of public authorities. These opinions have been subsequently verified by the Commissioner in the course of the conducted proceedings. The results of the proceedings are presented in this *Report on the activities of the Commissioner for Human Rights in 2021* and have been the source material for assessing the state of observance of human and civil rights and freedoms in 2021.

In the reporting period, in addition to action taken with regard to individual cases, the Commissioner sent 213 problem-specific letters of intervention to the competent authorities, pointing to systemic problems regarding the protection of the rights of individuals. 79 of these letters concerned the need for legislative

initiative to ensure effective protection of human rights or freedoms. Pursuant to CHR's procedural powers, in 2021 the Commissioner joined 25 proceedings before the Constitutional Tribunal and filed 1 application with the Tribunal. He also filed 51 extraordinary complaints with the Supreme Court, 113 cassation appeals and complaints, 16 cassation appeals with the Supreme Administrative Court and 13 complaints with voivodeship (i.e. provincial) administrative courts, and joined 41 proceedings before national courts and 21 proceedings before the European Court of Human Rights and the Court of Justice of the European Union.

Figure 4. Main addressees of the CHR's interventions in 2021

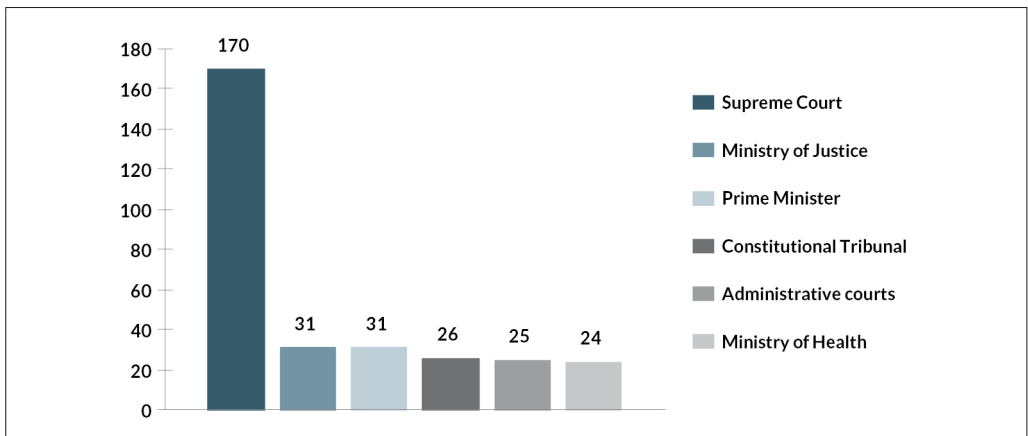
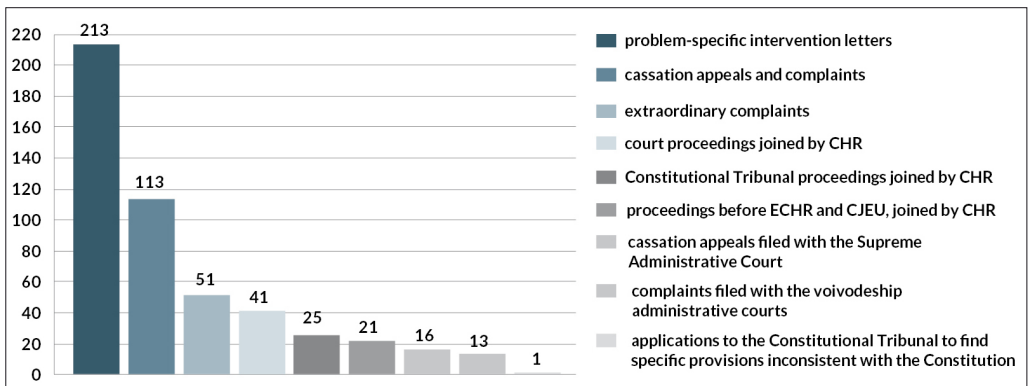


Figure 5. CHR's main interventions in 2021 by type of procedure



The cases examined by the Commissioner for Human Rights in 2021 related mainly to the broadly understood criminal law (36.8 %), administrative and commercial law (20.4 %), civil law (15.4 %) and labour and social security law (14 %).

Figure 6. CHR's general interventions by problem area

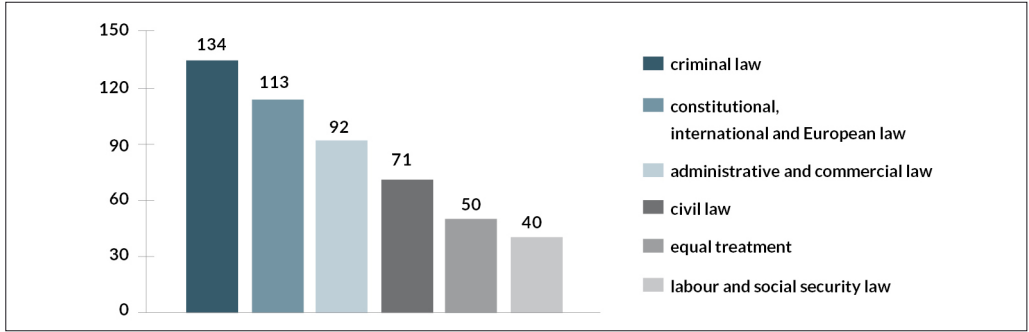


Figure 7. Examined cases by problem area

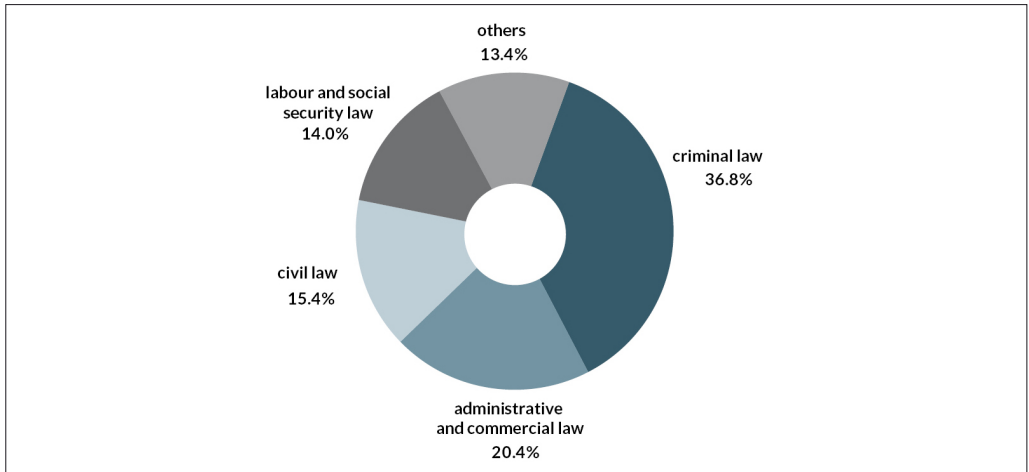
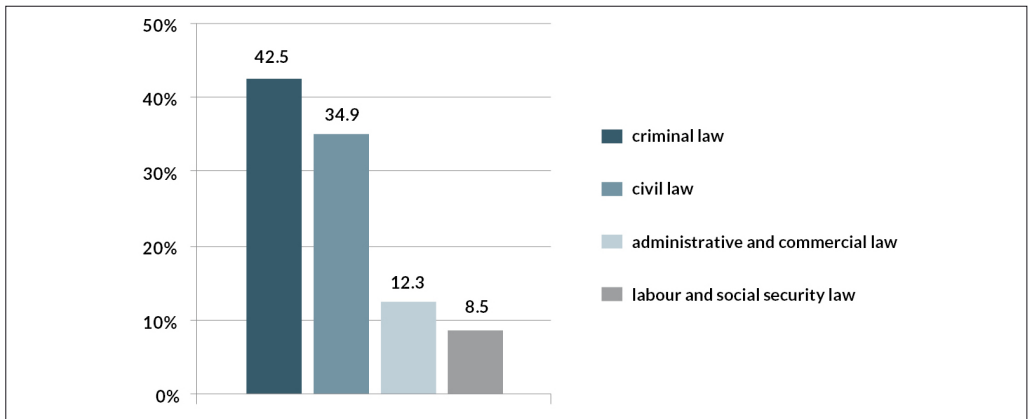


Table 1. Applications to the CHR to file an extraordinary complaint (by specialization areas of the CHR Office departments)

Problem area	2021
criminal law	1018
civil law	835
administrative and commercial law	294
labour and social security law	204
constitutional, international and European law	28
protection of the rights of soldiers and officers	8
others	6
Total	2393

Figure 8. Applications to the CHR to file an extraordinary complaint by problem area



■ Improved but still unsatisfactory budgetary situation

The significant increase (by over 20% year-to-year) in the number of cases referred to the Commissioner for Human Rights in 2020 and 2021 was not accompanied by a proportional increase in the budget. In particular, in the financial year 2021 the Commissioner did not receive a budget allocation for the task, carried out since 2018, of examining requests to file an extraordinary complaint with the Supreme Court against a final judgment of a common court or military court. In the second half of 2021, the Commissioner received additional funding from the state budget for the financial year 2022. It has made it possible

to finance 9 new full-time positions which, however, is still insufficient in relation to the existing needs.

The repeatedly reported problem of insufficient funding for the exercise, by the Commissioner, of the mandate of the National Preventive Mechanism has not been resolved either. As a result, the scope of the Commissioner's preventive visits to places of detention, carried out within the Mechanism, has been assessed by international bodies as insufficient.

■ Changes in the CHR position

Following a motion by a group of MPs, the Constitutional Tribunal lifted the system that had been in force for 30 years, according to which the incumbent Commissioner for Human Rights remained in office until a new Commissioner was elected. The normative guarantee of continuity of the constitutionally established CHR office was thus removed. The purpose of the formerly binding provision of the parliamentary act, deleted as a result of the Constitutional Tribunal's judgment, was to protect the effectiveness of the measure provided for under the Constitution i.e. application to the Commissioner for Human Rights for assistance in protecting one's rights or freedoms violated by public authorities. In view of the Tribunal's judgment it is necessary to undertake legislative work in order to properly regulate the procedure of Commissioner for Human Rights' appointment by the Parliament so as to avoid situations in which, after the end of the Commissioner's term of office, the position remains vacant.



Farewell photo: Commissioner of the 7th term of office and staff members in the CHR Office courtyard



Marcin Wiącek sworn-in as Commissioner for Human Rights



Commissioner of the 8th term of office welcomed by representatives of social organizations in the CHR Office courtyard

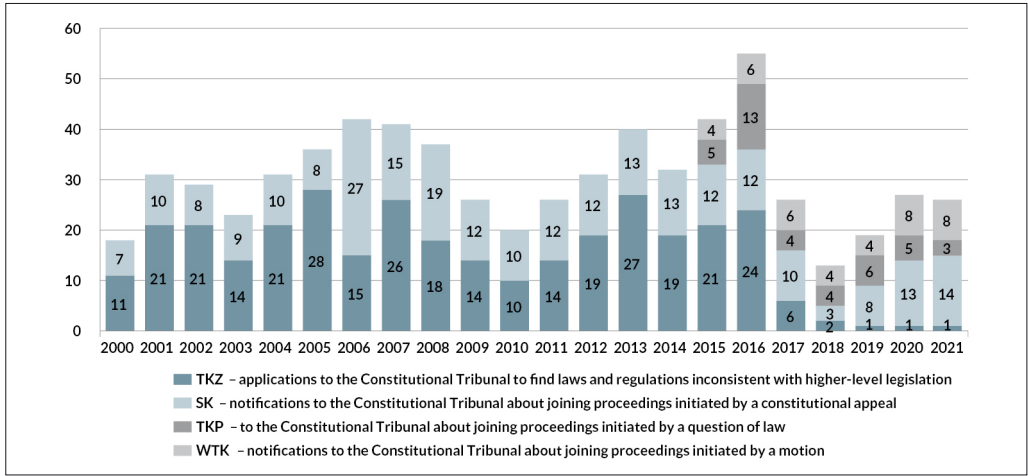
Overview of key problems relating to human rights in Poland

The parliamentary lawmaking process in many cases still deviates from the model described in the Constitution. Important acts of Parliament which regulate fundamental areas of the society's life, such as tax laws, are sometimes passed in haste, without sufficient reflection on the fact that their role is to set out fundamental duties of citizens. The consequences of faulty laws and mistakes made by the legislature are borne by the citizens. Moreover, the binding period of such hastily adopted laws is usually short as due to growing dissatisfaction of the society (as was the case with the tax regulations contained in the so-called *Polish Order*) they need to be amended. In the practice of lawmaking, still there are cases in which bills of key importance for the protection of the rights of individuals, drawn up by the government administration, are submitted to the Sejm as MPs legislative initiative. The practice makes it possible to avoid the consultations on the bills, which destroys the social dialogue as a part of the law-making process. In 2020, as a result of the introduction of the state of epidemic, **restrictions on fundamental human rights and freedoms were imposed.** At that time, the Commissioner for Human Rights pointed out that the restrictions on the freedom of movement, freedom to manifest one's religion, personal freedom, freedom of economic activity, freedom of assembly and the individual's informational autonomy constitute a subject matter that is governed by acts of Parliament. According to the Constitution, any restrictions on such constitutional freedoms or rights have to be introduced by a parliamentary act. Therefore, the restrictions introduced by the subsequent regulations have been against the standards set out in the Constitution. This position has been confirmed by administrative courts and the Supreme Court, following the examination of appeals filed by the Commissioner. The administrative courts found that administrative fines for non-compliance with the epidemic-related regulations had been imposed in gross violation of the law as the restrictions on the exercise of people's fundamental constitutional freedoms or rights had no legal basis in the form of an act of Parliament. The position has been shared by the Supreme Court in several dozen

judgments issued following the consideration of cassation appeals lodged by the Commissioner. The Court also found that the provisions of the epidemic-related regulations referred to by the police when imposing fines for the breach of public order did not, in fact, relate to such order as their aim was to protect health and not public order. The Supreme Court's established jurisprudence in this area shows that during the state of epidemic, the police acted without adequate legal basis when checking people's IDs, detaining people, or acting as a public prosecutor when imposing fines and taking cases to courts without any legal grounds, all of which was done by the police on a mass scale. By doing so, the police has thus violated people's personal freedoms, the right to privacy and, with regard to fines, also the constitutional principle that „only a person who has committed an offence prohibited, at the time of its commission, by a then-binding act of Parliament, is subject to criminal liability“.

The amendments to the legislation on common courts, administrative courts, the Supreme Court and the National Council of the Judiciary have resulted in a significant reduction of the judiciary's separation from and independence of the other public authority segments. This process, lasting for several years already, has been criticized, from the perspective of the standards of human rights protection, in numerous judgements of the European Court of Human Rights and the Court of Justice of the European Union as not providing a basic guarantee of access to a court which has been established by law and is characterized by independence and impartiality. It must be stressed that the legislative changes have not brought any solution to the problems the justice system has been facing for years. In particular, they have not eliminated the lengthiness of court proceedings, and in some cases have even exacerbated the existing problems with court proceedings' efficiency. The common courts have not been adjusted either to the requirements of the modern society that uses electronic means of communication on a mass scale.

Figure 9. Applications filed by the CHR with the Constitutional Tribunal, and constitutional appeals, motions and question of law to the Tribunal, joined by the CHR

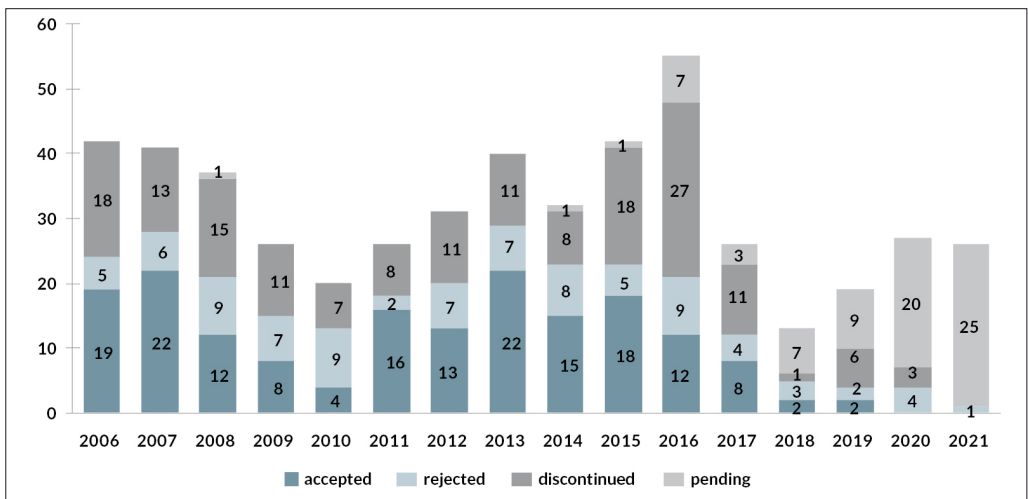


The efficiency of pre-trial proceedings conducted by prosecutors’ offices also deteriorated significantly. There has been a significant increase in the number of lengthy proceedings. The statistics on pre-trial detention in the course of pre-trial proceedings, ordered by courts, has also increased dramatically. The situation poses a threat to the suspects’ and victims’ right to have their cases heard within a reasonable time. It also means that an increasing number of people remain deprived of their liberty without a final court judgement that lifts the presumption of innocence.

The threats to the protection of the right to privacy and freedom of communication, emphasized in the previous years, still exist. These arise from the numerous binding provisions which allow the police or other authorized services to use operational control on a large scale and to collect telecommunications, postal and internet data on people without any limitations in practice. The threats to human rights in this area are caused not only by the scope of individuals’ data collected by the services but also by the failure to ensure effective and independent control over the process of covert acquisition of such

data. Courts receive only aggregate information on pending proceedings in which telecommunications data are gathered. At the same time, they do not have an effective tool to protect the informational autonomy of individuals and thus they may not order the destruction of data that has been collected in violation of the applicable law.

Figure 10. Applications examined by the Constitutional Tribunal: to find laws and regulations inconsistent with the Constitution; and constitutional appeals, motions and questions of law to the Tribunal, joined by the CHR (the graph shows the status, as of 31 December 2021, of all cases referred to the Constitutional Tribunal by the Commissioner for Human Rights. The data is broken down by year of the CHR’s application filled with the Tribunal).



A significant threat to the freedom of the media and the freedom to express opinions and seek and disseminate information has occurred as a result of the adoption of an amendment to the Broadcasting Act, which has changed the requirements for receiving the broadcasting licence. The state, once it has granted a license to operate a radio or television station, should refrain from interfering with the broadcaster’s exercise of their rights under the license, as long as their programmes remain in accordance with the applicable legislation. Hence, arbitrary legislative intervention undertaken in this field also violates the principle

of protection of rightfully acquired rights. Only thanks to the President of Poland who decided to refer the amendment back to the Sejm for reconsideration it has not entered into force.

Fundamental objections regarding the possibility to exercise the constitutional freedom to seek and disseminate information and to express opinions occurred when, following the introduction of the state of emergency in the area adjacent to Poland's border with Belarus, the executive power prohibited journalists to enter the area. The aforementioned freedoms include the right to seek information on one's own, regardless of the information obligations incumbent on other entities, in particular public entities. The legislator decided to prohibit entry into the area covered by the state of emergency, but it was their duty to allow journalists, as representatives of the society, to seek information within the area. The society has the right to know from independent sources what actions are taken by public authorities within areas which are not accessible to the public.

The migration crisis on the Polish-Belarusian border, caused by actions of the Belarusian authorities, resulted in the practice of turning back migrants who have illegally crossed the Polish border, including families with children, to the border line. The application of the practice with regard to persons intending to apply for the refugee status violates Poland's international obligations and makes it impossible for such migrants to effectively apply for the protection.

From the point of view of constitutional safeguards, there are still many problems related to the functioning of the National Centre for the Prevention of Dissocial Behaviour. The legislator has not regulated, by way of an act of Parliament, the scope of rights and obligations of persons placed in the centre. As a result, their basic constitutional rights and freedoms, such as the right to privacy or the freedom of communication, are regulated by means of the establishment's internal regulations.

As shown by complaints received by the Commissioner for Human Rights during the state of epidemic, the existing problems with exercising the constitutional right of equal access to the publicly funded health care system have increased.

The shortage of doctors and nurses, as well as the system's bureaucratisation and underfunding, particularly in the period of increased demand for its services due to the epidemic, made access to health care difficult and inconsistent with the standards arising from the Constitution.

The measure of legal incapacitation has not yet been replaced by the supported decision-making model. Thus, legally incapacitated persons are still dependent on other people's will when conducting their social lives, even if they are able to express their will themselves. This situation undermines their inherent and inalienable dignity.

Some progress has been made with regard to local governments' resolutions containing discriminatory provisions concerning the LGBTQ+ community. The Supreme Administrative Court, as a result of the procedural measures taken by the Commissioner, found that such resolutions constitute public administration resolutions and are therefore subject to review by administrative courts. The already existing case law makes it possible to assess the substantive content of such resolutions from the point of the existence of discriminatory provisions.

In order to ensure the protection of consumers' rights, the **Commissioner took part in a number of proceedings before the Court of Justice of the European Union, which concerned bank loans.** He pointed out that under European law, effective measures against unfair contractual terms have to be ensured. Therefore, the consumer's weaker negotiating and information position vis-à-vis the business entity should be counterbalanced by the possibility of active intervention by a court as an independent entity which is not a party to the contract.

There is still a lack of systemic regulations on the consequences of post-war expropriation and nationalisation, although the need for such regulations has been repeatedly highlighted by the Commissioner for Human Rights. Instead of them, the legislator decided to introduce a radical solution which consists in discontinuation of administrative proceedings concerning invalidity of administrative decisions issued in the past in this regard. The regulations, due to the close connection between supervisory administrative proceedings and civil cases in which damages are claimed, result in violations of the constitutional property rights. The regulations are particularly detrimental to persons who have not achieved the annulment of the flawed decisions due to the sole reason of the supervisory proceedings grossly exceeding the time limits applicable to administrative proceedings.

There has been no change in the legal situation of caregivers of persons who have been considered disabled in their adult age. Although the Constitutional Tribunal's judgment regarding the matter was issued already in 2014, it has not yet been enforced. As a result, caregivers have to initiate lengthy proceedings before administrative bodies and administrative courts in order to receive financial support in the same amount as caregivers of persons who have been considered disabled in their childhood.

The practice of employment contract termination by virtue of law has been entrenched by many acts of Parliament. The practice violates the constitutional principle according to which employment is protected by the Republic of Poland, as well as citizens' constitutional right of equal access to public service positions. Parliamentary acts on the functioning of the public sector contain provisions that permit employment contract (service contract) termination by virtue of law if the public sector employer has not offered new conditions of employment (service) to the employee. In this way, a public employer, having significantly greater powers than a private employer, namely the possibility to regulate their legal situation under generally applicable law,

may evade obligations he would face in the case of standard termination of the employment relationship.

As regards personal income tax law, fundamental changes to the regulations were introduced as a result of legislative works conducted hastily, without any consultations and a sufficiently long adjustment period. This has only increased the already existing distrust in the law so enacted.

Crisis on the Belarusian border

Since August 2021, the Polish-Belarusian border started to be crossed by large numbers of refugees and migrants e.g. from Iraq, Syria, Afghanistan and other countries. This was caused by actions of the Belarusian authorities which, in response to the European Union sanctions, opened channels to smuggle migrants into the territories of the neighbouring EU countries.

As a result of the migration crisis, Poland implemented measures to prevent people from entering the country. A barbed wire fence was erected along the border, a state of emergency was declared, and military and territorial defence forces were deployed to the border area. The Parliament passed legislation which legalised the turning back of migrants to the border line (the so-called pushback procedure).

In September, a state of emergency was declared in some parts of Podlaskie and Lubelskie Voivodeships, and entry there was prohibited. The state of emergency was then extended twice.

The Commissioner looked into about 300 cases of apprehension, detention or repeated turning back of foreign migrants who had crossed the border in an irregular manner, often coerced by the Belarusian side. At the end of the year, the Border Guard reported almost 40,000 attempts to cross the Polish border.

The situation caused interest on the side of international organisations, including the ENNHRI network, Council of Europe bodies and European Court of Human Rights. The latter, on 25 August 2021, granted a protective order in the case of Amiri and others (application no. 42120/21). In this context, the expectations of international organisations increased with regard to the Commissioner's role of monitoring such cases and taking initiatives to ensure compliance with the standards provided for by national and international laws.

■ Visits at the border

From the end of August to December 2021 representatives of the CHR carried out, on weekly basis, unannounced visits to the border. The visit on 16-17 November 2021 was conducted together with Council of Europe Commissioner for Human Rights Dunja Mijatović. During the visits, Border Guard posts and detention places for migrants were inspected. The hospital in Hajnówka, which provided medical aid to migrants detained by the Border Guard, was visited several times. Interventions were also taken at places where activists had found migrants in need of humanitarian aid who, in many cases, declared their intention to apply for international protection. Particular attention was paid to the Border Guard's use of the previously unknown procedures of turning migrants back to the border line, which were introduced in August and October 2021.



Marcin Wiącek and CHR Office employees meeting with representatives of social organisations working in support of migrants



The Commissioner's meeting with local authorities of the municipality of Michałowo

■ Non-acceptance of applications for international protection

On 19 August 2021, an unannounced visit was carried out to the border near the village of Usnarz Górny where a group of migrants, Afghan citizens, was staying. They had not been permitted by the Border Guard to enter the country although they had declared their intention to apply for international protection in Poland. Following the visit, the Commissioner for Human Rights sent an intervention letter dated 20 August 2021 to the Prime Minister requesting him to take steps to solve the situation at the border and ensure that the migrants have the possibility to file their applications.

Any person who, at the border of the Republic of Poland, informs a Border Guard officer performing any official action with regard to that person, of his or her intention to cross the border in order to apply for international protection in Poland, should be permitted to enter the country temporarily – for the duration of the procedure. The Border Guard officers are required to accept the application from such a person, regardless of whether his or her presence at the border has resulted from the deliberate policy of the Belarusian authorities.



Press conference following the opening of the migrant assistance point in Michałowo

On 24 August 2021, representatives of the National Mechanism for the Prevention of Torture travelled to Usnarz. The conditions in which the migrants were staying, and the refusal to ensure conditions in which their basic physiological needs would be met and to provide medical and legal aid and access to the refugee procedure had features of inhuman or degrading treatment. This may expose Poland to the

risk of liability before the ECtHR. The CHR called on the Ministry of the Interior and Administration to request the Border Guard to provide access to the refugee procedure to the migrants.

■ Establishment of the pushback procedure

The Commissioner noted with concern the amendment to the regulation of the Ministry of the Interior and Administration on temporary suspension or restriction of border traffic at certain border crossing points. Starting from 21 August 2021, the amendment provided a basis for turning back persons who have attempted to cross the Polish border beyond a border crossing point, to the border line of the country (the so-called pushback procedure).

The pushback procedure is contrary e.g. to the provisions of the Geneva Convention Relating to the Status of Refugees, the EU Charter of Fundamental Rights, and the Convention for the Protection of Human Rights and Fundamental Freedoms. Despite the reaction of the CHR, the criticised regulations are still in force.

On 17 September 2021 the Sejm passed amendments to the Aliens Act. The Commissioner had submitted his comments on the amendments to the Senate. He criticised, inter alia, the introduction by the *Act on Aliens* of the possibility to issue a decision ordering to leave the territory of the Republic of Poland, and stated that it was contradictory to the Geneva Convention's prohibition of expulsion or turning back of aliens seeking international protection. The adoption of the provision which makes it possible to leave unprocessed an application for international protection submitted immediately after crossing the border against the law, has no basis in EU law. The CHR's comments have not been taken into account.

■ Restriction of civil rights and liberties

By way of the regulation of 2 September 2021 the President of Poland, at the request of the Council of Ministers, introduced a state of emergency in certain parts of Podlaskie and Lubelskie Voivodeships. The detailed scope of restrictions on human freedoms and rights during the state of emergency was set out in a regulation of the Council of Ministers issued on the same day.

The Commissioner saw no reasons to question the legitimacy of introducing the state of emergency, looking from the point of view of applicable constitutional provisions. At the same time, however, he found that certain provisions of the regulation of the Council of Ministers could raise doubts as to their compliance with the constitutional principle of proportionality.

The regulation strictly prohibited journalists to enter the area. Journalists were not covered by a system of passes. As a result, some of them could seek limited access to the area, under the control of the state services. Also, the right of access to public information was significantly restricted, or, within some scope, simply excluded.

The Ministry of the Interior and Administration rejected the comments regarding disproportionality of the prohibition, including too narrow use of the pass system. The Minister considered the right to public information as not unconditional in nature and thus as subject to limitations.

The CHR also pointed to discrepancies between the regulations of the President of Poland and those of the Council of Ministers.

The President's regulation introducing the state of emergency imposed restrictions on human and civil rights and liberties within the country's region covered by the state of emergency.

The Council of Ministers' regulation went beyond the scope of the restrictions set out in the presidential regulation. According to the latter, the prohibition of entry applied to specific places and facilities within the area covered by the state



Temporary prohibition of entry covered the area adjacent to Poland's border with the Republic of Belarus

of emergency. Importantly, the prohibition was not applicable throughout the duration of the state of emergency but only „for the time determined“ i.e. for a part of the duration period of the state of emergency. The government, however, instead of making the restrictions more specific, **broadened them by introducing a general prohibition to enter the entire area covered by the state of emergency. The prohibition was applicable for 24 hours a day throughout the duration of the state of emergency.** The Council of Ministers should only have designated specific places and facilities covered by the prohibition as well as its duration.

On 17 November 2021, the Sejm passed an amendment to the *Act on the protection of the state border*. In his intervention letter to the Marshal of the Senate, **the Commissioner pointed out that the amendment introduced solutions that directly interfered with fundamental constitutional freedoms such as the freedom to move within the territory of the Republic of Poland, to choose one’s place of residence and stay, and to express one’s opinions and seek and disseminate information.**

The Commissioner for Human Rights pointed out, inter alia, that the failure to set a maximum time for which the prohibition to enter an area within the border zone may be applicable gave the Minister of the Interior unlimited powers to restrict people’s constitutional freedom of movement. The prohibition also directly interfered with the freedom of assembly and the freedom to express opinions and to seek and disseminate information, as it applied also to journalists. The public has the right to know, from independent sources, what the authorities are doing in an area that is not open to the public. Most of the Commissioner’s comments were not taken into account.

From the point of view of the constitutional standards of protecting the rights of individuals, the CHR’s doubts were raised by the *Act on the construction of state border protection installations*. In his comments forwarded to the Marshal of the

Senate, the Commissioner pointed out that the aim of the Act, i.e. the protection of the state border, is in principle unquestionable, whereas the means by which it is achieved should be questioned.

The construction of state border protection installations is exempt from the provisions of the Construction Law, the Water Law, the Environmental Protection Law, the Geodesy and Cartography Law and the Acts: on accessibility of information on the environment; on spatial planning and development; on the protection of agricultural and forest land and land reclamation; on railway transport, and on special principles of planning and implementing construction projects in the field of public roads. The total exclusion of the applicability of the said acts which protect the constitutional values leads to a situation in which the act under consideration violates the other acts. This is because the provisions on environmental protection, on the protection of human life and health in connection with construction works, and on ensuring safety and health at work when implementing construction projects are not applicable to the construction of state border protection installations.

■ **The Supreme Court has confirmed that the prohibition was unconstitutional**

On 28 September 2021, three journalists of the German and French television stations ARTE and AFP were detained on suspicion that they had violated the prohibition of entry to the area covered by the state of emergency. The court found them guilty and imposed a penalty of reprimand on them.

In his cassation appeal to the Supreme Court, the CHR challenged the judgment and requested that the persons be acquitted. The acts with which the journalists had been charged did not have features of an offence. In the justification, the CHR pointed to the doubts regarding the regulation of the Council of Ministers, which could not annul the journalists' right to exercise their constitutional freedom to seek information in the area covered by the state of emergency.



The Supreme Court building

In its judgment of 18 January 2022 the Supreme Court upheld the cassation appeal and acquitted the journalists (case ref. no. I KK 171/21). In the long statement of grounds of the judgment, the Court confirmed the doubts and found the Council of Ministers' regulation to be unconstitutional, as it disproportionately encroached on people's freedom of choice of place of stay. It also interfered with the constitutional freedom of the media, as the numerous exceptions to the prohibition of entry did not cover journalists, although they have special legitimacy to be in places where events of importance for the community are taking place. The state, in addition, even taking into account the specific circumstances for which the state of emergency is imposed, has the duty to protect individuals' rights and freedoms to the fullest extent possible. No limitation on the protection of human dignity, the protection of human life or the duty of humane treatment may be introduced, even based on a parliamentary act declaring a state of emergency.

■ **Rights and duties of Border Guard officers and soldiers during the state of emergency**

The situation on the Polish-Belarusian border resulted in the deployment of several thousand soldiers to the border zone. The need to provide them with accommodation, food and other necessities of life was a major challenge for the military logistics services. The specific situation of service in the border zone, in difficult and stressful conditions for which the soldiers were not trained, caused the feelings of threat and anxiety in some of them. Therefore, the Commissioner for Human Rights wanted to know how psychological support for these soldiers was organised, how individualized support was provided in the emergency conditions, and how the rotation of soldiers performing tasks in the border zone looked like.

The sudden increase in the number of migrants placed in the guarded centres for migrants, operated by the Border Guard, and the establishment of the temporary guarded centre in Wędrzyn resulted in alarming information about the staffing problems. In his intervention letter to the Border Guard Commander-in-Chief, concerning the conditions in these centres, the Commissioner pointed, inter alia, to the need to adopt solutions that would improve the safety of officers, and to increase support, also by psychologists, to officers at the guarded centres for migrants.

Problems related to the COVID-19 pandemic

2021 was the second year in which the world and Poland counteracted the SARS-CoV-2 pandemic. COVID-19 vaccination begun, giving hope for gradual return to normality. The subsequent waves of the pandemic lead, unfortunately, to a situation in which the prohibitions and orders introduced by the Council of Ministers remained in place. This entailed numerous problems.

The commencement of the vaccination campaign, apart from the obvious positive aspects, also caused many controversial situations in which the Commissioner for Human Rights intervened.

■ Restrictions on the rights of unvaccinated people

On 3 October 2021, the Commissioner for Human Rights requested the prime minister to minimize restrictions on the rights and freedoms of people who were unvaccinated, had no recent test or had not have the coronavirus infection.

He pointed out that restrictions on the rights of unvaccinated persons might be introduced solely by way of an act of Parliament. The government regulations introduced e.g. limits on the numbers of people taking part in various events or entering certain venues. Vaccinated people were not included in the limits. The event organizers were to face penalties for not applying the restrictions. However, due to their lack of powers to verify people's vaccination status they were not able to monitor the size of the audience.



„People are afraid that after the economy is ‘unfrozen’ access to services may be limited for those who are not vaccinated against COVID-19. This would discriminate against people unvaccinated for various reasons. The only criterion for any possible restrictions may be a threat to public health, caused by a given person. Some people cannot be vaccinated due to health reasons”, warned the CHR in his letter to the Minister of Development of 29 April 2021.

Some universities intended to make study or accommodation in dormitories conditional on being vaccinated against the coronavirus. This constituted an unjustified limitation of the constitutional rights to education and protection of privacy. On 12 August 2021, the Commissioner requested the Minister of Education and Science to undertake a legislative initiative to provide universities with a legal basis for any preventive measures.

Because of the complaints regarding restrictions on unvaccinated people’s access to sports events, on 19 November 2021 the Commissioner for Human Rights requested the Minister of Sport to initiate changes in the law. The government regulation on audience limits during sporting events, which limits did not include vaccinated people, did not provide grounds for verifying the vaccination status. Most entities required to observe the limits under the penalty of a fine were not authorized to verify people’s vaccination status. Thus, they were required to bear responsibility for something beyond their influence. Access to information on people’s vaccination status is available only to public services. On 8 December 2021, the CHR requested the Minister of Health to adjust the regulations to the relevant constitutional standards.

The Commissioner received a complaint about disproportionately severe limitations applicable to music events as compared to other events. For example, a football match at the National Stadium could be watched at the venue by approximately 20 thousand people but a music concert in the open air could be attended by no more than 250 people. The Constitution does not discriminate

between the individual types of cultural activities. On 2 June 2021, the Commissioner requested the Minister of Culture to explain the reasons for the differences in the regulations on access to individual forms of culture and sport. Also on 2 June 2021, the CHR wrote to the Minister of Health that **people in the homelessness crisis were practically outside the vaccination system, although they were at a particular risk of the coronavirus infection**. It was necessary to organize vaccinations for this group in designated points.

■ Prohibition of eviction

The CHR's letter to the Minister of Justice of 1 July 2021 referred to the prohibition of eviction, which was introduced during the pandemic. The prohibition was introduced for humanitarian reasons, in order to protect people whose financial situation deteriorated as a result of the pandemic and who could not afford to pay their bills. Not questioning the purposefulness of the prohibition, the Commissioner pointed out that it mainly helped people who had been ordered to leave their apartments before the declaration of the state of epidemic. The owners not only may not remove from their apartments people who occupy them without a legal title but in many cases have to bear the costs of their bills. Therefore, consideration should be given either to mitigating the prohibition, introduced for indefinite period, or to providing compensation to apartment owners.

After receiving the reply from the Ministry of Justice, informing that the issue was under analysis, the CHR wrote a letter to the Prime Minister on 3 October 2021, pointing out that the continuation of the prohibition may constitute a violation of the constitutional standards. The CHR stated that the situation resulted in shifting the state's obligation to counteract homelessness to the citizens. The Ministry replied that legislative work had been initiated in order to change the situation.

■ Court judgments confirming illegality of the regulations

The Commissioner for Human Rights repeatedly pointed out to the government that the introduction of the pandemic-related restrictions on fundamental human rights and freedoms (the freedom of movement, freedom of assembly or freedom of economic activity) by means of regulations had been done in violation of the constitutional standards.

However, the intervention letters to the government did not result in any correction of the unconstitutional legislative practice. The authorities notoriously exceeded their powers provided for in the *Act on preventing and combating infections and infectious diseases in humans*. In particular, they issued regulations which were beyond their powers, related to matters required to be regulated by acts of Parliament, and interfered with fundamental constitutional freedoms or rights. Such interference is illegal unless pursued in a state of emergency which was not introduced during the pandemic.

There is no doubt, therefore, **that no penalties may be imposed on citizens for failure to comply with obligations, orders, prohibitions or restrictions being issued in violation of the law applicable to legislative processes.**

Therefore, **the Commissioner for Human Rights filed a number of cassation appeals with the Supreme Court, to the benefit of persons on whom penalties had been imposed by way of orders.** The first three appeals were upheld by the Supreme Court on 16 March 2021 as fully grounded. Similar judgments were then issued by the Supreme Court in the remaining numerous cases in which the CHR had filed cassation appeals.

■ Prohibition of assembly

The government's regulation of 19 March 2021 prohibited not only „to organize assemblies“ during the pandemic, as the preceding regulation did, but also to participate in them. „This has raised doubts of the Commissioner for Human

Rights in the context of the need to protect the constitutionally guaranteed freedom of assembly,” wrote the CHR to the Prime Minister on 29 April 2021. Restriction of the freedom of assembly does not fall within the powers of the Council of Ministers, and may be done solely by way of an act of Parliament. Such an act may not, however, violate the core principle of the freedom and the right. Even if a state of emergency is introduced, restrictions may apply solely to the organization of assemblies and not to participation in them.

„The prohibition of assembly has been introduced by the government without an appropriate legal basis, i.e. by way of a regulation rather than an act of Parliament, and its introduction has been contrary to Article 57 and Article 31(3) of the Constitution” – ruled the Supreme Court on 1 July 2021 (case file no. IV KK 238/21). The Court upheld the Commissioner’s appeal regarding two men fined for participating in a gathering. The defendants were acquitted of „pandemic-related” charges concerning the participation in the assembly and the fact that they did not wear face masks. It was the first judgment of the Supreme Court regarding the prohibition of assembly during the pandemic.

The Commissioner joined the proceedings before the Constitutional Tribunal, instigated pursuant to a constitutional appeal filed by a citizen (case file no. SK 4/21). In his position statement presented to the Tribunal, the CHR stressed that the unconditional prohibition of assembly, introduced by way of the regulation of the Council of Ministers, was against the constitutional aim of the freedom of assembly. The prohibition made it fully impossible for citizens to effectively exercise this freedom in any manner. **The Act on preventing and combating infections and infectious diseases in humans may not constitute a basis for introducing a prohibition of public assemblies.** Thus, when issuing the regulation prohibiting assemblies, the Council of Ministers had no necessary statutory powers to do so. The CHR demanded that Article 46(4)(4) of the Act on combating infectious diseases – insofar as it is understood as containing

the authorization to introduce a full prohibition of public assemblies – is found inconsistent with Article 57 in conjunction with Article 31(3) of the Constitution.

„The government eased the covid restrictions but maintained the full prohibition of spontaneous assemblies,” wrote the Commissioner to the Prime Minister on 4 June 2021. This limited the ability of citizens to exercise their fundamental constitutional rights and freedoms. The CHR once again pointed out that the regulations of the Council of Ministers on the matter had been issued without a legal basis. **Spontaneous assemblies are a permitted and legally protected form of public gathering; the right to hold them may be restricted solely by way of an act of Parliament and only in certain conditions.**

The CHR also filed with the European Court of Human Rights an amicus curiae opinion on the restriction of the citizens' right to hold counter-demonstrations during periodic assemblies, which restriction divides citizens into the „better ones” and „worse ones”. The first group has the right to assemble, while the latter is prohibited to express their opinions in the vicinity of places where periodic assemblies are held, i.e. within 100 meters from them. The latter group gets surrounded by the police so as not to be able to take part in periodic assemblies. This happened e.g. to a female journalist in 2017 during the so-called counter-assembly to the monthly assembly commemorating the Smolensk disaster. The journalist lodged a complaint with the ECtHR which asked questions to the Polish authorities regarding the case which is also of importance for the attitude of the police during other protests.

■ Education system during the pandemic

On 18 January 2021, pupils of grades 1-3 of primary schools and special schools returned to full-time education. The next day, the Commissioner for Human Rights addressed the Ministry of Education and Science, pointing to the concerns of teachers and other school staff members about the risk of coronavirus infection. **Supporting the voices of school employees, the CHR supported the**

postulate of quick access to vaccinations for the education system staff, including teachers and other employees of nurseries and kindergartens. He also pointed to the problems with accessibility in the field of remote teaching, and to mental problems of children.

On 5 February 2021, the Commissioner drew the attention of the Ministry of Education and Science to the needs of students with disabilities, which were not sufficiently met because of the solutions adopted during the pandemic. The Commissioner pointed out that educational institutions conduct not only educational activities but also developmental activities. **Distance learning often eliminates or significantly limits the possibility to use the support of special school teachers.** He also emphasized that as a result of the closure of schools, students with special educational needs lost access to equipment available at educational institutions but remaining beyond the financial reach of their families. In many cases, students also lost access to psychological and pedagogical assistance.

The Commissioner inquired the Ministry of Education, on 17 March 2021, whether the hybrid-system of teaching for the youngest classes at schools could be imposed by central-level authorities. Such system of teaching was introduced in four voivodeships and resulted in distance learning conducted regardless of the actual risk of infection. In the opinion of the CHR, directors of educational institutions should be authorized to take into account local health conditions and to exercise the right to education.

Due to the autumn wave of COVID-19 cases, an increased number of schools worked remotely or in the mixed system due to the risk to health of students and employees. Students complained about the excessive numbers of tests conducted because of the discontinuation of direct teaching, expected by teachers, and of the lost possibilities of real learning, caused by discontinuity of education. On 22 November 2021, the Commissioner informed the Minister of Education and

Science that one of the postulates mentioned to the Commissioner was to give directors of educational institutions the possibility to conduct direct education for students who were not under quarantine. The perspective of direct learning instead of distance learning may encourage more people to get vaccinated, which is of great importance from the point of view of public health. The CHR also informed about requests regarding regular mass-scale testing of teachers and students.

■ Justice system during the pandemic

In connection with citizens' complaints about insufficient access to court buildings during the pandemic, on 20 July 2021 the CHR requested the presidents of all courts of appeal to take action. **Despite the improvement in the public health situation, restrictions on entering the courts were not eased.** People had e.g. problems with access to their case files. According to decisions of presidents of the courts, only persons summoned to take part in specific court sessions could enter the buildings. This also hindered the work of lawyers.

„The fact that there are no lay judges in the composition of civil courts' adjudicating panels is contrary to the Constitution" – this opinion was presented by the CHR to the Constitutional Tribunal in December 2021. The participation of lay judges in the examination of cases was limited during the state of epidemic and remained limited one year later. According to the Commissioner, this should apply only to cases initiated after the entry into force of the relevant act. Otherwise, the limitation constitutes a blatant violation of people's rights and freedoms by the legislature. The Commissioner joined two court cases concerning the issue.

The problems with access to courts were also connected with the changed rules of sending letters to courts. In one of the complaints, a citizen referred to his problems with the proceedings before the Supreme Administrative Court which required all letters addressed to it to be sent electronically. Correspondence in the

paper version was received only as postal mail, and no letters could be submitted in person. After the intervention taken by the CHR on 20 May 2021, the Supreme Administrative Court resumed the acceptance of correspondence delivered in person.

On 1 July 2021, a conference on the work of courts during the pandemic was held. The event title was „Procedures sick with COVID? How the pandemic affected civil, criminal and administrative court proceedings“. The conference participants attempted to answer e.g. the following the questions: do the pandemic-related changes to civil, criminal and administrative proceedings violate the rights of citizens, and if so, in what way? Is there a risk that the changes will remain with us for a longer time if they seem effective? The conference was organized by the Commissioner for Human Rights and the Supreme Bar Council.

■ **The CHR's report and other information activities**

The pandemic-related legislation was drawn up hastily, without sufficient assessment of its compliance with the Constitution. The faults in that legislation have been confirmed by the Supreme Court and the Supreme Administrative Court. Now, it is necessary to eliminate the effects of these faults and to prepare the state for possible similar challenges in the future. In view of the increase of the health care system's problems during the pandemic, a debate beyond political divisions should be started about its thorough reform. Furthermore, the state has failed to meet the needs of entrepreneurs, taxpayers and consumers. It is now necessary to eliminate the legal uncertainty by way of adopting correct legislation. Rebuilding citizens' trust in law-making bodies is one of the key tasks for public authorities.

These have been the main conclusions of the Commissioner for Human Rights' report drawn up at the end of 2021, which summarizes the time of the pandemic. The publication, issued by the CHR Office, is intended not only for public authorities but also for general public, the media and social organizations.

During the state of pandemic, the Commissioner for Human Rights' website published, almost every day, related questions asked by citizens and answers provided by CHR Office experts via the helpline operated by the CHR Office. Also, on 4 March 2021 the CHR organized a debate on methods of popularizing access to coronavirus vaccines around the world. The event was attended by biologists, lawyers specializing in intellectual property and international law, philosophers and sociologists. It was emphasized that no one is safe until everyone is safe. The vaccines must be made available worldwide. The main mechanism is social pressure. Therefore, the participants, recognizing the great importance of the social pressure mechanism, signed the European legislative initiative „No Profit on Pandemic“.

Justice system and the rule of law

The dispute about changing Polish courts, which has been going on for years, has had a clearly negative impact on the rights of individuals. The right to a fair trial has suffered most.

The large numbers of cases brought to courts, unclear rules and deteriorating quality of legislation, as well as the effects of the COVID-19 pandemic, are among the reasons of the lengthiness of court proceedings. For years, the CHR has been emphasizing that a thorough reform of the judiciary system in Poland is necessary. However, the changes which are introduced solve the problems only to a small extent.

From the point of view of citizens' rights, disturbing information was received from the Constitutional Tribunal. In 2021, it issued precedential judgments concerning people's constitutional rights and freedoms as well as the binding force in Poland of provisions of international treaties – the European Convention on Human Rights (ECHR) and the EU Treaties.

■ Judgment of the European Court of Human Rights in the case of Xero Flor

The Commissioner for Human Rights joined the proceedings before the Constitutional Tribunal, initiated by the Public Prosecutor General's application for assessing the constitutionality of the provisions of the European Convention on Human Rights, which refer the right to a fair trial. The Commissioner took the position that the proceedings should be discontinued due to the impossibility to issue a judgment. The Commissioner pointed out that the prosecutor's request sought, in fact, the review of the judgment of the European Court of Human Rights (ECtHR) in the case of Xero Flor v. Poland, for which the Constitutional Tribunal was not competent.

On 7 May 2021, the ECtHR ruled, in the case of Xero Flor, that Poland had violated Article 6 of the ECHR, and that the Constitutional Tribunal with a judge appointed to a position already taken in the Tribunal was not a court established in accordance with the relevant act of Parliament (application no. 4907/18). After the judgment became final, the Commissioner applied to Prime Minister Mateusz Morawiecki for its execution, stressing that it was of significance for the protection of the rights of individuals. In reply, the Commissioner was informed that the Prime Minister was concerned about the international bodies' allegations that irregularities exist in the functioning of the judiciary system in Poland. The reply suggested that the government had no intention to execute the judgment.

On 24 November 2021, the Constitutional Tribunal issued a judgment in which it found that the ECHR violates the Constitution of the Republic of Poland to the extent to which it uses the term „court” to refer to the Constitutional Tribunal and to the extent to which it enables the ECtHR to assess the legality of the election of judges of the Constitutional Tribunal.

■ European Union law’s compliance with the Constitution

The CHR also took part in proceedings before the Constitutional Tribunal, conducted in two cases of key importance for Poland’s place in the European Union. They concerned the compliance of the provisions of the EU treaties with the Constitution of the Republic of Poland.



The case initiated by a question of law by the Disciplinary Chamber, regarding the legality of its operation after the issue of the interim measure by the CJEU (P 7/20), in April 2021 the Commissioner presented a supplementary opinion to the Constitutional Tribunal, pointing to the obligation to initiate preliminary ruling dialogue with the CJEU. Such an obligation exists in any case concerning aspects of interpretation or application of European Union law. On 14 July 2021, the Constitutional Tribunal ruled that the CJEU may not suspend, by way of ordering interim measures, the application of parliamentary acts regulating the Polish court system.

The CHR also joined the proceedings before the Constitutional Tribunal, initiated by the Prime Minister's application and concerning European law's compliance with the Polish Constitution (K 3/21). He took the position that the provisions of the Treaty on the European Union (TEU) were consistent with the Polish Constitution, and the requirements applicable judges, arising from those provisions, corresponded to the requirements of the Constitution. He pointed out that the proceedings before the Constitutional Tribunal had been initiated in order to ensure legitimacy for Polish authorities' actions taken against the law, and should thus be considered only pretended control of the constitutionality of the law. He pointed out that the Constitutional Tribunal should first of all send a question for a preliminary ruling to CJEU, regarding the allegations raised by the applicant. The Commissioner requested that the proceedings be discontinued due to the lack of the need for the judgment. On 7 October 2021, the Constitutional Tribunal declared the provisions of the European treaties unconstitutional and stated that the EU bodies, including the CJEU, acted beyond their competences assigned to them in the treaties when assessing the Polish judiciary system.

■ **Justice system reforms required to improve its effectiveness**

The CHR joined the proceedings before the Constitutional Tribunal, initiated by the constitutional appeal regarding the examination of compliance with the Constitution of the regulation on permissibility for a district court judge to adjudicate in a higher-level court based on a delegating order issued by the Minister of Justice (SK 32/21). The doubts resulted from the Minister of Justice's double role, also as Prosecutor General. Granting to such a body discretionary and uncontrolled powers to delegate judges violates the constitutional principle of the separation of powers (Article 10 of the Constitution). The case is pending before the Constitutional Tribunal.

The Commissioner expressed his opinion on the changes in the system of delivering pleadings to professional lawyers in civil proceedings. The change

is a part of the expected process of digitization of civil proceedings, which has so far encountered problems related primarily to ensuring the technical and organizational possibilities for developing and operating an IT system for the courts. The change, although aimed at streamlining civil proceedings in the area of servicing pleadings, raises doubts with regard to the manner of its introduction, the ambiguity and imprecision of the regulations, their scope and, consequently, the effects not only for the work of courts and attorneys, but above all for the parties to the proceedings. This affects the possibility to exercise the constitutional right to court. The Minister of Justice replied to the Commissioner that the changes did not violate the safeguard of procedural fairness. He also stated that the matter would be monitored in the future and that the problems with the functioning of the courts' information portal would be removed. Its functionality is also to be improved.

Freedom of speech and freedom of the media

The freedom of speech, provided for in Article 54(1) of the Constitution of the Republic of Poland, covers three aspects i.e. the freedom to express one's opinions, the freedom to seek information and the freedom to disseminate information. Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 11 of the EU Charter of Fundamental Rights also provide that everyone has the right to the freedom of speech, which includes the freedom to receive and impart information without interference by public authority and regardless of frontiers.

Actions limiting the freedom of speech should be undertaken in line with the principle of proportionality and with respect for fundamental human rights.

A special role in a democratic country is played by free media. The work of journalists constitutes practical implementation of the political role of the press whose freedom is guaranteed by the Constitution. The freedom of the press makes it possible for citizens to effectively exercise their right of access to independent information. **Ensuring appropriate conditions for the free exchange and dissemination of opinions is of key importance for the society's control over activities of the authorities.**

■ Opinion on „Lex TVN”

The MP's bill amending the Broadcasting Act, called „Lex TVN”, significantly changed the requirements for obtaining a broadcasting license. The bill violates constitutional freedoms, including those of the media and of speech, stated the CHR in his opinion sent to the Marshal of the Sejm on 12 July 2021. The change of the „rules of the game” for broadcasters during the game constituted a departure from civilized principles of law-making, without the existence of any extraordinary circumstances that would justify such departure. Although the authors of the bill referred to the clause on the „state security” they did not explain how the bill would improve it. Instead, they themselves created a real threat to the economic security of the state. The act would violate the treaty on trade and economic relations between Poland and the USA. Thanks to the intervention of the President of the Republic of Poland, who decided to refer the bill back to the Sejm for reconsideration, the act did not enter into force.

■ State of emergency: restrictions on journalists' access to the border zone

After the introduction of the state of emergency on 2 September 2021 in certain parts of Podlaskie and Lubelskie regions, the Commissioner for Human Rights expressed doubts regarding the media's impossibility to cover the situation on the border between Poland and Belarus, and the restriction of the right of access to public information. On 6 September 2021, Marcin Wiącek presented his position

on the issue to Prime Minister Mateusz Morawiecki, and sent the intervention letter to the President of the Republic of Poland. The Commissioner did not see legal reasons against the introduction of the state of emergency. The Sejm should decide about the existence of the reasons for its introduction, as set out in the Constitution.

A team of employees of the French and German television station called Arte was stopped in the zone under the state of emergency. After the journalists were informed that they were in the zone, they immediately declared their intention to leave it but they were stopped. Their IDs were checked and they were searched. Their equipment, documents and telephones were taken from them and they were detained for 24 hours, without any information provided to them about their situation and their status. They were not permitted to contact their relatives and there was no interpreter present. The special role of the free media in a democratic state, and the doubts regarding violations of the constitutional principle of freedom of the media, were highlighted by the Commissioner in his letter to the Border Guard and to the Police, sent on 8 October 2021. The journalists had been reprimanded for violating the prohibition to enter the zone covered by the state of emergency. The court found them guilty and reprimanded them. The CHR appealed against the decision to the Supreme Court which acquitted the journalists and confirmed that the Commissioner's doubts were justified. The Supreme Court concluded that the Council of Ministers' regulation prohibiting entry to the area covered by the state of emergency was unconstitutional and constituted, inter alia, a violation of the freedom of the media.

■ **Merger of the media sector companies: acquisition of Polska Press by Orlen**

On 5 March 2021, the CHR filed an appeal with the District Court in Warsaw against the decision of the President of the Office of Competition and Consumer Protection of 5 February 2021 regarding the consent to the acquisition by Polski

Koncern Naftowy Orlen S.A. of Polska Press. When consenting to the acquisition, the President of Office of Competition and Consumer Protection did not examine whether it would result in an unacceptable restriction of the freedom of the press. The president of the Office is always required to take into account all circumstances affecting the protection of consumers. For this reason the CHR s appealed to the court and sought the annulment of the consent.

■ Spontaneous assemblies and counter-demonstrations

The state is also required to protect spontaneous assemblies and counter-demonstrations which are legally protected forms of public assembly, also under the state of epidemic. **State authorities have the obligation to ensure the safety of all groups of people demonstrating at the same time.** It is illegal to fully prevent the organization or holding of a counter-demonstration. A counter-demonstration may not be dissolved if it is peaceful in character. These were the recommendations sent by the Commissioner to the National Police Headquarters on 22 November 2021.

Minor persons exercising the freedom of speech guaranteed by the Constitution, have the right to demonstrate their opinions and take part in peaceful public assemblies. **The restrictions applied with regard to them are unconstitutional, have no sufficient basis in the acts of Parliament, and violate the freedoms enshrined in the Constitution.** The CHR reminded the police of this fact on 15 April 2021.

The CHR also joined the case before the European Court of Human Rights concerning a complaint by a journalist who was arrested during one of such a demonstration (application no. 13375/18). The issue is discussed in more detail in the point regarding the prohibition of assembly during the pandemic.

Education

After the difficult year of the pandemic, when schools faced so many challenges, they needed supportive and calm approach conducive to reflection on the best direction of changes. The objective should be to develop schools that are more democratic, creative, courageous in their actions and friendly for all those who contribute to better quality of teaching.

The Commissioner for Human Rights analyses information about problems with the functioning of educational institutions as well as legislative changes impacting the functioning of schools or the exercise of the right to education. This is particularly important for providing school education that is free from gender stereotypes, and for the socialization of girls and boys to fulfil various social and professional roles. This is a necessary and most effective instrument of building a society based on the principles of equality and non-discrimination.

The CHR also paid attention to the organization of the system of education and the implementation of the right to education during the pandemic. Problems in this area are discussed in the section about the pandemic.

■ Amendment to the Act on School Education

The Commissioner expressed his concern about the bill amending the *Act on school education* which gives excessive powers to school superintendents, including as to the appointment and dismissal of school heads. In his letter to the Minister of Education and Science of 22 June 2021, the Commissioner pointed out that the amendment may limit self-governance powers of schools. **The decisive opinion of a school superintendent on the activities of social organizations and associations operating at schools may pose a risk to the right to education.** This, in turn, may adversely impact the right of parents to raise their children according to their beliefs. The changes will disrupt the work of schools

and reduce the number of classes considered as controversial by decision-makers, although young people need anti-discrimination, civic and climate-related education.

■ Anti-discrimination (equality) education

On 1 March 2021, on the international Zero Discrimination Day, the Commissioner drew the attention of the Minister of Education and Science to the need for anti-discrimination education. It is the most effective tool for building a modern society supporting the principles of non-discrimination, equality, tolerance, justice and solidarity. The Commissioner also **pointed to the need to prevent schools from using textbooks that undermine the principle of equal treatment.**

Prohibition of torture and inhuman treatment

The year 2021 presented many challenges in the field of human rights protection, including the prevention of torture and inhuman or degrading treatment.

Although the prohibition of torture and other cruel, inhuman and degrading treatment or punishment is absolute in nature, which has been confirmed by numerous international treaties and agreements, such acts take place all the time across the world, also in Poland.

From the point of view of effective prevention of torture, **it is necessary for Poland's Criminal Code to refer to a separate type of crime i.e. the crime of torture.** The fact that such a crime does not exist in the code is not only contrary to Poland's international obligations in the field of criminalization of torture, but also makes it possible for the perpetrators to avoid responsibility.

One of the most effective measures to fight such crimes is the activity of the National Mechanism for the Prevention of Torture, which operates within the Office of the Commissioner for Human Rights.

■ Respect for human rights by the police

On 30 June 2021, the CHR called on the Marshal of the Senate to amend the legislation with the aim to strengthen the protection against torture in Poland. The regulations do not refer to the separate crime of torture or other cruel, inhuman or degrading treatment or punishment. Most detained people do not, in practice, have access to a lawyer from the outset of detention, and their hearings are not recorded. The police overuse the possibility of preventive use of handcuffs, and more and more often they use tear gas and pepper spray against participants of peaceful protests.

■ Access to a lawyer from the outset of detention

The Commissioner for Human Rights has been highlighting the need ensure every detainee's right to contact a lawyer before the first questioning. Since 2017, the Ministry of Justice had not responded to this motion. Only in October 2021 the ministry replied that as a result of such a solution the police would not have the right to speak to detainees without the presence of a lawyer. The CHR continues to focus on the issue because the solution would be a fundamental safeguard against torture, as pointed out by international institutions and experts.

■ Popularization of modern interrogation methods (the so-called Mendez rules)

Effective interrogation of suspects, free from torture or psychological coercion, is guaranteed by the so-called Mendez rules drawn up under the auspices of the UN. The rules promote effective, ethical and non-forced interrogation focused on the presumption of innocence and the pursuit of truth. The CHR requested Prime Minister Mateusz Morawiecki to disseminate knowledge about the principles among his subordinate ministries as widely as possible.

■ NMPT report

After the incorrectly conducted actions of police officers with regard to protesters during the Women's Strike caused by the Constitutional Tribunal's judgment on the issue of abortion, the team of the National Mechanism for the Prevention of Torture wrote a report on how the police actions can be improved. The concern was caused mostly by brutality of police officers, including unjustified use of gas, handcuffs, truncheons and insults. Thanks to the non-profit campaign carried out by lawyers, apprehended person's access to a lawyer slightly improved. The report pointed out that there were no justified reasons for placing the apprehended persons outside Warsaw.

Equal treatment

Equality is a key constitutional value. Everyone has the right to respect, regardless of any of their characteristics and sources from which they derive their universal values. The principle of equality and the prohibition of discrimination are specific legal norms which relate to the rights of individuals, and ensure that everyone, regardless of their individual characteristics, can participate in various areas of life on equal grounds with others.

10 years have passed since the entry into force of the *Act implementing certain European Union regulations on equal treatment*, which transposed the anti-discrimination directives of the European Union into the Polish legal system. Pursuant to Article 18 of the Act, the Commissioner for Human Rights fulfils the role of the independent equality body.

The *Act on equal treatment* contains a closed and short list of grounds for discrimination, such as: gender, race, ethnic origin, nationality, religion, denomination, belief, disability, age and sexual orientation. However, Article 32 of the Constitution clearly points to the fact that the scope of applicability of the

principle of equal treatment is unlimited in terms of personal and subjective scope. Therefore, the Commissioner may take also in cases when a person is treated in a worse manner for other reasons, such as health, material status or migration experience.

■ The wage gap

On 15 April 2021, the Commissioner wrote to the Minister of Development, Labour and Technology about how to counteract the gender pay gap i.e. the differences in men's and women's earnings in the same job positions. Although in Poland the difference is 8.5% (less than the EU average), it has almost doubled in 10 years. Its causes include greater proportion of female employees in underpaid positions, lack of wage transparency, gender stereotypes, unpaid care-provision work performed by women, their numerous duties related to family life, and poorer access to managerial positions.

■ Equal treatment at school

Over two-thirds of Poles believe that schools should offer anti-discrimination education. This is the conclusion of a survey carried out by the CHR Office, entitled „Legal awareness of equal treatment“. In the opinion of citizens, as well as the Polish legislator and international organizations, **schools should be places free from discrimination and prejudice, offering development and education possibilities for young people.**

■ Counteracting gender-based violence against women

On the tenth anniversary of the opening for signature of the Council of Europe Convention on preventing and combating violence against women and domestic violence (the so-called Istanbul Convention), the Commissioner for Human Rights pointed out that the Polish mechanism for counteracting violence against women and domestic violence is still unadjusted to actual needs. Further work is needed to fully implement the Convention standards. **The Commissioner called upon**

state institutions to fulfil their obligations in the field of counteracting violence and to create a comprehensive support system for people suffering from gender-based violence and domestic violence, in line with the Istanbul Convention, as well as to develop preventive, corrective and educational activities addressed to perpetrators of violence.

In his opinion on the draft amendment to the *Act on counteracting domestic violence*, the Commissioner informed the government about the changes that are necessary in order to better combat and recognize domestic violence and violence against women. He positively assessed the government's suggestion to replace the term of „violence in the family” with „domestic violence” in the title of the act. It is reasonable also to extend the understanding of the definition of domestic violence so as to cover also economic violence. Moreover, a former partner or husband with whom the victim does not live may also be considered as perpetrator of domestic violence. However, the draft does not take account of the fact that different forms of gender-based violence against women are an expression of gender inequality.

In his intervention letter to the government plenipotentiary for equal treatment, dated 9 December 2021, the CHR pointed out to the need for a strategy to counteract gender-based violence against women. He stated that international and European law requires the adoption of regulations that apply to all forms of this violence, both in the public and private life.

■ LGBTQ+ rights

In July 2021, the Supreme Administrative Court ruled for the first time that local government resolutions on counteracting the „LGBT ideology” may be subject to revision by administrative courts. The court upheld two cassation appeals by CHR, against the rejection by the Voivodeship Administrative Court in Kraków of his appeals against the „anti-LGBT” resolutions of the Lipinki Municipal Council and the Tarnów District Council. The court sent the cases back for reconsideration

from the point of view of their compliance with the law. In September, the court upheld subsequent cassation appeals of the Commissioner for Human Rights against the rejection, by voivodeship administrative courts, of complaints against such resolutions taken by local government bodies. Thus, the court confirmed that such resolutions, as regulations adopted by public administration, are subject to review.

Voivodeship Administrative Courts issued subsequent judgments regarding CHR's complaints against resolutions „against the LGBT ideology” taken by some local governments. On 17 May 2021, the Commissioner for Human Rights wrote to the governors of all voivodeships that such resolutions are to the detriment of all citizens. The Court of Appeal in Wrocław, in the case joined by the Commissioner for Human Rights (case file no. I ACa 1233/20) found on 12 February 2021 that gender recognition i.e. change of the gender entered in one's birth certificate into the gender with which the person identifies is a human right. Upholding the claim and the position of the Commissioner, the court ruled that the state is required to respect the person's gender identity and to ensure the possibility of gender recognition i.e. change of the registered gender into the perceived gender. In the opinion of the Commissioner, despite the possibility to have the gender determined by court, it is necessary to regulate an out-of-court procedure of gender recognition in a fast, transparent and accessible manner.

The CHR also joined the case of a transgender person employed under a civil law contract by a security company, who was required to work in a male uniform although the person lived in accordance with the perceived female gender. Her gender recognition proceeding was then pending, so the ID document formally indicated that the person was male. Yet, the person refused to work in a male uniform and sued the company. Her claim was upheld. On 2 September 2021, the Commissioner requested the Supreme Court to dismiss the extraordinary appeal lodged against the judgment by the Public Prosecutor General.

Rights of persons with disabilities

People with disabilities are a special group of to whom the Commissioner for Human Rights pays a lot of attention. It is a duty for all of us to protect the dignity of these people, their right to happiness, and to make it possible for them to function normally in the society. As regards the needs of people with disabilities, **the Commissioner for Human Rights undertakes systemic actions as well as interventions in individual cases.**

Poland's ratification of the *Convention on the rights of persons with disabilities* has confirmed that persons with disabilities have the right to full and equal enjoyment of all human rights and fundamental freedoms and to respect for their inherent dignity. Statements made at the level of international law should be followed by actions at the national level.

■ Online access to public administration services and accessibility of public authorities' websites

Accessibility is one of the founding principles of the *Convention on the rights of persons with disabilities*.

Due to the pandemic, the work of public administration offices was limited. Therefore, it was crucial to ensure access to public administration services by means of electronic communication. The switching to online service provision highlighted the problems that had been reported for a long time by the community of people with disabilities. The Commissioner wrote to the Prime Minister that the so-called trusted profile which was to be a modern tool for sending and receiving information related to any formalities and activities of every citizen was still unavailable to people with disabilities who were unable to leave their place of residence and had no bank account. In response to the CHR's letter, the Chancellery of the Prime Minister informed that the problem raised by the Commissioner would soon be solved.

People with disabilities also face barriers in accessing information published on websites and mobile applications of public administration bodies. In an intervention letter to the Prime Minister, the Commissioner pointed out that the websites of such bodies should meet the needs of all interested parties, including people with various disabilities. The response received confirmed that many public bodies' websites did not comply with the digital accessibility requirements set out in the law, and assured that measures were being taken to eliminate the difficulties.

■ The census

In response to the complaints of deaf people, sent to the CHR Office, the Commissioner sent an intervention letter to the President of Statistics Poland calling for the inclusion, in the National Census procedure planned for 2021, of the possibility to use the Polish Sign Language as the language for contacting deaf citizens at their homes. In response, Statistics Poland informed that the Polish Sign Language had been added to the list of languages to be used in the census. It will also be possible for citizens to select the box „other” in the list of languages and enter the name of the language by oneself. Information was also provided that the census questions would also be translated and available in the Polish Sign Language.

In the context of the census, the Commissioner also pointed out that the online census questionnaire was not accessible to the blind and visually impaired people, as the read-out program was not able to read some of the questions.

■ Accessibility of polling stations

Adaptation of polling stations to the needs of all voters, in particular voters with disabilities, is a key safeguard of the constitutional principle of universal suffrage. In order to fully implement this safeguard as well as the obligations arising from the *Convention on the rights of persons with disabilities* and the

recommendations of the UN Committee on the Rights of Persons with Disabilities, it is necessary, in the opinion of the Commissioner for Human Rights, to increase by way of an act of Parliament, the share of polling stations adapted to the needs of voters with disabilities in every municipality. Therefore, the CHR wrote to the Government Plenipotentiary for Disabled People about the issue. In response, the Plenipotentiary informed that as a result of the implementation of the Strategy for Persons with Disabilities for 2021-2030, there already existed possibilities of full participation by people with various types of disabilities in all types of elections and referenda.

■ **Need for statutory regulations on personal assistance**

The Chancellery of the President of Poland determined the main assumptions for the planned act of Parliament introducing the position of personal assistant of people with disabilities. On 13 December 2021, the Commissioner sent his comments on the assumptions. **The provision of personal assistance services for people with disabilities must be based on individual assessment of a given person's needs and living conditions. The conducted assessment will be the basis for determining who, where, when and in what manner will provide the services.** Currently, the system does not provide for the possibility of the assistant's replacement with another care provider in case the assistant falls ill. Thus, in such a case the person with a disability remains without support. The system of personal assistance, even with the good theoretical assumptions, will not function effectively in the conditions of negative selection for the job and frequent staff rotation. The Commissioner pointed out that the implementation of the system requires, inter alia, an urgent change of the system of issuing disability certificates and the removal of the system of legal incapacitation.

■ Multiple paths of granting the disability status

There are as many as six systems of issuing disability certificates in Poland. Four of them are focused on entitlement to disability benefits, one is focused on determining the degree of disability and the last one – on determining the entitlement to special education. This means that a given disabled person has to be examined by various specialist teams. The regulations are often contradictory and confusing for people with disabilities who thus find it difficult to exercise their rights. On 30 August 2021, the Commissioner inquired the Minister of Family and Social Policy about the advancement of works on the reform of the system. The reply stated that analytical and legislative works on the development of a single uniform system were in progress.

■ Deinstitutionalization of the support system for people with disabilities and older people

In a letter sent on 4 May 2021 to the Ministry of Labour and Social Policy, the Commissioner pointed out that deinstitutionalization of the support system for people with disabilities had been one of the key postulates of these people for many years. The urgent need for action had been also underlined by the UN Committee on the Rights of Persons with Disabilities. The pandemic additionally highlighted many negative consequences of the system of institutional care for seniors and people with disabilities. However, no schedule of the process of deinstitutionalization of the support system had been drawn as on the date of the CHR's letter.

The prepared strategy of social services development will not work if it is not developed with the participation of the community of people with disabilities. The aim is not only to improve social services but also to transfer the support provision to local communities and to close down care establishments. People with disabilities should have the possibility to make choices and decisions concerning

their lives, wrote the CHR to the Ministry of Labour and Social Policy on 16 July 2021. The Commissioner also presented his comments on the *Strategy for the development of social services for the years 2021–2035* from the perspective of an independent monitoring body for the implementation of the Convention on the Rights of Persons with Disabilities, which role is performed by the Commissioner.

Health care system

When writing about health care it is at present impossible not to start with the COVID-19 pandemic, which is an unprecedented event in recent history, and for which our country was not prepared. According to the report of the Commissioner for Human Rights regarding the pandemic, **the applicable provisions were drawn up hastily, without sufficient assessment of their compliance with the Constitution.** The faults in that legislation have been confirmed by the Supreme Court and the Supreme Administrative Court. Now, it is necessary to eliminate the effects of these faults and to prepare the state for possible similar challenges in the future.

There is no doubt that the Polish health care system is undergoing one of the most difficult tests in recent years. The system has to cope with the changing requirements relating to the pandemic and to ensure the availability of equipment, including means of personal protection. Also, the time of the pandemic has highlighted the unresolved and increasing problems of the health care system including staff shortages and limited availability of health care services.

Given the increasing problems of the system during the pandemic, **a debate beyond political divisions should be held over the system's thorough reform, including financing principles.** One of the central elements of the debate should be how to ensure a sufficient number of medical staff and their decent remuneration, as these problems have been unresolved for many years.

■ Principles for citizens' access to vaccination against COVID-19

The sudden changes in the vaccination campaign schedule caused organizational chaos. This, in turn, led to cases of unjustified discrimination and inequality. For example, on 1 April the government launched registration for people aged 40 to 59 who had before informed their doctors of the intent to get vaccinated. The CHR received complaints from concerned citizens who had not reported this intent at the beginning of 2021 but had never received any prior information that if they do not do it, vaccination will be possible for them at a later date. There were also cases of people who had reported their intent to get vaccinated but did not receive electronic referral letters.

On 16 April 2021, the Commissioner requested the government plenipotentiary for the COVID-19 vaccination programme to clarify the matter. In response, the plenipotentiary informed that starting

from 10 May registration was open for all adults, and the activities undertaken were aimed at vaccinating as many people as possible in the shortest possible time.

The Commissioner also highlighted the need to organize vaccination for people in the homelessness crisis, who were, in practice, outside the COVID-19 vaccination system although they were at a particularly high risk of infections.

■ Prenatal tests after the Constitutional Tribunal's judgment regarding abortion

As a result of the entry into effect of the judgment of the Constitutional Tribunal of 22 October 2020 (K 1/20), in Poland termination of pregnancy is currently prohibited even if prenatal tests or other medical symptoms show a high probability of severe and irreversible defect or an incurable disease that



threatens the life of the foetus. In connection with the announcement and then the entry into effect of the said judgment, the experts pointed to the negative consequences it may bring for the development of prenatal diagnostics.

The Commissioner for Human Rights requested the Prime Minister to take urgent systemic measures aimed at improving access to prenatal tests in Poland. In response, the Minister of Health stated that the judgment of the Constitutional Tribunal of 22 October 2020 did not affect the regulations regarding the conduct of prenatal tests or access to them. He also informed that it was planned to introduce on mass scale systemic solutions in the field of pre-conception and perinatal care so as to increase the awareness of future parents of health services to which they are entitled.

The Commissioner also wrote to the Marshal of the Sejm about the necessity to adjust the legislation to the Constitutional Tribunal's judgment of 22 October 2020 regarding abortion. According to the Constitutional Tribunal, the judgment should be enforced in such a way so as to make it possible to terminate pregnancy when „measurable criteria” to be introduced are met, i.e. when a woman cannot be expected to make sacrifices exceeding the usual scope. This can apply to cases of a so-called lethal defect of the foetus, to result directly in its soon inevitable death. In such a case, the abortion is not „eugenic” and thus is not prohibited by the Constitutional Tribunal. On the other hand, it makes it possible to eliminate a situation which can be described as inhuman treatment of a woman. The consequence of non-execution of the Constitutional Tribunal's judgment would be forcing women to take heroic action, which should not be required by law. The legislator should therefore balance all the constitutional values at stake.

■ **No funding for a helpline for children and adolescents**

Poland is among countries with the highest numbers of suicides among children and adolescents. The decreasing age of people attempting suicide also causes concern. The helpline number 116 111, operated for years by the Empowering

Children foundation, is well-known among young people. Therefore, the Commissioner was surprised with the decision of the Minister of Health to cancel the process of selecting a contractor to implement the task „Support centres for children, adolescents and adults in a mental crisis” in 2021. The Ministry of Health explained that the cancellation was caused by doubts regarding the numerous sources already financing the helpline, including non-public sources. He also informed that work was underway to ensure the continuity of its support.

■ Deterioration in the field of child and adolescent psychiatry

For years, the situation in child and adolescent psychiatry has been extremely bad. Not only are there no free places at hospitals but there are not enough specialist doctors who can help young people. **The availability of inpatient psychiatric care for children and adolescents, insufficient for years, has deteriorated even further.** Children in a life-threatening condition, placed on additional beds or even sent home, have become a reality.

In the context of information about possible closure of the children’s psychiatry department at the Institute of Psychiatry and Neurology in Warsaw, the Commissioner for Human Rights wrote an intervention letter to the Minister of Health. The CHR stressed that neglect in this field would soon affect the social welfare system. An untreated child will become an ill adult un able to function properly function in the society. The Commissioner requested the minister to take urgent remedial measures to ensure that young patients have sufficient access to health care services in the field of psychiatry.

In response, the Minister of Health pointed out that due to the need for urgent changes in child psychiatry, the ministry prepared and was implementing a comprehensive reform of the mental health care system for children and adolescents, based on a new model of health care provision. Also, the ministry prepared and launched a project entitled *Support to the reform introducing a new system of mental health care provision to children and adolescents.*

Other important problems

■ Transport exclusion and the vision of rural areas' development

Transport exclusion of people living in small towns and villages is one of the main problems raised during citizens' regional meetings with the CHR Office representatives, held across Poland since 2015. In places distant from large cities, citizens pointed to numerous problems such as difficulties in patients' access to health care or physical rehabilitation services, or difficulties in commuting to work by people who have no car. The lack of sufficient public transport connections means that seniors and people with disabilities have to stay home, and children and youth have poorer access to education.



Bus stop in a rural area

The regulations do not set out citizens' rights to protection against transport exclusion of small towns and villages. The problem intensified during the pandemic due to bankruptcies of some small transport companies, as well as the reduced number of routes, bus stops and frequency of travel. The Commissioner wrote to the Ministry of Infrastructure about the need to determine the

responsibilities of local authorities in the area of public transport provision. In the opinion of the Commissioner, every citizen should be able, as a minimum, to travel to their municipal office. The Commissioner received a reply that the introduction of a commonly applicable regulation imposing the obligation to ensure the required transport connection was not grounded.

■ **Protection of consumers who have taken mortgage loans denominated in Swiss francs**

On 18 November 2021, the Court of Justice of the EU issued a judgment in the case no. C-212/20 concerning the market of Polish mortgage loans denominated in Swiss francs, so called „Swiss franc loans“. The Commissioner for Human Rights presented his position during the proceedings. Over recent years the Commissioner has joined several proceedings, requesting the courts conducting them to refer questions for a preliminary ruling to the CJEU. The CJEU's judgment took account of the position of the Commissioner.

The Court, in line with its existing jurisprudence found that the clause based on which the buy and sell prices of a foreign currency of the loan are determined should make it possible for a properly informed and sufficiently attentive and rational consumer to understand how the foreign exchange rates used to calculate the loan instalment amounts are set. The consumer should be able to independently determine the bank's exchange rate at any time. Moreover, the CJEU pointed out that a domestic court finding that the provision is unfair is not empowered to interpret the provision in order to mitigate its unfairness, even if its interpretation would reflect the will of the parties.

The Commissioner was requested present an opinion on six questions of law asked by by the Civil Chamber of the Supreme Court in full composition. The legal aspects concern the discrepancies revealed in court disputes and concerning consumers' mortgage loans denominated or indexed in Swiss francs.

In his opinion for the Supreme Court, the Commissioner pointed out that, in the

light of the CJEU jurisprudence, there is currently no possibility in the Polish law to replace the abusive clause on currency exchange rates with a legislative provision. He also pointed to the EU law's minimum requirements of the Polish system to meet the statute of limitations, and stressed that narrow scope was left for national courts.

Moreover, the Commissioner took the view that in the event of the failure of the loan agreement, any claims in excess of the amount of the loan (e.g. bank's claims for remuneration for using the capital) should be considered inadmissible in the light of the preventive aim of Directive 93/13 as well as the consumer protection standards required by the directive.

■ Foster care

In view of the errors in the foster care system and the failure to comply with post-inspection recommendations of the Supreme Audit Office, the Commissioner for Human Rights pointed out that a thorough review and modification of the regulations is necessary because the consequences of the inconsistent solutions impact the weakest social group and lead to violations of children's rights.

Therefore, the Commissioner drew the attention of the Minister of Family and Social Policy to the key issues concerning the organization and functioning of the foster care system and the obstacles to the development of a system of family-based foster care and deinstitutionalization.

The minister informed that work was underway on the government bill amending the *Act on support to the family and on the foster care system, and certain other acts*. Also, due to the large number of additional solutions proposed and comments submitted during the drafting of the bill, the Ministry of the Family started to analyse the suggested directions of change of the entire foster care system.

In view of the announced analysis of directions of change of the entire foster care system, the Commissioner wrote another intervention letter to the ministry, in

which he pointed out that the systemic assumptions regarding the temporary nature of foster care were insufficient. There was the need for more flexibility by introducing the concept of long-term foster care into the bill. The CHR also pointed out that deinstitutionalization of support for people with disabilities cannot be understood in a narrow way and should take into account a broader context i.e. what will happen to children placed in the state's children homes and those in foster care in the future, when they grow up. In reply, the minister assured that the presented comments and proposals would be analysed during the works on the amendment to the act.

■ The Polish Order

The package of tax solutions, called Polish Order, is a profound and revolutionary change of the tax system, wrote the Commissioner in his opinion of 13 October 2021 for the Marshal of the Senate. The Commissioner called for the related legislative works to be conducted in a manner ensuring thorough and reliable analysis of all comments, and providing taxpayers with sufficient time to read the new regulations, and requested that they enter into force only on 1 January 2023. The Commissioner pointed out that the most controversial changes were those regarding the impossibility of deducting the health insurance contribution from the tax amount due, an increase of the contribution's calculation basis, and an increase of the contribution's amount, to apply to certain groups of taxpayers. The CHR drew attention to changes unfavourable for pensioners i.e. impossibility to deduct their health insurance contributions and their non-inclusion in the group eligible for the „middle class” tax relief. The Commissioner emphasized that the proposed solutions were assessed by seniors as a kind of „penalty” for having worked professionally for more years. Therefore, it would be advisable to consider mechanisms to compensate them for the impossibility to deduct the health insurance contribution from the tax amount due.

The Commissioner also pointed to the unfavourable changes in the tax situation of single parents. The new system removed the possibility to use preferential tax rates payable based on a half of their income. The solution has been replaced with a fixed amount of PLN 1,500 tax relief per child of a single parent. The Commissioner called for considering the maintenance of the former solutions.

Special duties of the Commissioner for Human Rights

CHR as an independent equality body

The Commissioner for Human Rights acts as an independent equality body. The main tasks of the Commissioner in this role are to consider applications filed with the equality body, including complaints regarding violation of the principle of equal treatment, and to take other action in accordance with the provisions of the *Act on the Commissioner for Human Rights*.

The Commissioner's activities relate to discrimination on grounds such as: gender, race, ethnic origin, nationality, religion, denomination, belief, disability, age and sexual orientation. However, Article 32(2) of the Constitution prohibits discrimination on any grounds. Therefore, the Commissioner may take action also in cases when a person is treated in a worse manner for other reasons, such as health, material status or migration experience.

People exposed to discrimination and social exclusion often lack trust in public institutions and rarely seek support from them. Low legal awareness and the lack of knowledge about the bodies offering assistance to victims of discrimination also remains a barrier.

The Commissioner considers anti-discrimination education to be the most effective tool for raising public awareness. It should be addressed to children and adolescents in the form and content adequate to their level of development and general knowledge, and implemented in accordance with international standards in the field of human rights education.

Since the entry into force of the Act on equal treatment (*the Act of 3 December 2010 implementing certain European Union regulations on equal treatment*), the Commissioner has been emphasizing that there are no sufficient safeguards ensuring effective protection against discrimination in Poland, and that an urgent change of the situation is required. It seems necessary, in particular, to open the

list of legally protected characteristics and areas covered by the prohibition of discrimination under the Act on equal treatment.

The protection against unequal treatment, limited to a few specific areas and grounds, leads to situations in which people experiencing discrimination in areas other than those covered by the prohibition or on grounds other than those provided for in the act, have no possibility to use the simplified mechanism of claiming compensation for damages (harm) suffered due to the violation of the principle of their equal treatment.

The competences of the equality body within the meaning of the relevant EU directives should be extended by the possibility to provide independent assistance to victims of discrimination. The equality body should be able to take action in cases of discriminatory treatment by both public and private entities. However, the competences of the CHR as an equality a body apply solely to violations of the principle of equal treatment by public sector entities.

In order to strengthen the standard of protection against discrimination, the Commissioner for Human Rights has consistently recommended the ratification of Protocol No. 12 to the *Convention for the protection of human rights and fundamental freedoms*, which contains a general prohibition of discrimination, as well as the *Optional protocol to the convention on the rights of persons with disabilities*, which provides for an individual complaint mechanism in cases of violation of the Convention.

Moreover, since 2015 the Commissioner has been engaged in the debate and activities aimed at drawing up a new *Convention on the rights of older people*. In this regard he has cooperated, inter alia, with the United Nations Open-Ended Working Group on Ageing (OEWGA).

■ Counteracting discrimination on the grounds of gender

Poland scored 56 points on the Gender Equality Index – a European tool for measuring gender inequalities, and ranked 23rd among 27 EU Member States. Since 2011, Poland has dropped by 9 places in the ranking. Since 2018, the country's result has increased by only 0.8 points thanks to a slight improvement in the areas of „power“ and „money“.

The differences in the treatment of women and men are most visible in the area of „power“ (31.5 points), in which Poland ranked 22nd (five places lower than in 2010). The differences have significantly increased in the sub-area „social decision making“(-9.4 points). Compliance with the principle of gender equality in this sub-area is an issue to which the Commissioner for Human Rights pays special attention. The wage gap in Poland, although one of the lowest in the EU, increased from 7% in 2015 to nearly 8.5% in 2021 to the detriment of women.

The adjusted wage gap which compares the wages of men and women in similar positions and with similar competences, is much higher and amounts to around 20%. This translates into significant disproportions in the size of old-age pensions: in 2018, the retirement pensions of women were on average 30% lower than those of men.

Ensuring equal opportunities for men and women to influence decision-making processes is a normative obligation imposed on public authorities both under domestic law (Articles 32 and 33 of the Constitution) and international law.

The Commissioner is aware of the relationship between women's work-and-live imbalance and the varying situations of women versus men in the labour market and private lives. The situations imprint the stereotypical social roles of each gender, which translates into lower economic activity and wage discrimination of women, and marginalization of caretaking tasks of men.

Ensuring protection against violence in close relationships remains a priority for gender equality. Violence is a manifestation of structural inequalities between

women and men. Women and girls are more likely to suffer from gender-based violence, including domestic violence, than men and boys, although men also experience such violence.

The implementation of factual and legal equality of women and men is a key obligation of public authorities. This obligation applies also to Poland according to many acts of international law, including the Istanbul Convention. On the occasion of the tenth anniversary of the convention's opening for signature, the Commissioner recalled its importance for the protection of people who experience domestic violence and negatively assessed any attempts to denounce it. The Commissioner also repeatedly pointed to the need to fully implement its provisions. The position of the Commissioner is consistent with the assessment of Poland's implementation of the convention, as set out in the GREVIO report.

■ **Counteracting discrimination on the grounds of disability**

The Commissioner for Human Rights in Poland performs the function of an independent mechanism monitoring the implementation of the Convention on the Rights of Persons with Disabilities, ratified by Poland in 2012. Compliance with the Convention by states-parties is assessed by the Committee on the Rights of Persons with Disabilities (CRPD).

In 2021, three years had passed since the Committee issued the recommendations for Poland after examining its first report on the progress of implementation of the Convention. The main objection regarding Poland, raised by the CRPD, was the lack of a strategy and plan for implementing the obligations under the Convention. Such documents should ensure the replacement of the medical model of disability with a model based on human rights. A plan of action in this regard was adopted by way of the *Resolution of the Council of Ministers of 16 February 2021 adopting the strategy for persons with disabilities for 2021-2030*. It is the first programme document which determines measures to support people with disabilities, taking into account the convention's approach to disability. The

Commissioner carefully monitors the progress in the implementation of the measures set out in the strategy.

The implemented measures aimed at ensuring accessibility for people with disabilities should be considered a significant progress. Due to the pandemic, in was necessary, in order to prevent the spread of SARS-CoV-2, to ensure access to public administration services by means of electronic communication. Among others, solutions making it possible for people with disabilities to use a „trusted profile” were introduced. The National Broadcasting Council launched a contact point on the accessibility of media services for people with sight and hearing disabilities. The solutions take into account the postulates of the Commissioner for Human Rights.

In connection with the ongoing works on the amendment to the *Act on digital accessibility of websites and mobile applications of public sector entities*, the Commissioner pointed to the need to supplement it and stressed that the adopted legal regulations should clearly state that failure to ensure such accessibility constitutes discrimination and thus should be subject to judicial review. This would contribute to the implementation of the recommendations of the Committee on the Rights of Persons with Disabilities, according to which the prohibition of discrimination against persons with disabilities should cover all areas of life. The refusal to provide reasonable accommodations should be considered a form of discrimination on the grounds of disability.

The main challenge is to deinstitutionalize support services for disabled people. The government has taken additional steps to draw up a strategy serving this purpose but the efforts are still insufficient. The proposed changes should take into account the CRPD recommendations for Poland and the opinions of people with disabilities, including their organizations as well as entities that work on their behalf. Due to the works conducted simultaneously by the Ministry of Health and the Ministry of Family and Social Policy, it is necessary to coordinate the planned activities.

Taking into account the provisions of the *Convention on the rights of persons with disabilities* and the CRPD recommendations, effective measures are necessary to introduce a system of supported decision-making in place of the currently used system of incapacitation. There is also the need to build a comprehensive and integrated disability assessment system consistent with the provisions of the Convention. The Commissioner for Human Rights considers these issues a priority and calls for greater efforts in this regard.

■ Counteracting discrimination on the grounds of age

In 2021, the Commissioner highlighted the issue of systemic discrimination of older people on the grounds of age in the context of access to education. He presented an analysis of public policies in this field to the prime minister, paying special attention to the lack of visibility of older people in educational settings. The Commissioner also drew attention to the negative stereotypes related to old age, which hinder the development of state policy for increasing educational accessibility.

The Commissioner also described the main assumptions of the resolution adopted by the Human Rights Council, which included the first-ever reference to the phenomenon of ageism (age discrimination) in international law. The Commissioner inquired the Minister of Family and Social Policy about the planned measures to counteract the phenomenon.

The COVID-19 pandemic highlighted the difficulties faced by senior persons with access to health care, including long-term and palliative care, as well as caused the feeling of loneliness and isolation, due to the introduced restrictions. Bearing this in mind, the Commissioner carried out a representative survey on people aged 60+ concerning their assessment of the situation during the pandemic.

Since 2015, the Commissioner has also been involved in the debate and activities aimed at drawing up a new convention on the rights of older people.

■ Counteracting discrimination on the grounds of sexual orientation and gender identity

In view of the continuously increasing prejudice against LGBTQ+ people, since 2019 the gaps in the system of legal protection against this group's human rights violations have been even more visible. Also, as in the previous years, court rulings played an increasingly important role in the protection of human rights of LGBTQ+ persons, as due to the lack of appropriate regulations or their inconsistent application such rulings significantly impact the actual legal situation of non-heteronormative and transgender people.

Since March 2019, several dozen local governments have adopted resolutions against the so-called „LGBT ideology.“ Despite the resolutions being repealed by some of those governments in 2021, many of them still remain in force. In the opinion of the Commissioner such resolutions are contrary to the law, including the principle of non-discrimination, and deteriorate the situation of LGBTQ+ people in areas in which they are binding. The Commissioner took a number of steps for such resolutions to be declared void, including through appeals to administrative courts against 9 resolutions against „LGBT ideology“ regarding various areas of jurisdiction of administrative courts and various local governments. In 2021, the Supreme Administrative Court heard a total of 5 cases in which the Commissioner lodged complaints found, before, inadmissible by first instance administrative courts at the level of voivodeships. In all five cases, the Supreme Administrative Court upheld the Commissioner's cassation appeals and referred the cases back to the voivodeship courts for reconsideration.

There are still no provisions governing the gender recognition procedure. The situation of transgender people has been shaped by court rulings for many years. There have been attempts to challenge civil court judgments issued in favour of transgender people, an example of which can be the Public Prosecutor General's extraordinary complaint against a judgment stating that gender identity may be

considered grounds for discrimination in employment. The Commissioner has always been against such attempts.

Court proceedings, including strategic proceedings cannot, however, replace the necessary changes to the law. The prohibition of discrimination on the grounds of sexual orientation and gender identity is part of the Polish legal system as it follows from Article 32 of the Constitution and four other acts of Parliament that explicitly mention sexual orientation as an unacceptable reason of unequal treatment. However, the legislation protecting LGBTQ+ people against discrimination does not directly cover a number of important areas of social and economic life such as service provision, health care, education and social security. Moreover, the legal system does not provide non-heteronormative persons with sufficient protection against prejudice-motivated crimes.

Another disturbing phenomenon to which the Commissioner pays attention is the problem of medically unnecessary surgery procedures conducted on children with male and female sexual characteristics (intersex children). The procedures aim at bringing the patients' anatomy in line with either of the two normatively defined genders. The issue has been the subject of the Commissioner's report for the Committee on the Rights of the Child in October 2021 and will be analysed in the future.

The Commissioner regularly suggests the necessary legislative changes in order to provide LGBTQ+ people with full protection against discrimination, hate crime and hate speech and the possibilities of living with a sense of security, dignity and human rights in all areas of private and professional life.

■ **Protection of the rights of national and ethnic minorities**

In his actions aimed at ensuring respect for the rights of national and ethnic minorities the Commissioner is guided by the conviction that multiculturalism, reflected by the very existence of minorities, is a value of a democratic state ruled by law and is subject to legal protection. An effective system of protection

of minority rights consists not only of the prohibition of discrimination, which guarantees equal treatment of minorities and their individual members in social, economic and political life, but also of positive obligations of the state in the field of maintaining and developing minorities' cultures, languages and identity.

The Commissioner believes that an integral element of the right to maintain a separate cultural identity by minorities is their right to learn and teach their own languages. Thus, the

Commissioner has asked the Prime Minister to undertake legislative work aimed at granting this right also to those groups which do not formally have the status of national and ethnic minorities in Poland but which clearly seek to maintain their identity in terms of culture, history and language. In the

opinion of the Commissioner, a desirable solution would be, for example, to grant the status of a regional language to the Silesian language and Wilamowice area language.

The Commissioner continuously monitors the situation of the Roma minority in Poland and has noted that it is gradually improving, which is a result of work of Roma organizations and the previous and current editions of the *Program of social and civic integration of the Roma community in Poland for the years 2021–2030*.

In the opinion of the Commissioner, Roma people who have lived in Poland for many years and still remain strongly isolated from the country's society require special assistance from the state. Many of them still experience discrimination in their private and social lives because of their ethnicity or of poverty. There still exist numerous stereotypes that contribute to the negative perception of people of the Roma nationality.



Roma community settlement in the village of Maszkowice, Łącko municipality, Małopolskie voivodeship

■ Counteracting crimes motivated by prejudice

There is still a need for development of a comprehensive policy on combating crimes motivated by racial hatred and prejudice based on nationality, ethnic origin, religion, sexual orientation and identity, age or disability.

Already in 2019 the former Commissioner sent an intervention letter to the Prime Minister, setting out 20 recommendations with regard to combating hate crime. Unfortunately, since then there have been no changes in the law or practice that would increase the effectiveness of counteracting such crimes.

Every year, the Office of the Commissioner for Human Rights considers about 100 cases concerning crimes and other acts motivated by hatred on the grounds of nationality, ethnicity, race or religion. In 2021, there was a decrease in the number of individuals' complaints submitted to the Commissioner with regard to the problem.

Public authorities do not conduct education and information campaigns aimed at combating hate speech, incitement to hatred and hate crimes, or at solving problems related to prejudice and negative approach to groups and persons who belong to various minorities and are thus particularly vulnerable to discrimination. It is necessary to build awareness through the implementation of social campaigns focused on counteracting discrimination, tolerance building and preventing intolerance and hate crimes.

The Commissioner has been emphasizing the need to take steps to develop effective tools to limit the phenomenon of hate speech, including on the internet, in the form of statements promoting racist ideologies, fascism or other totalitarian ideologies and inciting to hatred or insulting individual persons or groups of people on the grounds of nationality, ethnicity, religion or lack of religious denomination. Such solutions should be a part of the above-mentioned comprehensive strategy.

National Mechanism for the Prevention of Torture

The National Mechanism for the Prevention of Torture (NMPT) is an independent body that conducts visits to places where people are deprived of their liberty. It was established pursuant to the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

The Republic of Poland is one of 91 States Parties that have ratified the Protocol and one of 76 countries that have established a national preventive mechanism to visit places where people are deprived of their liberty. In January 2018, the tasks of the National Preventive Mechanism were entrusted to the Commissioner for Human Rights.

The National Mechanism for the Prevention of Torture (NMPT) operates as one of the departments of the Office of the Commissioner for Human Rights. The department is supported by employees of the offices of the Commissioner for Human Rights' Regional Representatives in Wrocław, Gdańsk and Katowice, who, apart from working at their offices, take part in NMPT's preventive visits to entities located within their areas of operation.

In 2021, representatives of the NMPT carried out a total of 92 preventive visits, 16 of which were held online due to the epidemic. Most of them were ad hoc visits aimed at checking the conditions of detention and treatment of migrants in establishments operated by the Border Guard. The visits were caused by the increase in the number of migrants entering Poland from Belarus.

After the detention of participants of protests following the publication of the Constitutional Tribunal's judgment regarding abortion, representatives of the NMPT conducted ad hoc visits to police-operated detention facilities. The purpose was to hold interviews with the detained persons and to investigate the situation

and conditions of their detention in the context of the implementation of the so-called minimum anti-torture guarantees.

The NMPT also continued the thematic visits started in 2020.

In 2021, the Commissioner for Human Rights, acting as the National Mechanism for the Prevention of Torture, sent 12 general intervention letters concerning,

inter alia, the situation of juvenile

mothers placed in social

rehabilitation centres; the need to disseminate knowledge about

the so-called Mendez Rules on

interrogation of detainees; and the CHR's opinion on the bill on

support and social rehabilitation of juveniles, of 20 July 2021. The

Commissioner also highlighted

the dramatic situation of migrants camping at the border near the village of Usnarz Górny and those placed in guarded centres for migrants.

In the reporting year, the NMPT published two thematic reports: *Foreigners in administrative detention. Results of monitoring visits to Guarded Centres for Foreigners in Poland* contains conclusions of the visits to the centres, diagnoses key systemic problems and points to irregularities which, in many cases, directly contribute to the re-traumatization of torture victims.

In the report *The crime of torture in Poland*, the NMPT analyses courts' final judgments issued in the years 2018–2019 and concerning instances of torture in the meaning of Article 1 of the UN Convention Against Torture. The report provides, among others, examples of cases in which torture was used by officers against citizens, contains recommendations a brief information guide for citizens.

Despite the COVID-19 pandemic, in 202 the NMPT representatives continued their



Training session conducted as part of the social campaign „State without torture“

training activities aimed at raising the awareness of officers and other employees of establishments where persons are deprived of their liberty of the need to prevent torture and other forms of ill-treatment.

One of the elements of the NMPT's activities are training courses conducted as part of the „State without torture” social campaign launched in December 2018. In September 2021, NMPT employees conducted a training course for police officers from the Podkarpatie region. The objective was to raise the awareness of the issue and build a culture of non-acceptance of the use of torture or other forms of ill-treatment.

As part of its educational activities, the National Mechanism for the Prevention of Torture issued statements presenting its positions on matters important for the prevention of torture, for example on judgments issued by national courts or the ECtHR, media reports or a changes in the law.

More information on the activities of the NMPT can be found in the *Report of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture in Poland in 2021*.

Photos from the visit of the National Mechanism for the Prevention of Torture in guarded centres.



Concertina wire around the walking yard, Temporary Guarded Centre for Foreigners in Wędrzyn



Window bars in a bedroom, Guarded Centre for Migrants in Krosno Odrzańskie

Organization system of Commissioner for Human Rights' activities

CHR's regional offices and citizen reception points

The Commissioner for Human Rights may, upon consent of the Sejm, appoint his or her Local Representatives. The work of the Commissioner for Human Rights' Regional Representative Offices covers the full scope of matters dealt with by the Commissioner, except for cases which require personal participation of the Commissioner or his or her Deputies. The Regional Representatives act based on the authorization of the Commissioner and on his or her behalf.

The establishment of the regional representative offices turned out to be an effective and very important tool for protecting the rights of citizens. This has been confirmed by the large numbers of in-person visits and telephone calls by citizens as well as applications sent by them to the offices. The Regional Representative Offices' cooperation with regional and local media and civic organizations strongly popularizes the knowledge about civil rights and methods of their protection.

Figure 11. Inflow of cases to Regional Representative Offices

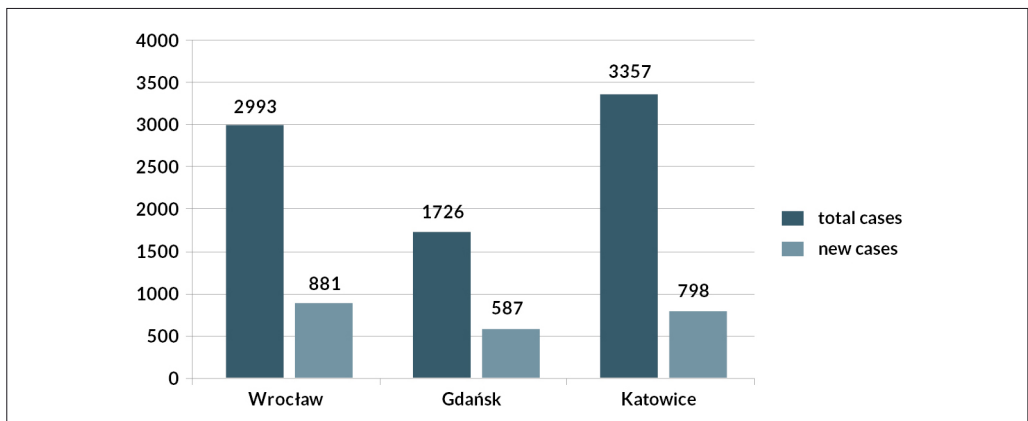


Table 2. CHR Regional Representative Offices examined 2495 cases

Outcome of examination	Number of cases	% share
Cases accepted for further proceeding	1207	48,4
Provision of information, indication of measures the complainant may take	1041	41,7
Complaint referred to a competent authority	53	2,1
Complaint returned to the complainant for adding necessary information	96	3,9
Cases not accepted for further proceeding (complaints forwarded to the Commissioner as c/o; and complaints with unintelligible content)	98	3,9

Figure 12. Cases examined by CHR Regional Representative Offices

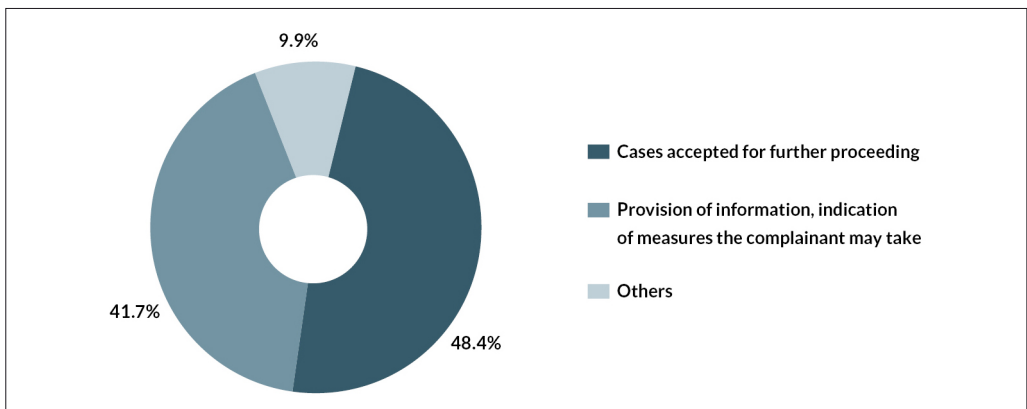
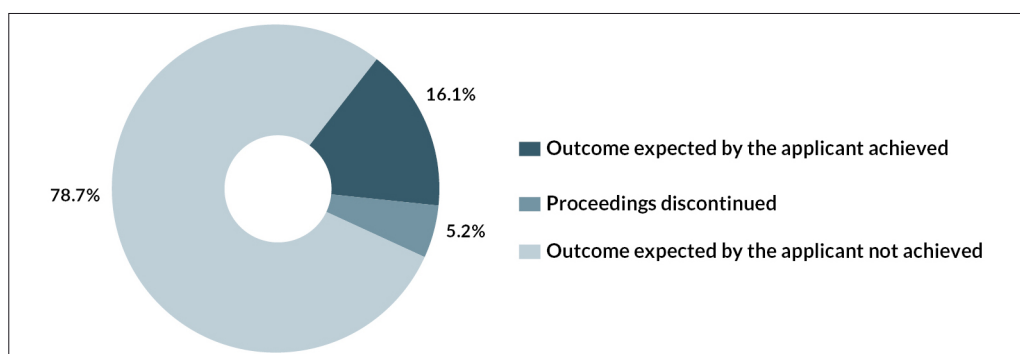


Table 3. CHR Regional Representative Offices completed 1063 proceedings in cases initiated in 2021 and in previous years

Result	Reason for completion	Number of cases	% share
Outcome expected by the applicant achieved	1 Total (2+3)	171	16,1
	2 Applicant's claim confirmed	151	14,2
	3 CHR's general intervention successful	20	1,9

Proceedings discontinued	4	Total (5+6)	55	5,2
	5	Proceedings pending (ongoing procedure)	14	1,3
	6	CHR's discontinuation of proceedings (due to objective reasons)	41	3,9
Outcome expected by the applicant not achieved	7	Total (8+9+10)	837	78,7
	8	Applicant's claim not confirmed	826	77,7
	9	CHR's general intervention not successful	3	0,3
	10	Measures available to the CHR exhausted	8	0,7
Total			1063	100,0

Figure 13. Completion of cases handled by Regional Representative Offices



The Regional Offices in cities distant from the CHR's Warsaw Office contribute to the Commissioner's better communication with citizens. They enable the Commissioner's influence on public authorities in a given region.

At present, the Commissioner has three Regional Representatives in the cities of Wrocław, Gdańsk and Katowice.

The territorial competence of the CHR Regional Representative in Wrocław covers the following voivodships: Dolnośląskie, Lubuskie and Opolskie. In 2021, the Regional Representative in Wrocław received 187 persons seeking help and answered 1926 telephone calls, providing explanations and advice to citizens. The number of incoming cases reached 2993, of which 881 were newly registered cases.

The territorial competence of the CHR Regional Representative in Gdańsk covers the following voivodships: Pomorskie, Warmińsko-Mazurskie and Zachodniopomorskie. In 2021, the Regional Representative in Wrocław received 102 persons seeking help and answered 1255 telephone calls, providing explanations and advice to citizens. The number of incoming cases reached 1726, of which 587 were newly registered cases.

The territorial competence of the CHR Regional Representative in Katowice covers the following voivodships: Śląskie, Małopolskie and Świętokrzyskie. In 2021, the Regional Representative in Wrocław received 87 persons seeking help and answered 2045 telephone calls, providing explanations and advice to citizens. The number of incoming cases reached 3357, of which 798 were newly registered cases.

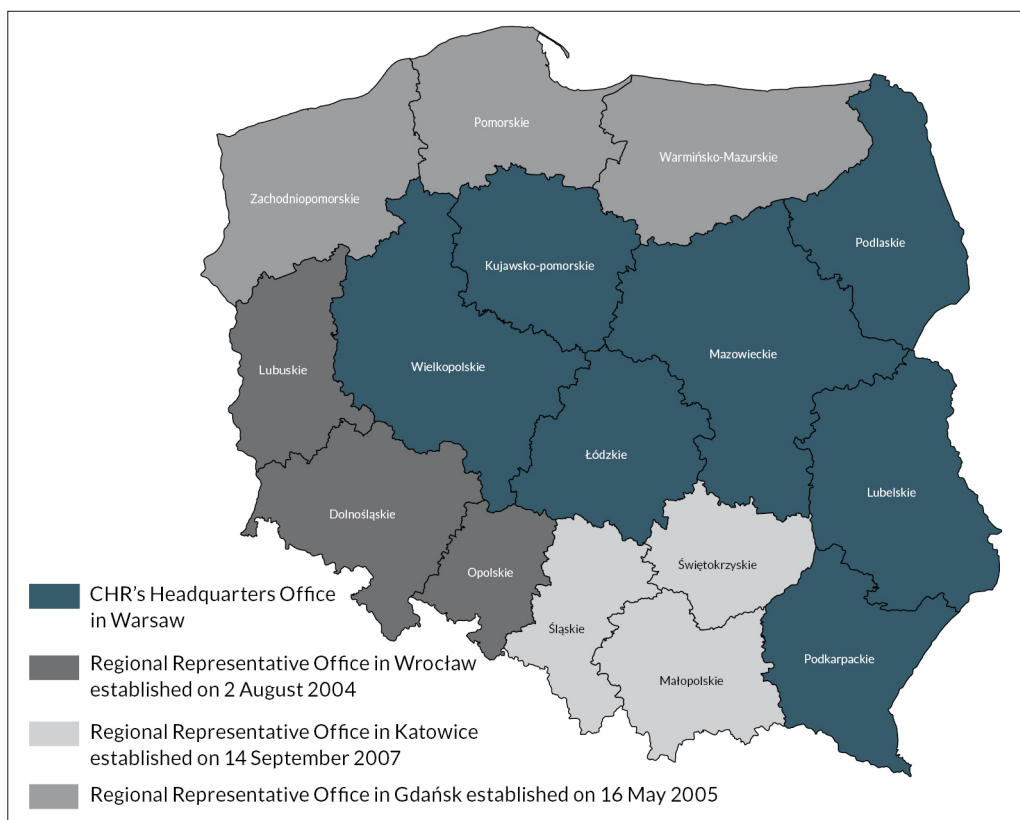
Problems reported to the Regional Offices most often concern the following subject areas:

- Civil law (cases concerning eviction, outstanding payments, legal division of property, entitlement to the possession of movables or documents, inherited property division, annulment of joint ownership of property, finding a contract null and void, obligation to transfer property ownership, enforcement of liabilities, property acquisition by usucaption, division of property, eviction),
- Family law (regulation of contact maintenance with a child, deprivation/ limitation of parental authority, divorce, alimony),
- Housing (finding whether council flat eligibility criteria are met, poor technical condition of council flats, requests by people with disabilities who seek change of a council flat located on a building's high floor into one on the ground floor),
- Administrative law: in 2021, the number of complaints against actions of sanitary inspection bodies, taken in connection with the SARS-CoV-2 pandemic, decreased significantly. The pandemic's negative effects on the health care system started, however, to be visible. They included first of all lack of

availability of health care services and limitations on patient family members' access to hospitals. There was also an increase in the number of complaints concerning environmental protection regulations on air pollution, noise limits or tree felling. The largest number of complaints, however, concerned decisions issued in administrative proceedings, in particular ones regarding expropriation of property, construction law, land division and land registry),

- Labour and social security law: the cases concerned mainly the size of retirement pensions, disability benefits and care provider allowances, the correctness of their calculation by competent bodies, and related court judgments. There were also complaints concerning ZUS (the national social insurance office) and courts.

Territorial competence of each of the three Regional Representative Offices



CHR activities in the field of social communication

The Commissioner for Human Rights carries out numerous information and education activities aimed at disseminating knowledge about the situation in the field of human and civil rights and freedoms. This includes the provision of information on the state of observance of the principle of equal treatment and the rights of persons deprived of their liberty.

The main source providing information about the Commissioner's work is the Public Information Bulletin of the Office (bip.brpo.gov.pl). In 2021, the website registered a record number of over 4 million 700 thousand entries.

In December 2021, the CHR officially started to provide information via social media (Facebook, Twitter and LinkedIn). The *Act on the Commissioner for Human Rights* requires the office to expand contact with citizens, also with the use of modern communication channels. This type of activity makes it possible to reach a large group of internet users with the aim to engage them in activities for the promotion of human rights and in building a civil society.

2021 was the second year overshadowed by the COVID-19 pandemic and the related restrictions. Conferences were held under the sanitary regime, and certain meetings were held in a hybrid way or remotely.

The Commissioner for Human Rights took part in a number of conferences, symposia and events, including the General Assembly of the International Ombudsman Institute, Tour de Constitution, the 7th Congress of People with Disabilities, a debate during the congress of the „Gazeta Polska” clubs, and the UN Global Compact Network Poland conference. He also took part in official ceremonies and such as the ceremony commemorating the victims on the 80th anniversary of the Jedwabne massacre, the „Lodołamacze” award gala, and the ceremony of the oath of profession taking by young attorneys at the District Bar Council in Warsaw.

In 2021, the CHR Office issued 17 publications. 15 titles were published in the printed form, in the overall number of 8,300 copies. The website of the Office of the Commissioner for Human Rights, bip.brpo.gov.pl, meets the accessibility standards so the publications contained there meet the WCAG 2.0 standard.

Every year, the Commissioner presents Dr Maciej Lis award in appreciation of special achievements in protecting the rights and interests of people with disabilities. In 2021, the winner of the Award was Dr Monika Zima-Parjaszewska, President of the Board of the Polish Association for People with Intellectual Disability.

For sixteen years, the Commissioner for Human Rights has been presenting the Paweł Włodkowic award to people demonstrating an uncompromising attitude towards fundamental values and truths, even against the opinions and views of the majority. In 2021, the award was presented to representatives of Michałowo municipality. Marcin Wiącek handed the award to Marek Nazarko, mayor of Michałowo, Maria Bożena Ancipiuk, president of the Town Council and Bartosz Nos, head of Michałowo Voluntary Fire Brigade. People from Michałowo municipality in Podlasie region actively helped migrants entering Poland from Belarus.



Ceremony commemorating Warsaw Uprising casualties. Commissioner for Human Rights Marcin Wiącek laid a wreath at the Monument to the Home Army and the Polish Underground State.



On the anniversary of the outbreak of Warsaw Ghetto uprising, Deputy Commissioner for Human Rights Hanna Machińska laid a wreath at the Monument to the Ghetto Heroes.



Commissioner of the 7th term awarded the CHR's Medal of Honour "For achievements in the protection of human rights" to Agata Nosal-Ikonowicz and Piotr Ikonowicz.



In 2021, the winner of the Award was Dr Monika Zima-Parjaszewska, President of the Board of the Polish Association for People with Intellectual Disability



Marcin Wiącek took part in the 7th session of the Senior Citizens' Parliament, entitled *Landscape after the pandemic – a plan of returning to earlier living*, held on 4 October 2021 in the Senate of the Republic of Poland



Michałowice municipality representatives receiving the Paweł Włodkowic Award from the Commissioner

Human rights education

Education projects of the Commissioner for Human Rights aim at the widest possible dissemination of knowledge about the rights and freedoms enshrined in the Constitution, about how the Commissioner can help people, the importance of the principles of equal treatment and non-discrimination and the protection of the rights of groups at risk of discrimination and exclusion, in particular of seniors, people with disabilities, mentally ill people, migrants and national, ethnic and religious minorities, and building the society's positive attitude towards those groups.

In January and February 2021, an online education project for secondary school students from all over Poland was implemented. It was entitled „Winter school

break with the Commissioner for Human Rights". Meetings were held on daily basis and were attended by about 150 students every day. Lawyers from the CHR office spoke about citizen's rights and freedoms in a democratic state and about pro-social attitudes and civic involvement. The participants could ask questions about current issues in public life. Students were particularly interested in civil rights provided for in the Constitution, the right to an independent court, Poland's compliance with international law, diffuse system of constitutional review and the rights of LGBT people.

In July and August, the summer internships for university students were held online. The project participants had online meetings and presentations by CHR Office employees. They were provided with information on the work of the Office and types of incoming cases. Each participant was assigned to a specific department of the office, and could learn about its work in practice. The students also met with the Commissioners for Human Rights: in July, with outgoing Commissioner prof. Adam Bodnar, and in August with the new Commissioner prof. Marcin Wiącek. There were also lectures by experts in various specialist subjects.

During the Pol'and'Rock Festival, for the twelfth time the Office of the Commissioner for Human Rights had a special stand called the „Human rights tent". It offered workshops and debates on environmental protection, broadly understood rule of law, protection of human rights and anti-discrimination education. Every day, it was possible to participate in a mock court hearing which demonstrated how the judicial system works and how people should behave during a court proceeding. The workshops and debates were conducted by Deputy Commissioner for Human Rights Dr Hanna Machińska, together with the CHR Office employees and invited guests.

In 2021, the campaign of the Commissioner for Human Rights „Help the Deaf", initiated on the International Day of Persons with Disabilities in 2020, was

continued. Its purpose is to draw the society's attention to the specific situation, problems and needs of deaf people. The action makes people aware that deaf people may not know Polish as such or know it poorly, as for many deaf people their „native language” is the Polish sign language, and spoken Polish is not.

Police officers, soldiers and firefighters serving in the Belarus border area were informed during meetings with the CHR Office representatives that the Commissioner's activities aim also at ensuring respect for their rights and that they may turn to the CHR Office for assistance if they feel their rights are not respected.

The Centre for Social Projects in cooperation with other CHR Office departments draw up a leaflet translated into 7 languages (English, Russian, French, Arabic, Farsi and Kurdish in the Sorani and Kurmanji dialects). The leaflet describes the rights of migrants, including their right to apply for international protection in Poland. The leaflet was distributed to refugees during CHR representatives' visits to the Poland-Belarus border zone.

The CHR Office launched information activities as part of the annual campaign „16 days of activism against gender-based violence”. The campaign started with Commissioner for Human Rights Marcin Wiącek's call for action and for 16 days, infographics with information on various types of violence were published.



Every year, during the Pol'and'Rock festival, the Commissioner takes part in debates and meetings with young people in the so-called Human Rights Tent run by the CHR Office.



Deputy CHR Hanna Machińska during the Pol'and'Rock festival



Pol'and'Rock festival participants attend training and leisure activities organized by the CHR Office

Expert Committees

The Commissioner for Human Rights is supported in his work by expert committees composed of the best experts in their fields. The committees include:

- Expert Committee on Elderly People;
- Expert Committee for Counteracting Homelessness;
- Expert Team on Alimony;
- Expert Committee of the NMPT;
- Expert Committee on Migrants;
- Expert Committee for People with Disabilities;
- Expert Committee on Mental Health;
- Expert Committee for Deaf People,
- Expert Committee on Healthcare;
- Expert Committee for Consumers;
- Expert Committee on civil rights observance in intelligence services.

Unfortunately, most of the Committees suspended their work in 2021 due to restrictions related to the COVID-19 pandemic.

The Committees ensure regular cooperation with social organizations. Each committee consists of scientists and social organization representatives whose work concerns, among others, the protection of the rights of elderly people, people with disabilities and foreigners residing in Poland. The Committees support the Commissioner in the performance of his statutory tasks, in particular in the field of monitoring the protection of human and civil liberties and rights in the process of applying the law. The Committees also put forward proposals as to how legislation should be amended (*de lege ferenda* conclusions), comments and recommendations regarding existing or planned amendments to legal acts, proposals for system changes and key points for the Commissioner's intervention

letters. The Committees promote good practices and carry out other tasks required by the Commissioner. Their members represent the Commissioner in numerous meetings, debates and conferences.

The Committees also invite other experts and representatives of various non-governmental organizations and other institutions particularly interested in the respective areas of activity. The Office of the Commissioner for Human Rights also uses the support of non-governmental organizations in implementing projects that promote the statutory competences of the Commissioner for Human Rights.

International-level activities

The key area of the Commissioner for Human Rights' activities at the international level in 2021 was the cooperation with international human rights organizations and Ombudsman associations.

In 2021, Ombudsman institutions in most countries focused mainly on the impact of the COVID-19 pandemic on the enjoyment of fundamental civil rights and freedoms by citizens, and examined the role of Ombudsmen in taking action with regard to those violations. The Ombudsmen in many countries noted an increase in such violations. This was confirmed by the large numbers of complaints regarding regulations introduced by the state administration bodies and impacting many areas of citizens' lives.

An important partner for the Commissioner for Human Rights in his international-level work is the European Ombudsman. The European Network of Ombudsmen (ENO), established by the European Ombudsman over a dozen years ago, is one of the main mechanisms for regular exchange of information between Ombudsmen offices on issues related to their current work.

Issues concerning the rule of law standards in our country were of interest to the European Commission and the European Parliament. In this context, the Polish

Commissioner was expected to present his opinion on the observance by the state authorities of the rule of law standards defined according to the criteria set by the European Union agencies.



Vice-President of the European Commission for Values and Transparency Vera Jourova at the CHR Office



Marcin Wiącek met with EU Commissioner for Justice Didier Reynders



French Secretary of State for European Affairs Clément Beaune visited the Commissioner for Human Rights

Commissioner for Human Rights Marcin Wiącek held an important meeting with Vice-President of the European Commission Vera Jourova. The talks held on 30 August 2021 at the CHR Office were part of an extensive programme of the Vice-President's visit to Poland, paid at the invitation of the Gdańsk authorities and coordinated by the Representation Office of the European Commission in Warsaw.

The fact that the Commissioner is part of the international system of human rights protection, as well as the Commissioner's statutory duties, require him or her to be engaged in the work of international organizations. The key entities include: the Council of Europe, the European Network of Equality Bodies (EQUINET), the European Network of National Human Rights Institutions (ENNHRI) and the UN Global Alliance of National Human Rights Institutions (GANHRI).

For many years, the Polish Commissioner for Human Rights has participated in

consultations initiated by these organizations and has participated in conferences on issues of key importance for maintaining the institutions' independent status. As the foreign counterparts, the Polish Commissioner makes use of advice offered by the international organizations in solving problems faced by Ombudsmen in their countries, or of support in situations that pose threat to the performance of their tasks set out in relevant legislative acts.

Through his representatives, the Commissioner participated in proceedings before the Court of Justice of the European Union (CJEU) in Luxembourg and the European Court of Human Rights in Strasbourg.

The Commissioner for Human Rights conducts partnership cooperation with the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (ODIHR / OSCE). Legal opinions prepared by ODIHR experts constitute an extremely valuable form of cooperation between the Commissioner and the Office. In 2021, the opinions referred to legislative acts passed by the state authorities with regard to the crisis on the Polish-Belarusian border, caused by a sudden influx of migrants, and in particular to provisions connected with the declaration of the state of emergency.

The situation on the Polish-Belarusian border caused interest on the side of international organisations, including the ENNHRI network, Council of Europe bodies and European Court of Human Rights. In this context, the expectations of international organisations increased with regard to the Commissioner's role of monitoring such cases and taking initiatives to ensure compliance with the standards provided for by national and international laws.

Despite the limitations caused by the pandemic, representatives of the Office of the Commissioner for Human Rights participated in several international conferences, workshops and seminars held abroad.

The activities of the Polish Commissioner for Human Rights in 2021 attracted the attention of representatives of foreign institutions working in the field of

protection of human and civil rights, and of international organizations. Over 30 years of work of the CHR Office in Poland and its commitment to maintaining international-level contacts cause continuous interest of foreign partners in the activities of the Polish Commissioner. As a result, many foreign guests visited the CHR Office.

Cases before European Courts

■ European Court for Human Rights

The Commissioner for Human Rights joined the following cases before the European Court for Human Rights in Strasbourg:

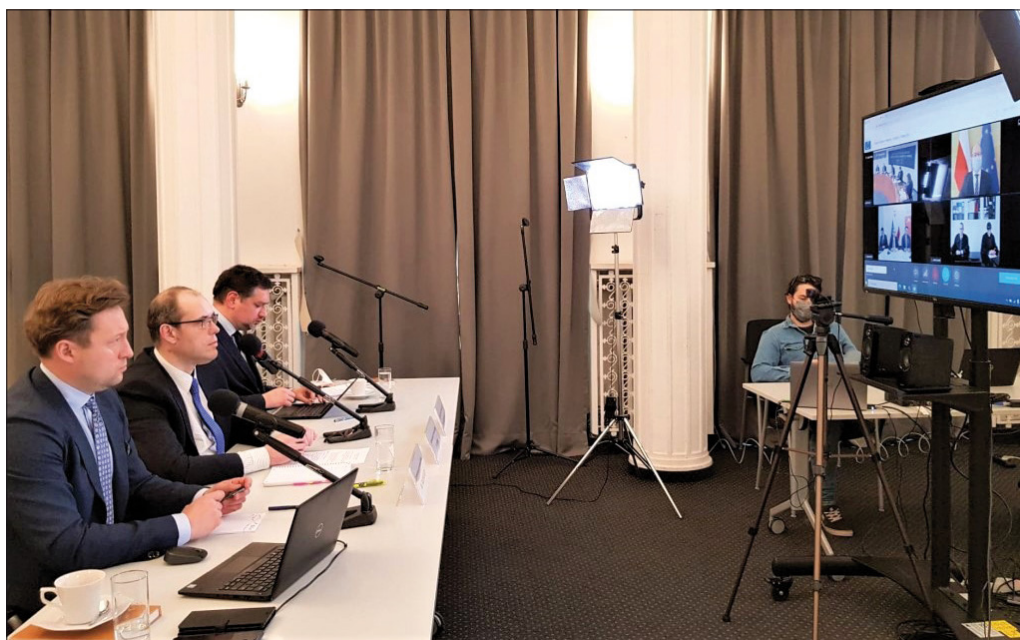
1. *Zuchniewicz v. Poland*, application no. 57759/19. A case concerning strip searches conducted on prison inmates based on Article 116(2) of the Penal Enforcement Code.
2. *W.W. v. Poland*, application no. 31842/20. A case concerning a person with a pending recognition procedure (transgender woman), who was serving a prison sentence, in particular her right to medical benefits.
3. *Kuchta and Mętel v. Poland*, 02/09/2021, application no. 76813/16. A case concerning the brutality of police officers during detention.
4. *Kędzierski and Hejosz v. Poland*, Applications nos.. 18065/18 and 57460/19. Cases concerning a restriction of the right to private life in the context of the legal obligation of judges to submit annual asset declarations, which are then made available to the public on the website of the court in question.
5. *Reczkowicz v. Poland*, Applications nos.. 43447/19, 49868/19 and 57511/19. A case concerning violation of Article 6 of the Convention on Human Rights and Fundamental Freedoms as a result of a failure to ensure the applicant's right to a fair trial.

6. Biliński v. Poland, application no. 13278/20. A case involving the procedure for transferring a judge to another judicial department in violation of convention guarantees.
7. Kornacki v. Poland, application no. 4775/18. A case concerning the prohibition of counter-manifestations to the so-called cyclical assembly.
8. Siedlecka v. Poland, application no. 13375/18. A case involving citizens being cordoned by the police and prevented from attending a gathering.
9. Advance Pharma sp. z o.o. v. Poland, application no. 1469/20. A case concerning an inadequate composition of the Supreme Court's bench.
10. Brodowiak and Dżus v. Poland, applications nos. 28122/20 and 48599/20. A case concerning the mode of appointment of common court judges who have ruled on their cases and were nominated by the new National Council of Judges in a procedure that raises serious doubts as to its legality.
11. Pionka v. Poland, application no. 26004/20. A case concerning the waiver of immunity and suspension in carrying out actions by the Supreme Court Disciplinary Chamber.
12. Juszczyszyn v. Poland, application no. 35599/20. A case concerning the use of the disciplinary liability regime in order to influence judges.
13. Paweł Drozd and Dagmara Drozd v. Poland, application no. 15158/19. A case concerning the issuance of a prohibition of entry to Parliament buildings by members of the organisation „Obywatele RP” („Citizens of the Republic of Poland”).
14. Mikołaj Pietrzak v. Poland, application no. 72038/17 and Dominika Bychawska-Siniarska and others v. Poland, application no. 25237/18. A case concerning the protection of human rights, particularly the right to privacy.
15. B.B. v. Poland, application no. 67171/17. A case concerning Poland's violation

of the prohibition of inhuman and degrading treatment, the right to respect for private life, the right to an effective remedy, and the prohibition of discrimination.

- 16.A.P. and R.P. v. Poland, application no. 1298/19. A case concerning the refusal to transcribe a foreign birth certificate that listed two women as parents.
- 17.Katarzyna Formela and Sylwia Formela v. Poland, applications nos. 58828/12, 40795/17, 55306/18 and 55321/18. A case concerning the inability of same-sex couples to marry or otherwise formalize their relationship.
- 18.Tomasz Szypuła v. Poland and Urbanik and Alonso Rodrigues v. Poland, applications nos. 78030/14 and 23669/16. A case concerning the inability of same-sex couples to marry or otherwise formalize their relationship and the violation of the right to privacy.
- 19.Przybyszewska and others v. Poland, application no. 11454/17 and others. A case concerning Poland's violation of the right to respect for private life and family life.
- 20.Jallow v. Norway, application no. 36516/19. A case concerning the evaluation of whether a hearing in which one of the parties participates solely by videoconference, to the exclusion of their personal participation (physical presence at the hearing), is consistent with due process.
- 21.X. v. Poland, application no. 20741/10. A complaint concerning discrimination in a suit for custody due to mother's relationship with another woman.
- 22.M.V. v. Poland, application no. 16202/14. A case on the lengthiness of the child's return proceedings.

A hearing in the case *Grzęda v. Poland* was held in the European Court for Human Rights. The Grand Chamber of the ECHR considered the complaint of a judge who was a member of the National Council of Judiciary. A judge in 2018 was prematurely terminated by the legislature in contravention of an explicit guarantee in the Constitution. In bringing his complaint to the Strasbourg Court, the judge raised the claim that he lacked the right to a court to review the legality of the interruption of his term in the NCJ (Articles 6 and 13 of the Convention on Human Rights).



CHR Office representatives participated online in a hearing at the European Court for Human Rights in the case *Grzęda v. Poland*

■ Court of Justice of the European Union

The Commissioner for Human Rights may join court proceedings in which courts refer preliminary questions to the Court of Justice of the European Union in Luxembourg regarding the interpretation of the European Union law. As in the case of proceedings before the European Court of Human Rights, the

Commissioner for Human Rights decides to use this competence in some cases, if the Court's interpretation of the EU law concerns human rights protection, and the CHR's broader, contextual observations on the basis of citizens' complaints and requests may allow him to take into account problems in this area which are identified on Polish grounds. Such a possibility is important insofar as the rulings of the Court of Justice of the EU do not apply only to specific proceedings, but prejudice a general way of interpreting the European law, which is binding on national authorities. In this context, the CHR's perspective helps to ensure that the interpretation of EU regulations will take into account Polish circumstances and challenges regarding appropriate standards for the protection of human rights. Taking advantage of the opportunity to participate in proceedings before the CJEU, the CHR joined i.a. the following proceedings:

1. Case (C-824/18) Case concerning a preliminary question from the Supreme Administrative Court regarding judicial review of the Supreme Court judges' nomination process.
2. Case (C-132/20) Getin Noble Bank. A case concerning a proper staffing of the court bench in the context of the right to trial by an independent court.
3. Combined cases (C-491/20 to C-496/20, as well as C-506/20, C-509/20 and C-511/20). A case concerning the right to effective judicial protection in the context of judges appointed in violation of the constitutional legal requirements of independence and impartiality.
4. Case (C-198/20) Wieliszew Municipality. A case concerning a proper staffing of the court bench.
5. Case (C-198/20). A case concerning the protection of consumer rights.
6. Case (C-212/20). A case concerning consumer protection in the context of 'Swiss francs loan agreements'.
7. Case (C-2/21). A case concerning the relevance – of the refusal to transcribe

a child's foreign birth certificate and issue an identity document or passport – for EU citizens' right to exercise freedom of movement and residence in the territory of the Member States.

8. Case (C-19/20). A case concerning the protection of consumer rights.

9. Case (C-516/21). A case concerning the protection of consumer rights.

The Commissioner also joined five other proceedings before national courts, in which he requested that a preliminary question be referred to the CJEU for a straightforward decision by the Court on whether a bank may claim remuneration for the use of capital after the cancellation of a loan agreement.

Furthermore, the Commissioner joined the proceedings before the Słupsk Regional Court under (case ref. no. I C 941/21), in which the Court raised doubts about the hitherto interpretation of the European Union law and decided to ask the CJEU a preliminary question about a possibility of the courts directly invoking Article 47 of the Charter of Fundamental Rights in civil proceedings.

Calendar of main events in 2021

■ January

- On the 10th anniversary of the entry into force of the *Act on equal treatment* the Commissioner for Human Rights summarized its effects and, in a letter to local government officials and the Government Plenipotentiary for Equal Treatment, showed what can be done to more effectively promote the idea of equality in Poland.
- A report by the National Mechanism for the Prevention of Torture was published following ad hoc visits to police stations and detention facilities during autumn 2020 protests following the Constitutional Tribunal's ruling on abortion regulations. Most disturbing behaviour of the police included brutality during the intervention, unjustified use of gas, handcuffs, beatings with batons and insults. In the report, the NMPT experts outlined to the police what to do to ensure that officers do not violate the rights of citizens during arrest, transport and stay at the police station.
- The Pawel Włodkovic Award was ceremonially presented at the CHR Office to Michal Rogalski, who created a database of coronavirus infections that is accessible to everyone and constantly updated. The database was used i.a. by the University of Warsaw team preparing forecasts for the Covid-19 pandemic. This shows how the younger generation is able to actively participate in the establishment of a modern, democratic community.
- The Commissioner presented the CHR's Medal of Honour „ For achievements in the field of human rights protection „ to Agata Nosal-Ikonowicz, a social activist who works to protect the rights of tenants and help people in difficult life circumstances, and to Piotr Ikonowicz – a political activist and socially engaged lawyer who defends the rights of abused people regardless of the circumstances and consequences. Together they help people facing eviction and social exclusion, including those affected by the „Warsaw re-privatization.”

■ February

- A position paper on GetBack S.A. victims was presented by the Commissioner to the Senate Group on GetBack S.A. Thousands of Poles feel aggrieved by the issue.
- The initiative announced by the government to introduce a new tax on revenue earned by the media from advertising was received by the CHR with utmost concern. This may restrict media freedom and freedom of expression, and thus limit the public's right to information.
- The Commissioner summarized the operation of his Office in 2020. Compared to the previous year, the number of cases referred by citizens to the CHR increased by 22 percent in 2020. This is a sign of confidence from people who know that they can count on the CHR during the difficult time of the pandemic. This is a result of the pandemic that has undoubtedly affected the state of human rights in Poland.

■ March

- The Supreme Court upheld the first cassations filed by the Commissioner in favour of citizens punished for violating the ban on movement without just cause, introduced by the government in 2020 in the face of the pandemic. The Supreme Court assessed that the pandemic restrictions blatantly violated the law. The Court found the CHR's cassation appeals to be clearly grounded and acquitted the defendants of the offenses.
- Before the 11th Session of the UN Working Group on Aging (OEWGA), the Polish Commissioner for Human Rights and his Georgian counterpart called for an agreement to speed up work on a convention on the rights of the elderly.
- Andżelika Borys, chairwoman of the Union of Poles in Belarus, was detained in Grodno and is expected to incur liability for „inciting hatred.” Andrzej Poczobut – a journalist – was also detained. The CHR addressed Polish Ministry of Foreign Affairs in this case and keeps monitoring it.

- The Supreme Court acting upon a motion of the CHR held that securing claims – as a civil law institution – cannot be a justification of placing a person who is subject to a proceeding to be rendered a person creating risk at the Gostynin facility.
- Nobody is safe until all of us are safe: vaccination only in wealthy countries will not bring effect. Vaccines must be available worldwide. The CHR organized a debate on facilitating worldwide access to Covid-19 vaccines.

■ April

- In a judgment of 15 April, 2021 (case ref. no. K 20/20) the Constitutional Tribunal held that the clause of the *Act on the Commissioner for Human Rights*, which allows the CHR to perform his functions until his successor is elected is unconstitutional.
- At the plenary session of the Senate, CHR Adam Bodnar presented information on the activities of the Commissioner for Human Rights in 2020. During the meeting, the Senate passed a resolution expressing thanks and appreciation to the CHR for his contribution to the protection of human rights in Poland and expressing opposition to attempts to remove him from office before a new CHR is selected.
- The Court for Competition and Consumer Protection halted the execution of the decision of the President of the Office of Competition and Consumer Protection regarding PKN Orlen's acquisition of Polska Press. Thus, the CHR's request was met.
- In recognition of their contributions to improving the situation of people with disabilities, the CHR and CHR Office were awarded the INTEGRALIA award by the Arrangement of Krakow Universities for Students with Disabilities.
- The Office of the CHR published a set of recommendations from the three Civil Rights Congresses organized by the CHR in the years 2017-2019. The publication is a summary of conclusions from meetings with representatives of civil society in Poland; it diagnoses challenges facing the implementation

of human rights in our country and expresses the expectations of citizens to improve their observance.

■ May

- The CHR presented to the Parliament information on the activities of the Commissioner for Human Rights in 2020 and on the state of observance of human rights and freedoms. – We owe it to the victims of the pandemic to improve the functioning of our state. We cannot move past the deaths of nearly 100,000 people. The state must verify what needs to be corrected and determine where it has made mistakes,” Adam Bodnar said.
- The year 2020 was marked by the social and health crisis caused by the COVID-19 coronavirus pandemic. How these extraordinary circumstances and accompanying restrictions have affected people deprived of their liberty is described in the 2020 report of the National Mechanism for the Prevention of Torture.
- The ECHR ruled, in the Xero Flor case, that a Constitutional Tribunal’s bench including a person elected to an already occupied seat on the Tribunal is not a court appointed „in accordance with the law.” The CHR joined the proceedings.

■ June

- A „Tour de Constitution” with the participation of CHR Adam Bodnar set off from the CHR headquarters to disseminate information about rights and freedoms also in smaller towns.
- On 7 June 2021, the reception of visitors at the CHR Office, which had been suspended for the duration of the pandemic, was restored.

■ July

- The Expert Committee on Senior Persons published a report on „How seniors’ right to health care is being executed during the pandemic, in terms of the availability of COVID 19 vaccinations.”

- Torture is still a problem in Poland. What they are, how to prevent them – this is what the report of the National Mechanism for the Prevention of Torture deals with.
- The CHR presented the CHR's Medal of Honour „For achievements in the field of human rights protection” to Draginja Nadaždin ,a resigning Director of Amnesty International Poland.
- Will the „infected law” stay with us for longer? – was the topic of the conference „Procedures that have suffered from COVID?” held at the CHR Office.
- The CHR submitted a complaint to the European Commission over Poland's failure to implement three important directives of the European Union's CHR on the rights of suspects and/or defendants. The case concerns inter alia ensuring assistance of a lawyer to a detained person prior to questioning and the confidentiality of a suspect's or defendant's contacts with the lawyer.
- The government proposed that the CHR should have a new competence – as a competent body with respect to whistle-blowers. The establishment of such a body is provided for by an EU directive.
- Since the Constitutional Tribunal's judgment of 15 April, 2021. (case ref. no. K 20/20) entered into force, CHR Adam Bodnar ceased performing his duties. He entrusted the management of the Office to his deputy Stanisław Trociuk.
- Marcin Wiącek was appointed Commissioner for Human Rights for the eighth term. He was elected by the Sejm on 8 July 2021. 380 deputies voted for his candidacy, with three votes against and 43 abstentions. On 21 July, the Senate accepted his nomination. On 23 July, Marcin Wiącek took his oath of office before the Sejm and assumed office.
- Aggregate penalties were the subject of the new CHR's first intervention letter, sent to the Minister of Justice.

- The ECHR held that the Supreme Court's Disciplinary Chamber is not a court established in accordance with the law. The case of *Reczkowicz v. Poland*, concerning the status of the Chamber's appointees, was joined by the CHR.
- CHR Marcin Wiącek took part in the Pol'and'Rock Festival.

■ August

- RPO initialled actions on reports of an increasing number of foreigners trying to cross Poland-Belarus border. Also, the first ad hoc visit of the National Mechanism for the Prevention of Torture was held near Usnarz Górny where a group of 50 people was camping in a clearing cordoned by Polish and Belarusian officers. The visiting team checked on their situation and the related state jurisdiction. The conditions in which foreigners are held and the fact that they are denied a possibility to meet their most basic needs and access to medical care, lawyer and the refugee procedure bear the hallmarks of inhuman and degrading treatment.
- European Commission Vice President for Values and Transparency Vera Jourova spoke with Marcin Wiącek about human rights issues. They discussed i.a. the situation on the Polish-Belarusian border.
- The CHR met with representatives of grassroots movements. He mainly talked to them about problems related to respecting the right of citizens to assemble and the conduct of police officers towards people detained during demonstrations.

■ September

- Representatives of the CHR conducted simultaneous and independent visits to the Border Guard units subordinate to the Podlaski and Nadbużański units of the Border Guard.

- Legal problems related to migration and the situation on the Polish-Belarusian border were the subject of an expert seminar on 10 September, 2021 at the CHR Office.
- During the state of emergency, the CHR exercised his powers in an uninterrupted manner. He investigated every case on the spot, even without notice.
- In connection with the humanitarian crisis on the Polish border with Belarus, the CHR, his deputies and Office staff were carrying out simultaneous and independent visits to the Border Guard units subordinate to the Podlaski and Nadbużański units of the Border Guard. An expert seminar on migration and the situation on the border was organized at the CHR Office.

■ October

- Marcin Wiącek spoke with Dunja Mijatović – Council of Europe Commissioner for Human Rights. The conversation focused on the main issues related to the functioning of the judiciary. It was mainly about the ECHR's jurisprudence in cases involving Poland, including the enforcement of rulings on the protection of court independence and the independence of judges.
- The CHR met with ZUS (National Social Insurance Office) President Gertruda Uścińska regarding cooperation in solving the problems of benefit recipients and, in particular, beneficiaries of nursing benefit and nursing allowance.
- Very poor conditions were found by representatives of the CHR at the temporary detention centre for foreigners set up at the military training ground in Wędrzyn. The residential buildings resemble prisons. They are surrounded by concertina wire. A great deal of stress is placed on foreigners by the sounds of gunfire and explosions – and there are those who have left their country due to armed conflicts. Such conditions can exacerbate traumas.
- The 7th Congress of Persons with Disabilities was held at the Office of the CHR. – There is still a lack of equality in access to education, work, health

care, real psychological and financial support, as well as a system of personal assistance for people with disabilities or respite care for their caregivers, anti-discrimination education, promotion of accessibility, access to housing, the CHR said, opening the Congress.

- Cooperation between the CHR and the Office of the President of the Republic of Poland for the sake of protection of citizens' rights was discussed between Marcin Wiącek and minister Andrzej Dera.
- Poland's Chief Rabbi Michael Schudrich made his first-ever visit to the Office of the CHR. Talks were devoted to the humanitarian crisis on the eastern border and to a film on Marian Turski that is being made.
- Social security issues and various forms of business taxation were the main topics of Marcin Wiącek's meeting with Small and Medium Business Advocate Adam Abramowicz.
- The CHR took part in the 7th session of the Citizens' Parliament of Seniors on the topic „Landscape after the pandemic. A Plan of returning to earlier living,” held at the Senate.

■ November

- Reports of a mutiny at the guarded centre for foreigners in Wędrzyn were received with great concern by the CHR. There were no signs indicating a possibility of a mutiny, the Border Guard said. The mutiny ended after negotiations involving police negotiators. Visits by representatives of the Office of the CHR to the Border Guard's guarded centres for foreigners were also continued. The conditions of residence in many of them raise serious concerns.
- The cars with the CHR delegation and the Council of Europe's Commissioner for the Protection of Human Rights were stopped by the Police and Border Guard in the vicinity of the state of emergency zone. Eventually, the

delegations were allowed to carry on, but a police officer stipulated that they could not enter the state of emergency area. This situation is of concern to the CHR.

- CHR Marcin Wiącek met with EU Justice Commissioner Didier Reynders. The conversation focused specifically on events at the border and the judiciary's authority.
- Council of Europe Commissioner for Human Rights Dunja Mijatović and representatives of the Office of the CHR conducted a visit to the border region near the Polish-Belarusian border. CHR Marcin Wiącek spoke with the Commissioner about legal solutions for foreigners.
- Marcin Wiącek handed over the CHR's Maciej Lis Award to Monika Zima-Parjaszewska. The awardee – president of the Polish Association for Persons with Intellectual Disabilities – was awarded inter alia for her work for greater empowerment of people with disabilities by replacing the institution of incapacitation with supported decision-making. She has also co-authored programs for training self-advocates – people with disabilities acting on their own behalf.
- CHR Marcin Wiącek and WOŚP leader Jerzy Owsiak attended the opening of a humanitarian aid point at Michałowo, adapted to provide professional medical assistance.

■ December

- *A Report on the visits to the Polish-Belarusian border area, conducted from late August to December 2021 by representatives of the CHR Office* was handed over to the Prime Minister. The report is classified.
- On 10 December 2021, the CHR presented the Pawel Włodkowic award to representatives of the Michałowo municipal government, in recognition of the

municipality's spontaneous response to the humanitarian crisis in the Polish-Belarusian border zone. When the first people in need of help appeared in the Michałowo area, the small town turned into a hub of humanitarian aid provided to exhausted, hungry and sick migrants. The award was received by representatives of the authorities and services of Michałowo but during the ceremony CHR Marcin Wiącek repeatedly stressed that it belongs to all residents of the municipality, who engaged in providing assistance to those in need.

- The Office of the Commissioner for Human Rights published „The Commissioner for Human Rights’ report on the pandemic: experiences and lessons learned.” It presents opinions of the CHR on main issues related to the management of the COVID-19 pandemic in Poland, such as the introduced restrictions on human rights and freedoms, as well as programmes aimed at mitigating the impact of the pandemic on the citizens (so-called „crisis shields”).
- Marcin Wiącek met with Kenneth Roth, executive director of Human Rights Watch. The CHR presented inter alia the main problems in the field of human rights protection in Poland.
- The rule of law issues, the situation at the Polish-Belarusian border, and the protection of human rights were the topics of Marcin Wiącek’s conversation with German Federal Foreign Minister Annalena Baerbock.

List of selected subject areas covered by the Constitution of the Republic of Poland

1. General principles

Article 30 – Dignity of the person

- *Pro futuro* statements and medical power of attorney;
- Application of the principle of non-refoulement with regard to women-victims of violence;
- The need to amend regulations on dealing with perpetrators of violence against women and domestic violence.

Article 31 – Freedom of the person and its permissible restrictions. The principle of proportionality

- The bill on support and social rehabilitation of juveniles.

Article 32(1) – Equality before the law and equal treatment

- Equality education;
- The Commissioner's recommendations on the protection against unequal treatment in Poland.

Article 32(2) – Principle of non-discrimination

- Problems connected with the census;
- Announcements re. availability of certain services only to people vaccinated against COVID-19;
- Counteracting and combating prejudice-motivated crime.

Article 33 – Equal treatment of men and women

- Effective prevention of gender-based violence;
- The need to improve standards of protection against sexual violence;
- The wage gap.

Article 34 – Right to Polish citizenship

- The bill on passports.

Article 35 – Rights of national and ethnic minorities

- The legal and living situation of Roma people in Poland. The improvement of housing conditions in the Roma settlement in Maszkowice.

Article 36 – Right to diplomatic and consular protection

- Detention of Polish citizens (Andżelika Borys and Andrzej Poczobut) in Belarus.

Article 37 – Jurisdiction of the Polish state

- The bill amending the *Act on foreigners and certain other acts*.

2. Personal freedoms and rights

Article 38 – Right to life

- The need for legislative work aimed at enforcing the Constitutional Tribunal's judgment regarding abortion.

Article 39 – Prohibition of scientific experiments

- In 2021, the CHR Office received no complaints regarding possible breach of the prohibition set out in Article 39 of the Constitution. The received complaints, however, contained the allegations that vaccination against SARS-CoV-2 constituted a medical experiment. The Commissioner did not share such opinions and informed the applicants that the vaccinations did not constitute a medical experiment.

Article 40 – Prohibition of torture and inhuman or degrading treatment

- Observance of human rights by the Police.

Article 41(1) – Personal inviolability and liberty

- Police officers' interventions regarding people participating in social protests.

Article 41(2) and (3) – Rights of detained persons

- Ensuring the possibility of detainee's contact with a lawyer from the outset of detention.

Article 41(4) – Right to humane treatment

- COVID-related problems of prisoners;
- Use of paid telephone sets by prisoners;
- Problems at the National Centre for the Prevention of Dissocial Behaviour.

Article 41(5) – Right to compensation for unlawful detention

- The Senate shared the Commissioner’s arguments that the one-year limitation period for claims concerning compensation for wrongful conviction, remand imprisonment or arrest, which is provided for in Article 555 of the Code of Criminal Procedure, is disproportionately short. Therefore, the Commissioner took a legislative initiative to extend the period to 3 years.

Article 42(1) – Nullum crimen sine lege

- The need to amend the legislation on petty offences.

Article 42(2) – Right to defence in criminal cases

- Poland’s failure to implement the procedures-related directives.

Article 42(3) – Principle of the presumption of innocence

- In 2021, the Commissioner did not receive any complaints concerning breach of the principle of the presumption of innocence.

Article 43 – Prohibition of statutes of limitation

- In 2021, the Commissioner received no complaints concerning the subject covered by Article 43 of the Constitution.

Article 44. – Suspension of the limitation period

- The Commissioner received no complaints concerning this provision of the Constitution.

Article 45 – Right to a court

- Limited participation of lay judges in adjudication;
- Access to courts during the pandemic;
- Non-enforcement of the ECtHR judgment issued in the case of Xero-Flor;
- Lengthiness of proceedings.

Article 46 – Forfeiture of objects

- In 2021, the Commissioner received no complaints concerning violation of Article 46 of the Constitution.

Article 47 – Right to protection of private and family life, honour and good reputation

- The need for legislative work aimed at enforcing the Constitutional Tribunal's judgment regarding abortion.

Article 48 – Right to raise children in accordance with one's convictions

- The announced amendments to the *Act on education*.

Article 49 – Freedom of communication

- Due to the still unchanged legal situation, the Commissioner upholds his objections regarding the threat to the freedom of communication. The threat has its source in a number of regulations which give the police and other services broad powers to use covert operational control and gather telecommunications, postal and internet data practically without limitation.

Article 50 – Right of inviolability of the home

- In 2021, the Commissioner undertook no general interventions concerning the violation of the right set out in Article 50 of the Constitution.

Article 51 – Right to information autonomy

- Processing of personal data within the 2021 National Census of Population and Housing;
- Restrictions on the rights of people unvaccinated against COVID-19.

Article 52 – Freedom of movement within the territory of Poland

- Transport exclusion and plans for rural area development;
- The *Act amending the act on the protection of the state border and certain other acts*;
- Bill on the amendment of the Road Traffic Act and certain other acts;
- Cases concerning administrative fines imposed in spring 2020 for violating the prohibition of movement.

Article 53 – Freedom of conscience and religion

- Planned changes to the rules on attending religion and ethics lessons in public schools.

Article 54 – Freedom of speech

- MPs' bill on the amendment of the Broadcasting Act (the so-called „lex TVN”);
- The bill on the protection of freedom of speech on social networking sites;
- The introduction of a state of emergency in the Podlaskie and Lubelskie voivodships;
- Concentration of media sector companies: acquisition of Polska Press.

Article 55 – Prohibition of extradition of Polish citizens

- Problems connected with extradition proceedings conducted in Poland.

Article 56 – Right to asylum and refugee status

- The humanitarian crisis on the Polish-Belarusian border;
- Amendments to the regulation of the Ministry of the Interior and Administration regarding temporary suspension or restriction of border traffic at certain border crossing points; the established procedure of bringing migrants back to the border line („pushback” procedure);
- The *Act amending the act on foreigners and certain other acts*;
- Difficult situation in guarded centres for migrants.

3. Political freedoms and rights

Article 57 – Freedom of peaceful assembly

- Restrictions on the freedom of assembly (due to the COVID pandemic);
- The lasting prohibition of spontaneous assemblies.

Article 58 – Freedom of association

- The role of judges' associations in protecting the independence and impartiality of judges.

Article 59 – Freedoms of trade unions

- Due to alarming reports about employers violating Article 35 of the *Act on trade unions*, and dismissals of trade union activists covered by special protection of their employment relationship, the Commissioner wrote to the Chief Labour

Inspector requesting him to investigate the cases as such a practice may have a chilling effect on the exercise of the constitutionally guaranteed freedom of association.

Article 60 – Right of equal access to public services

- The *Act on Foreign Service*;
- Employment in the Border Guard.

Article 61(1) – Right of access to public information

- The state of emergency in the border zone;
- Position on the motion of the First President of the Supreme Court regarding the *Act on access to public information*.

Article 61(2) – Right of access to documents and to meetings of collective bodies

- No remote access for citizens to sessions of municipal, district and voivodeship councils during the state of epidemic.

Article 62 – Electoral rights

- Adaptation of polling stations to the needs of people with disabilities;
- Electoral rights of incapacitated persons: the bill amending the *Election Code Act*.

Article 63 – Right to file petitions, requests and complaints

- The bill amending the *Act on petitions*.

4. Economic, social and cultural freedoms and rights

Article 64 – Right to property

- Impossibility to declare an administrative decision as issued in violation of the law (application to the Constitutional Tribunal regarding the amendment of the Code of Administrative Procedure);
- Prohibition of eviction during the pandemic;
- Doubts regarding the planned construction of the Central Transport Hub.

Article 65(1) – Freedom to choose and practice a profession

- The *Act on Foreign Service*.

Article 65(2-5) – Employee rights

- The impossibility to include the period of non-agricultural business activity or work under civil law contracts into the number of years in employment.

Article 66 – Right to health and safety at work and the right to leave from work

- Works on a regulation giving employers the right to test their employees for the presence of alcohol in the body.

Article 67 Right to social security

- „the June pensions“;
- Idle time pay.

Article 68(1) – Right to health protection

- The future of prenatal diagnostics in Poland (in view of the judgment of the Constitutional Tribunal of 20 October 2020).

Article 68(2) – Right of equal access to healthcare services

- Rules on access to vaccination against COVID-19.

Article 68(3) – Right to special health care for vulnerable groups

- Lack of funding for a helpline for children and young people;
- The situation at the Institute of Psychiatry and Neurology.

Article 68(4) – Fighting epidemics and preventing environmental degradation

- Rules on access to vaccination against COVID-19;
- Effectiveness of epidemic restrictions monitoring.

Article 68(5) – Development of physical culture

- Access to sports infrastructure during the pandemic.

Article 69 – Support for people with disabilities

- Problems of disabled people's access to information published on websites of public authorities;

- The need to deinstitutionalize Poland’s system of support for people with disabilities and for seniors;
- The need to ensure that persons with disabilities can fully participate in elections;
- Diverging jurisprudence concerning disability pensions and social benefits;
- The need for statutory regulation of the system of personal assistance;
- Technical conditions to be met by buildings and their location.

Article 70(1) – Right to education

- Announcements concerning the amendment to the *Act on Education*;
- The education system during the pandemic.

Article 70(2) – Free learning

- The Commissioner received no complaints concerning violation of the principle of free education in public schools.

Article 70(3) – Right to operate private schools

- In 2021, no complaints concerning violation of the safeguard provided for in Article 70(3) of the Constitution were considered.

Article 70(4) – Equal access to education

- Education for senior persons.

Article 70(5) – Autonomy of universities

- The bill amending the *Act on higher education and science*;
- Limitation of the possibility to attend clinical classes and internships at hospitals and establishments outside medical universities.

Article 71(1) – The good of the family. Support for families

- The functioning of the foster care system;
- Court proceedings concerning alimony payment;
- Coordination of the social security systems;
- Limited access to nursing benefits for care providers to people with disabilities.

Article 71(2) – Assistance for mothers before and after childbirth

- The situation of juvenile mothers in social rehabilitation centres.

Article 72 – Children’s rights

- Ratification of the 3rd Optional Protocol to the Convention on the Rights of the Child.

Article 73 – Freedom of artistic expression, scientific research and enjoyment of achievements of culture

- Access to sports infrastructure during the pandemic;
- Limited access to sports events for unvaccinated people;
- Reimbursement of the costs of cancelled events (due to COVID-19).

Article 74 – Environmental safety and environmental protection

- Activities of the Commissioner aimed at environmental protection (In 2021, the Commissioner focused on cases brought by individuals. In 2021, he took part in a number of court proceedings in which judgments of importance for environmental safety and protection were issued. They included e.g. the Supreme Court judgment according to which the right to living in a clean environment is not a separate personal good but the violation of air quality standards set out in the legislation may result in a violation of people’s right to health, their freedom and privacy.)

Article 75 – Housing policy and protection of tenants’ rights

- The need to solve the problem of the so-called company flats.

Article 76 – Protection of consumer rights

- Discrepancies in court judgments regarding consumers’ mortgage loans denominated in or indexed to the Swiss francs.

5. Means of protection of rights and freedoms

Article 77(1) – Compensation for damages caused by public authorities

- The Prime Minister applied to the Constitutional Tribunal to find that Article 417(1)(1) of the Civil Code is inconsistent with Article 2, Article 188(3) and Article

193 of the Constitution to the extent that it does not require the Constitutional Tribunal to declare regulations inconsistent with the Constitution, a ratified agreement or an act of Parliament. The Marshal of the Sejm filed a separate application regarding the case. These applications were joined by the Tribunal for the purpose of their joint examination; the proceedings are pending.

Article 77(2) – Right to a court

- Applicability of so-called horizontal complaints.

Article 78 – Right to two-instance proceedings

- Lack of a procedure to verify the correctness of speed measurement in cases where a driving license is suspended.

Article 79(1) – Right to a constitutional appeal

- In 2021 the Commissioner joined 14 proceedings before the Constitutional Tribunal, initiated by constitutional appeal, acting in support of the complainants and their arguments concerning violation of their constitutional freedoms or rights.

Article 80 – Right to apply to the Commissioner for Human Rights

- The Constitutional Tribunal ruled that Article 3(6) of the *Act on the Commissioner for Human Rights* is inconsistent with Article 209(1) in conjunction with Article 2 and with Article 7 of the Constitution (K 20/20). This annulled the principle that an incumbent Commissioner remains in office until a new Commissioner is elected. The judgment therefore removed the normative guarantee of continuity of work of the constitutionally established CHR office. The purpose of the annulled provision of the parliamentary act was not to protect a person holding the CHR office but to protect the effectiveness of the measure provided for in Article 80 of the Constitution i. In view of the Tribunal's judgment it is necessary to undertake legislative work in order to properly regulate the procedure of Commissioner for Human Rights' appointment by

the Parliament so as to avoid situations in which, after the end of the Commissioner's term of office, the position remains vacant

6. Other normative standards

Article 2 – Rule of law

- Consistence of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms with the Constitution;
- The need for legislative work aimed at enforcing the Constitutional Tribunal's judgment regarding abortion;
- Doubts regarding the planned construction of the Central Transport Hub.

Article 4 – Principle of the supreme power of the nation

- The procedure of leaving the European Union and the need to amend the *Act on international agreements*.

Article 22 – Freedom of economic activity

- The situation of business owners during the pandemic;
- The terms and conditions of granting financial aid to farmers.

Article 24 – Labour protection

- Professional work provision via electronic platforms.

Article 217 – Tax imposition system

- The practice of suspending limitation periods for tax liabilities;
- The „Polish Order“.

This summary report has been drawn up based on the full „Report on the activities of the Commissioner for Human Rights and on the state of observance of human and civil rights and freedoms in 2021“. It discusses key issues connected with the protection of civil rights and freedoms as well as the related activities undertaken by the Commissioner for Human Rights.

„2021 was a special year as it saw a record number of 74 279 cases submitted to the Office of the Commissioner for Human Rights. This was a clear expression of trust on the part of all those who turned to the Office for support. It is very encouraging that at the time of crisis emerging nationally and globally so many people turned to the CHR Office to seek assistance with their problems, ask for legal information or for support in solving various issues. I would like to thank everyone for their trust. Let me assure you that people and their dignity, freedoms and rights always come first in our work.“

Marcin Wiqcek

Commissioner for Human Rights



**COMMISSIONER
FOR HUMAN RIGHTS**

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SUMMARY- Report on the activities of the Commissioner for Human Rights in 2021

Annex - data presented in the figures included in the Summary

Table 1. Figure 1. Inflow of applications to the CHR Office, 1988–2021

Year	New cases	Total inflow
1988	44936	52867
1989	18936	29607
1990	18114	22764
1991	17243	23334
1992	20952	30097
1993	27632	40850
1994	33252	51157
1995	29912	46311
1996	28094	44177
1997	31122	48125
1998	30251	46554
1999	34954	50960
2000	31532	49602
2001	33735	55404
2002	30576	52091
2003	32016	55286
2004	33604	59248
2005	27602	51643
2006	26023	49387
2007	29286	57507
2008	27872	61522
2009	31406	65208
2010	26575	56641
2011	27491	58277
2012	28 884	62400
2013	35310	70002
2014	26470	57127
2015	27376	57627
2016	24360	52551
2017	22800	52836
2018	25266	57546
2019	27113	59524
2020	31100	72428
2021	25379	74279

Table 2. Figure 2. Applicant visits to the CHR Office, 2004–2021

Year	Warsaw	Wrocław	Gdańsk	Katowice
2004	3571	1362		
2005	3574	1935	1277	
2006	3318	1391	1372	
2007	3424	985	1137	277
2008	3331	1090	1231	1341
2009	3205	1348	1123	1082
2010	3176	1122	1002	917
2011	3091	1044	962	1226
2012	3197	1035	1090	929
2013	3416	1168	968	1040
2014	3035	958	811	1024
2015	2989	1044	735	888
2016	2436	948	827	984
2017	2205	1065	722	721
2018	2009	847	732	768
2019	1952	874	726	833
2020	635	190	133	208
2021	541	187	102	87

Table 3. Figure 3. Advice provided to applicants by telephone, 2004–2021

Year	Warsaw	Wrocław	Gdańsk	Katowice
2004	20006	1144		
2005	16501	2115	1396	
2006	14978	2126	2372	
2007	16581	1747	2934	434
2008	16517	2053	2736	1811
2009	16645	2231	2320	1764
2010	14744	1939	2279	1801
2011	16284	2047	2188	2264
2012	23329	2156	2111	2037
2013	32977	2138	2084	2484
2014	31919	2058	2000	2281
2015	31446	2158	1974	2496
2016	30107	2389	2280	2006
2017	27521	2643	2251	1797
2018	26514	2073	1574	1812
2019	27380	1824	1595	1596
2020	33120	2045	1267	1857
2021	35715	1926	1255	2045

Table 4. Figure 4. Main addressees of the CHR's interventions in 2021

Addressees	Amount
Supreme Court	170
Ministry of Justice	31
Prime Minister	31
Constitutional Tribunal	26
Administrative courts	25
Ministry of Health	24

Table 5. Figure 5. CHR's main interventions in 2021 by type of procedure

Type	Amount
Problem-specific intervention letters	213
Cassation appeals and complaints	113
Extraordinary complaints	51
Court proceedings joined by CHR	41
Constitutional Tribunal proceedings joined by CHR	25
Proceedings before ECHR and CJEU, joined by CHR	21
Cassation appeals filed with the Supreme Administrative Court	16
Complaints filed with the voivodeship administrative courts	13
Applications to the Constitutional Tribunal to find specific provisions inconsistent with the Constitution	1

Table 6. Figure 6. CHR's general interventions by problem area

Type	Amount of cases
Criminal law	134
Constitutional, international and European law	113
Administrative and commercial law	92
Civil law	71
Equal treatment	50
Labour and social security law	40

Table 7. Figure 7. Examined cases by problem area

Type	Percentage share
Criminal law	36,8%
Administrative and commercial law	20,4%
Civil law	15,4%
Labour and social security law	14%
Others	13,4%

Table 8. Figure 8. Applications to the CHR to file an extraordinary complaint by problem area

Type	Percentage share
Criminal law	42,5%
Civil law	34,9%
Administrative and commercial law	12,3%
Labour and social security law	8,5%

Table 9. Figure 9. Applications filed by the CHR with the Constitutional Tribunal, and constitutional appeals, motions and question of law to the Tribunal, joined by the CHR

Year	TKZ – applications to the Constitutional Tribunal to find laws and regulations inconsistent with higher-level legislation	SK – notifications to the Constitutional Tribunal about joining proceedings initiated by a constitutional appeal	TKP – to the Constitutional Tribunal about joining proceedings initiated by a question of law	WTK – notifications to the Constitutional Tribunal about joining proceedings initiated by a motion
2000	11	7	0	0
2001	21	10	0	0
2002	21	8	0	0
2003	14	9	0	0
2004	21	10	0	0
2005	28	8	0	0
2006	15	27	0	0
2007	26	15	0	0
2008	18	19	0	0
2009	14	12	0	0
2010	10	10	0	0
2011	14	12	0	0
2012	19	12	0	0
2013	27	13	0	0
2014	19	13	0	0
2015	21	12	5	4
2016	24	12	13	6
2017	6	10	4	6
2018	2	3	4	4
2019	1	8	6	4
2020	1	13	5	8
2021	1	14	3	8

Table 10. Figure 10. Applications examined by the Constitutional Tribunal: to find laws and regulations inconsistent with the Constitution; and constitutional appeals, motions and questions of law to the Tribunal, joined by the CHR

Year	Accepted	Rejected	Discontinued	Pending
2006	19	5	18	0
2007	22	6	13	0
2008	12	9	15	1
2009	8	7	11	0
2010	4	9	7	0
2011	16	2	8	0
2012	13	7	11	0
2013	22	7	11	0
2014	15	8	8	1
2015	18	5	18	1
2016	12	9	27	7
2017	8	4	11	3
2018	2	3	1	7
2019	2	2	6	9
2020	0	4	3	20
2021	0	1	0	25

Table 11. Figure 11. Inflow of cases to Regional Representative Offices

Regional office	Total inflow	New cases
Warsaw	66203	23113
Wrocław	2993	881
Gdańsk	1726	587
Katowice	3357	798

Table 12. Figure 12. Cases examined by CHR Regional Representative Offices

Manner of examination	Percentage share
Cases accepted for further proceeding	48,4%
Provision of information, indication of measures the complainant may take	41,7%
Others	9,9%

Table 13. Figure 13. Completion of cases handled by Regional Representative Offices

Manner of completion	Percentage share
Outcome expected by the applicant achieved	16,1%
Proceedings discontinued	5,2%
Outcome expected by the applicant not achieved	78,7%