

Collecting promising practices regarding NHRI's application of the Charter

Analytical overview of practice of EU Charter
of Fundamental Rights application by the
Commissioner for Human Rights (Poland)

Office of the Commissioner
for Human Rights (Ombudsman) (Poland)



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Executive Summary

The present document presents an overview of best practices regarding application of the EU Charter of Fundamental Rights by the Commissioner for Human Rights (CHR), central constitutional human rights institution in Poland. The practices have been selected with the purpose of illustrating the most established types of the Charter application, or the most promising ones in terms of new types of EU law and EU institutional setting application as a benchmark for review of national measures taken with regard to fundamental rights. The examples reflect the Commissioner's competences as provided for by the law and cover typical NHRI's activities, such as reporting and monitoring of fundamental rights compliance, but also interventions in administrative and judicial proceedings, at national and international level.

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Introduction

The aim of this analysis is to present the most promising practices of Charter application by Polish Commissioner for Human Rights. This category, according to adopted methodology, encompasses both the most typical and frequent purposes of Charter application in the Commissioner's work, as well as some individual, singular cases which indicate a new potential of EU fundamental rights law, and the EU law as such, to be used as a basis for alternative or additional effective human rights protection. Those singular examples are of particular interest for the analysis of added value of Charter application at the national level. Some of them, given their singularity, are at this time difficult to assess and conclusively label as recommendable promising practices, as they might change in the future.

The majority of examples provided here relate to the Commissioner's direct or collateral participation in judicial proceedings, and in particular, proceedings before Polish apex courts (Supreme Court, Supreme Administrative Court, Constitutional Tribunal) and international law courts (European Court of Human Rights, Court of Justice of the EU), which contribute to human rights protection through their judgments' binding legal force and broader, general *erga omnes* impact on national judiciary. This report provides an overview of selected cases, accompanied by a short analytical description of identified patterns and opportunities stemming from application of the Charter by the Commissioner on the national level. It is important to note, however, that the report does not cover some of the cases that have been previously presented to the EU Agency for Fundamental Rights and which are accessible on the FRA's website, in particular those included in the Charter Case Law Database¹ or other FRA's or other EU institutions' studies² or other FRA's and other EU institutions' studies.

¹ <https://fra.europa.eu/en/case-law-database>

² [European e-Justice Portal - Member States' best practices on the Charter](#); FRA analysis of the European Commission's stakeholder consultation in 2020 given that one of the four groups was NHRIs; FRA paper [The EU Charter of Fundamental Rights on its 10th anniversary: views of civil society and national human rights institutions](#) ENNHRI paper [Implementation of the EU Charter of Fundamental Rights. Activities of National Human Rights Institutions](#).

Overview of CHR's application of the Charter

Typology of activities of the Commissioner for Human Rights

The Commissioner for Human Rights applies the Charter within the framework of his/her competences as provided for by the Polish law, specified in Article 13-17 of the Act on the Commissioner for Human Rights³. The powers of the Commissioner, who is the central constitutional human rights institution in Poland, allow for his/her participation in administrative, civil and court proceedings with competences equal to those of the public prosecution. This also includes the power to initiate administrative and judicial proceedings and, since 2018, an instrument called 'extraordinary complaint' (*skarga nadzwyczajna*) to the Supreme Court, allowing for the judicial review of final judicial decisions in civil and criminal matters involving violation of human and civil rights. The Commissioner can also initiate a constitutional review before the Constitutional Tribunal and join proceedings initiated by other parties, including the citizens' constitutional complaints. In the past, the Commissioner has also been active in the proceedings before the European Court of Human Rights and the Court of Justice of the European Union, presenting his/her *amicus curiae* opinions in cases involving human rights issues. Any and all powers granted to the Commissioner are strictly connected with the purpose of human rights protection. In practice, the standards most widely used by the Commissioner are the fundamental rights codified in the Constitution of the Republic of Poland, the European Convention of Human Rights and the Charter of Fundamental Rights of the European Union; there are, however, no limitations to protecting rights set forth in other normative acts (e.g. other international conventions on human rights).

The Commissioner's mandate is limited to the control of 'organs, organizations and institutions responsible for the observance and implementation of those rights and liberties, the law and principle of coexistence and social justice' (Article 1 para. 3 of the Act). This definition includes state and local authorities as well as 'bodies of cooperative, social, professional and socio-occupational organizations, bodies of organizational units which have legal personality' although the Commissioner can't control private actors if they do not perform public tasks. Competences with regard to courts of law are included in Commissioner's mandate, but certain limitations apply, safeguarding the independence of the judiciary. The Commissioner can act on his/her own initiative (*ex officio*) if he/she has become aware of any violation of human or civil freedoms or rights (Article 8 para. 1

³ <https://bip.brpo.gov.pl/en/content/act-commissioner-human-rights>

of the Act). The Commissioner may request a competent police or public prosecution authority to investigate a problem; he/she may examine prosecution and court files as well. The Commissioner may also intervene in form of recommendations including general recommendation letters addressed to all, including high-level, state representatives' interventions, if he/she concludes that the reasons behind the infringements are faulty regulations or erroneous interpretation of the law, and that they are of a systemic nature.

In general, the Commissioner is a legal actor in diverse legal proceedings and performs other 'soft' tasks to ensure fundamental rights compliance, such as advisory activity including proposals for legal acts, and participation in public legislative consultations, encouraging ratification and implementation of international standards, monitoring and reporting, as well as some educational, promotional and research activities⁴. According to the adopted methodology, the examples presented below have been classified respectively as following types of activity: **complaints handling and litigation, advisory functions (including impact assessment and legal scrutiny), human rights monitoring, reporting, human rights education, awareness raising.**

Analytical overview of collected practices (Charter's added value)

As mentioned in the introduction above, this study aims to both depict some already established and frequently used patterns of application of the Charter's provisions, as well as identify new potential of EU fundamental rights, including the Charter, based on analysis of certain individual cases. Both categories encompass cases in which the Charter has played an additional, self-standing role as a legal basis for alternative fundamental rights check, and, thus, has had an identifiable added value when compared to other legal instruments available to the NHRIs. This **added value** may arguably stem from **the content of the Charter** as such, from **its authority** linked to the position of the CJEU and, finally, from its **institutional setting**, especially due to the primacy and autonomy of EU law which has been used with increasing frequency as an alternative fundamental rights review instrument.

Added value of the Charter stemming from its content

Many of the analysed cases show that the added value of the Charter can result from the simple fact that the Charter is one of the most recent human rights instruments, compared to other acts codifying such rights and freedoms. Some of the rights and freedoms enshrined in the Charter have **more specific definitions** which constitute, in many cases, a more solid legal basis for fundamental rights review. This is particularly apparent, for example, in cases of equality principle infringements: non-discrimination principle set forth in the Charter contains broader and more detailed catalogue

⁴ For a detailed description of the Commissioner for Human Rights' competences see more in: "The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds (Baseline Report 1)", pp. 11-13 and "Mapping of national human rights structures (Polish chapter)", pp. 14-17.

of expressly named discrimination grounds. This has been of particular importance in cases of large, but vaguely defined minorities (vulnerable persons), as well as smaller minorities which are often overlooked by legislation (transgender persons).

See cases in the annex:

- 1.1 *Pre-trial detention of persons with intellectual disabilities in an appropriate treatment facility*
- 1.2 *Determination of an individual's ability to work for the purposes of granting a social pension benefit*
- 1.3 *Nursing benefit for caregivers of disabled children;*
- 1.5 *Discrimination in the workplace, due to gender identity (uniform case)*
- 2.3 *Amendment of national Broadcasting Act (prohibition of discriminating content inciting hate or violence)*
- 3.2 *Treatment of transgender persons in penitentiary isolation*

The **added value resulting from concretization** of a given right or freedom in the Charter also involves its possible **linkage with related EU secondary law** containing specific rights and mechanisms that add to the general Charter right or freedom. This applies in particular to cases involving discrimination, breaches of data protection or migration.

See cases:

- 1.9 *Pushbacks of migrants arriving from territory of Belarus to the state border (collective expulsions);*
- 1.10 *Pushbacks of migrants arriving from territory of Belarus to the state border (individual assessment of international protection conditions);*

In some of the cases, invoking the Charter, and specifically where the Charter stipulates new rights, had a decisive impact on the final outcome. In such cases the Charter was helpful in that it provides for several expressly mentioned rights which in national law are only present in form of a constitutional objective or directive, without being formally recognized as an individual right. Thus, the Charter saves the effort of convincing state authorities to develop an advanced legal interpretation of other, more general, constitutional norms in order to fulfil the claim of a given individual.

See case 1.11. Rental of social housing resources in Cracow

Authority of the Charter and the CJEU

The added value of the Charter at the national level may also stem from the authority of the act as a part of primary law of the European Union, on level equal to the EU treaties, as well as the strong position of the CJEU, which interprets the Charter. The CJEU is a central, apex instance of jurisdiction of the European Union, the judgments of which are binding on all its Member States. In some of the

analysed cases, it is clear that state authorities, initially reluctant to implement some of the NHRI's recommendations, felt obliged to do so once such recommendations were confirmed (in the same or similar case) in a judgment of the CJEU. At present, this mechanism is used by the NHRI and national courts in cases concerning, for example, rule of law issues, by referring to an established and developed case law on that matter. This applies both to litigation and advisory actions.

See cases

**1.4 Reform of justice system of 2018
(rule of law and judicial independence)**

2.1 Forest management plan for the Białowieża Forest District (admissibility of judicial review);

With regard to applying the Charter as ground for formulating arguments, it is interesting to note that the authority of CJEU's case law may extend also to judgments not related to the given country. In one of the analysed cases, application of the Charter included a reference to an already existing case-law based on the Charter in similar factual circumstances but related to another country.

See case 2.2 Amendment of Supreme Court judges' retirement age

Institutional setting of the Charter

The Charter may also bring in significant added value due to its institutional setting, i.e. its position in the hierarchy of norms in the EU law as such, but also due to the general framework of relations between EU law and national legal orders. In many cases, EU law and the Charter may supersede the national law and change the outcome of the legal analysis in much more effective way than national constitutions. This results from the differences between conditions governing control of constitutionality vs those of compliance with EU law by judges and bodies of national administration. It is important to note that EU law allows for a broader and more effective control of national measures, with view to the possibility that constitutional review by common and administrative judges under national law may be restricted. The EU law compliance review can be triggered and executed more easily following the principles of primacy, direct effect and *effet utile* which, brought together, can allow the judge or the organ to execute EU law check also in cases where such possibility has not been expressly provided for in the national legislation.

In this context, bearing in mind recent developments concerning rule of law and justice system in Poland, value of the Charter as an instrument of additional check of fundamental rights compliance was far from negligible.

Since the CEU judgment in Portuguese judges case⁵, it has become clear that the principle of effective legal (judicial) protection has to be ensured by the member states. As a consequence, a number of issues fell within the scope of application of the EU law, being therefore subjected to Eu-

⁵ CEU judgment of 27 February 2018 in case C-64/16 – Associação Sindical dos Juízes Portugueses v Tribunal de Contas, ECLI:EU:C:2018:117.

European standards of fundamental rights protection enshrined in the Charter. As matters subject to EU law, they have also been referred to by national courts to the CEJ and appropriately examined.

This was especially helpful in cases where the standards of fundamental rights protection at national level were undermined due to deficiencies of human rights compliance review by competent institutions (for example constitutional review or other checks by national supervision institutions with human rights remit). As such, EU law, and particularly the preliminary judgment reference procedure, have become a real, parallel instrument for alternative fundamental rights review.

See cases

1.4 Reform of justice system of 2018 (rule of law and independence of courts)

1.7 Judges' and prosecutors' obligation to submit declarations of membership in associations (judicial independence)

The advantage of invoking EU law and the Charter is also visible in cases where no relevant human rights standard exists for a given issue, it is difficult to establish such a standard, or when the national level of protection is, in actuality, much lower. In such scenarios, applicability of EU law can be triggered by reference to a cross-border situation or by having exercised one of the Treaty freedoms of the internal market. In case of some civil rights concerning sex and parenthood, the EU law offers a much more established and developed standard of protection, providing potential legal arguments supplementary to those based on general constitutional principles or other provisions of national law. There are also cases which are purely European in nature (governed only by EU law). In both scenarios the applicable EU standard may be used by NHRI in a more general way to change the national law governing similar situations. Similar logic applies to invoking the ECtHR case law even if unrelated to the given country as such, by following the Charter and its Article 52 para. 3.

See cases

1.8 Refusal of transcription of birth certificate stating parenthood of same-sex couple

2.4 Incapacitated persons' right to vote

Finally, bearing in mind that the Charter constitutes a binding act of primary law, which is a common legal reference for all EU institutions and authorities of Member States implementing EU law, the added value of the Charter may result from the interplay of parallel application of the Charter by several institutions. This is particularly true of cases in which the European Commission is directly involved or cooperates in investigating a given issue and, by applying infringement procedure, undertakes a multi-pronged approach to resolve it. In some of the most serious cases, the Commission may decide to exercise external pressure on the given Member State to implement EU law, CJEU judgment or its own recommendations properly; such an action may effectively complement NHRI's effort to ensure protection of fundamental rights for concerned individuals. Such interinstitutional cooperation may also consolidate certain standards of human rights protection on a larger scale.

See cases

- 1.6 *Local and regional authorities' resolutions on "LGBT-free zones" and conditionality of EU funds*
- 2.1 *Białowieża forest case and CJEU's judgment in that case,*
- 1.7 *Judges' and prosecutors' obligation to submit declarations of membership in associations (judicial independence)*

Conclusions

In the past few years application of the Charter has been becoming increasingly important in the fundamental rights protection system. The Commissioner for Human Rights, as Polish NHRI, has developed some new patterns of Charter application in circumstances which allow it to bring a real added value, compared to other human rights protection instruments. The particularly interesting examples involve the institutional setting in which the Charter operates, and which complement other types of identified potentials of bringing added value (content and authority of the Charter). Some of them are intrinsically linked to principal features of EU law as such and its relationships with national legal orders. In this context, the interplay between alternative institutional checks of fundamental rights compliance, especially in EU - Member State authorities juxtaposition, has proven to unlock a particularly effective way of using the Charter to address human rights issues on the national level.

Specific examples of promising practices on NHRI's Charter application

1. Complaints handling and litigation

1.1. Pre-trial detention of persons with intellectual disabilities in an appropriate treatment facility

THEMATIC AREA	DETAILED INFORMATION
NHRI	Commissioner for Human Rights (<i>Rzecznik Praw Obywatelskich</i>)
Purpose of Charter application	Complaints handling and litigation
Date of use/decision/event	13.05.2019
Detailed description of facts (of the case, the event, the file etc)	The Commissioner for Human Rights received a letter from the parents of a temporary detainee because, in their opinion, their son's physical health and cognitive functioning did not allow for his stay in penitentiary isolation. He had been an intellectually disabled person since birth. In childhood, the degree of his disability was diagnosed as mild, further expert opinions determined a disability of a moderate degree, at its lower limit.
Legal question	Necessity of pre-trial detention at an appropriate treatment facility (Article 260 of the Code of Criminal Procedure) and proceedings for placement in a psychiatric institution as a protective measure.
Final outcome (of the case, the event, the file etc)	A protective measure in the form of placement in a psychiatric institution was applied and the inmate was released from the penitentiary unit
Relevance of the Charter	In the address of the Deputy Commissioner to the Regional Court in Radom, the Charter of Fundamental Rights was invoked to emphasise the importance of special treatment of persons from the so-called „vulnerable groups”, who include those with intellectual disabilities - depriving them of their liberty prior to conviction should be treated as a measure of last resort, which must be proportionate and applied in conditions adapted to their needs.
Reference	https://bip.brpo.gov.pl/pl/content/rpo-o-prawach-aresztowanych-w-podmiotach-leczniczych

1.2. Determination of an individual's ability to work for the purposes of granting a social pension benefit (inability to work resulting from non-medical conditions)

THEMATIC AREA	DETAILED INFORMATION
NHRI	Commissioner for Human Rights (<i>Rzecznik Praw Obywatelskich</i>)
Purpose of Charter application	Complaints handling and litigation
Date of use/decision/event	30.01.2020
Detailed description of facts (of the case, the event, the file etc)	<p>The case concerned an appeal against the decision of the pension authority refusing to grant the right to a social and survivor pension. The decision was first upheld by the District Court in Gdańsk, wherein the judgement was based upon expert opinions of a psychologist and a psychiatrist, who claimed the person in question was not completely unable to work or to exist independently. Upon appeal, the Court of Appeals set aside the judgement and referred the case back to court of first instance.</p> <p>The Commissioner for Human Rights joined the proceedings before the court of second instance, wherein he claimed that the existence and degree of inability to work is not determined solely by a medical assessment stating the presence of certain disease entities and their impact on the functioning of the human body. The determining factor should be the legal assessment taking into account both medical and other circumstances, including in particular the level of the insured's qualifications, his or her possibilities of earning income based on these qualifications, the possibility to perform his or her current job or take up another job and the advisability of professional retraining, taking into account the type and nature of work performed so far, the level of education, age and psychophysical predispositions.</p>
Legal question	The right to a social and survivor pension
Final outcome (of the case, the event, the file etc)	In its judgment of 30 January 2020, the Court of Appeals dismissed the appeal of the pension authority, sharing the arguments raised by the Insured's ex officio attorney and the Commissioner for Human Rights. The court emphasised that in order to determine whether a person is able/unable to work, it is not sufficient to establish the person's medical condition alone, but rather that the entirety of the person's social, family and personality-related circumstances should also be taken into account.
Relevance of the Charter	<p>Article 34(1) of the Charter states that the Union recognises and respects the right to social security benefits and social services providing protection in cases such as maternity, illness, accidents at work, dependency or old age and in the event of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.</p> <p>Furthermore, in accordance with Article 47 of the Charter, everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be provided to persons who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.</p>

1.3. Nursing benefit for caregivers of disabled children

THEMATIC AREA	DETAILED INFORMATION
NHRI	Commissioner for Human Rights (<i>Rzecznik Praw Obywatelskich</i>)
Purpose of Charter application	Complaints handling and litigation
Date of use/ decision/event	24.09.2020
Detailed description of facts (of the case, the event, the file etc)	<p>The case concerned proceedings related to a complaint against the decision of the Self-Government Appeal Board to uphold the decision of the Head of the Municipal Social Assistance Centre refusing to grant the individual the right to a nursing benefit on the grounds that she had given up employment or other gainful employment in connection with caring for her mother who was severely disabled.</p> <p>The Commissioner decided to intervene in the proceedings. In justifying his position, he referred to the judgment of the Constitutional Tribunal of 21 October 2014 issued in the case ref. no. K 38/13 and pointed out that the consequences of its non-implementation and failure to make legislative changes in this regard cannot be borne by the citizen.</p>
Legal question	entitlement to social security benefits
Final outcome (of the case, the event, the file etc)	The Voivodship Administrative Court announced a judgment in which it upheld the complaint and revoked the decision of the Self-Government Appeal Board and the preceding decision of the Head of the Municipal Social Assistance Centre, refusing to grant the individual the right to a nursing benefit on the grounds of her resignation from employment or other gainful employment in connection with the care of her mother, who was severely disabled.
Relevance of the Charter	<p>Article 34(1) of the Charter states that the Union recognises and respects the right to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age and in the event of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.</p> <p>In accordance with Article 26 of the Charter, the Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.</p> <p>Furthermore, in accordance with Article 47 of the Charter, everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in accordance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be provided to persons who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.</p>
Reference	<i>Case number:</i> III SA/Gd 320/20

1.4. Reform of justice system of 2018 (rule of law and judicial independence)

THEMATIC AREA	DETAILED INFORMATION
NHRI	Commissioner for Human Rights (<i>Rzecznik Praw Obywatelskich</i>)
Purpose of Charter application	Complaints handling and litigation
Date of use/ decision/event	04.02.2021
Detailed description of facts (of the case, the event, the file etc)	<p>In 2018, Polish Parliament amended several acts governing the justice system and changed, among others, the provisions on the procedure of judicial appointment by the National Council of Judiciary. The newly adopted law provided for the composition of the Council which is not compliant with Polish Constitution, with Constitutional Tribunal case-law on that matter already existing at that time. The Commissioner decided to join several cases before national courts, CJEU and ECHR to present his opinion on the issue. Among other examples, in his <i>amicus curiae</i> opinion filed to the ECHR in case of Advance Pharma Sp. z o.o v. Poland (Application no. 1469/20, the Commissioner included an extended argumentation based on the EU Charter and the CJEU's case-law in a case concerning the same legal measures.</p> <p>Cases before CJEU with Commissioner's participation: C-824/18 A.B. i in., C-487/19 W.Ż., C-508/19 Prokurator Generalny, C-132/20 Getin Noble Bank, -491/20 Sąd Najwyższy i in., C-521/21 RPO;</p> <p>Cases before the ECHR with Commissioner's participation: Guðmundur Andri Ástráðsson v. Iceland (26374/18), Grzęda v. Poland (43572/18), Sobczyńska and others v. Poland (62765/14, 62772/14, 11708/18), Advance Pharma v. Poland (1469/20), Tuleya v. Poland (21181/19), Biliński v. Poland (13278/20), Pionka v. Poland (26004/20), Juszczyszyn v. Poland (35599/20)</p>
Legal question	Does the right to effective judicial protection (Article 47 of the Charter and Article 6 of the ECHR) entail that the adjudicating panel of judges must be composed in accordance with the law (requirement of tribunal 'established by law') understood as the existence of valid legal basis, including the question of its compliance with the national constitutional law?
Final outcome (of the case, the event, the file etc)	The ECHR in its judgment of 3 February 2022 declared violation of Article 6 para 1 of the Convention (right to independent and impartial tribunal). The judgment has not been implemented as of the present moment.
Relevance of the Charter	The EU Charter and CJEU's case-law which preceded the ECHR's final judgment in that case (CJEU judgment of 19 November 2019, C-585, 624 and 625/18 A.K. and others), has served as a strong argument to convince the Court to declare violation of the applicant's rights under the European Convention of Human Rights, given that the same measure has been already declared incompatible with equivalent fundamental rights enshrined in the Charter by another apex supranational human rights jurisdiction.
Reference	<p>https://bip.brpo.gov.pl/pl/content/stanowisko-rpo-dla-etpc-ws-statusu-powolanych-do-sn, https://bip.brpo.gov.pl/sites/default/files/Amicus_curiae_4.02.2021.pdf</p> <p>Barcz, Jan and Grzelak, Agnieszka and Szyndlauer, Rafał. Problem Praworządności W Polsce W Świetle Orzecznictwa Trybunału Sprawiedliwości Ue (2021). Księga I. Vol. I. Dom Wydawniczy Elipsa, 2022. doi:10.2775/401187, p. 1883 ff⁶.</p>

⁶ https://poland.representation.ec.europa.eu/system/files/2022-12/Respect%20for%20the%20rule%20of%20law%20principle%20in%20Poland%20in%20the%20light%20of%20the%20case%20law%20of%20the%20Court%20of%20Justice%20of%20the%20EU%20%282021%29%20-%20Volume%202_PDF%20final.pdf.

1.5. Discrimination in the workplace, due to gender identity (uniform case)

THEMATIC AREA	DETAILED INFORMATION
NHRI	Commissioner for Human Rights (<i>Rzecznik Praw Obywatelskich</i>)
Purpose of Charter application	Complaints handling and litigation
Date of use/decision/event	02.09.2021
Detailed description of facts (of the case, the event, the file etc)	The Commissioner for Human Rights replied to the Prosecutor General's extraordinary complaint against a court judgment in an employment discrimination case based on gender identity. In the facts of the case, the concerned person's employment was terminated because of their refusal to wear a men's uniform in the workplace.
Legal question	Employment discrimination based on gender identity
Final outcome (of the case, the event, the file etc)	Dismissal of the Prosecutor General's extraordinary appeal by the Supreme Court
Relevance of the Charter	Article 21(1) of the EU CFR is an intrinsic source of an individual's right which can be invoked directly in a dispute concerning one of the areas covered by Union law (directly effective rule of law). By contrast, it imposes an obligation on national authorities to guarantee the full effectiveness of the right conferred on the individual by rejecting the result of an interpretation of the concept of gender that results in a breach of the principle of equality (interpretative benchmark)
Reference	https://bip.brpo.gov.pl/pl/content/oddalic-skarge-nadzwyczajna-pg-osoba-transplciowa-rpo-sn-wyrok

1.6. Local and regional authorities' resolutions on "LGBT-free zones"

THEMATIC AREA	DETAILED INFORMATION
NHRI	Commissioner for Human Rights (<i>Rzecznik Praw Obywatelskich</i>)
Purpose of Charter application	Complaints handling and litigation
Date of use/decision/event	13.02.2022
Detailed description of facts (of the case, the event, the file etc)	The Commissioner for Human Rights has relied on the Charter in his intervention to the Minister of Funds and Regional Policy regarding the resolutions establishing so-called "LGBT-free zones" enacted by certain local and regional authorities. <i>These resolutions have already been subject to court proceedings</i> ⁷ , following the Commissioner's complaints, and consequently, all those challenged judicially have been held to be unlawful. However, not all local and regional authorities implemented the court rulings. Thus, in the light of the new financial perspective, the Human Rights Commissioner inquired how the Ministry aims to assess the compliance of EU funds with the horizontal principle of equal treatment and non-discrimination, as protected under Article 21 (1) of the Charter.
Legal question	What action will be taken to verify the compliance of EU funds spending by local and regional authorities with the horizontal principle of equal treatment and non-discrimination?
Final outcome (of the case, the event, the file etc)	Minister Grzegorz Puda replied that it is of the utmost importance to ensure that this condition - included in the 'Partnership Agreement for 2021-2027' - is adhered to by all local authorities - beneficiaries of European funds. The exchange between the Minister and the Commissioner regarding future steps is ongoing.
Relevance of the Charter	<i>The principle of equal treatment and non-discrimination, as protected under Article 21 (1) of the Charter were held as a benchmark for the assessment of the lawfulness of the resolutions.</i>
Reference	https://bip.brpo.gov.pl/pl/content/rpo-uchwaly-anty-lgbt-fundusze-europejskie-mfipr

⁷ See Baseline report on the potential for strengthening the fundamental rights situation through a stronger use of the EU Charter of Fundamental Rights in Poland, 2023, p. 17.

1.7. Judges' and prosecutors' obligation to submit declarations of membership in associations (judicial independence)

THEMATIC AREA	DETAILED INFORMATION
NHRI	Commissioner for Human Rights (<i>Rzecznik Praw Obywatelskich</i>)
Purpose of Charter application	Complaints handling and litigation; advisory functions, including impact assessment and legal scrutiny
Date of use/decision/event	05/06/23 (still pending)
Detailed description of facts (of the case, the event, the file etc)	<p>On 20th December 2019 the Polish Sejm adopted one of several acts on justice system reform amending the Act on Common Courts, Act on Administrative Courts, Act on the Supreme Court, Act on Public Prosecutors. This Act introduced, among others, an obligation for judges and prosecutors to file declarations on their membership in associations, regardless whether their activity in such associations is or is not related to justice system and public affairs. The declarations are subject to publishing in the official public information system which is openly available online.</p> <p>The Commissioner for Human Rights expressed serious concerns regarding this measure and its compliance with the right to private life and data privacy in the course of the legislative procedure. The scope of the measure went, arguably, far beyond the objective of transparency of justice system and could lead to serious infringements of judges' and prosecutors' rights as they were obliged to publicly share informations which could reveal their convictions, belief, religion or sexual orientation, areas which are covered by constitutional rights of every citizen, as well as produce a chilling effect on their exercising the freedom of association.</p> <p>Following the legislators' refusal to refrain from introducing the discussed obligation, the Commissioner filed a motion to the National Data Protection Authority (<i>Prezes Urzędu Ochrony Danych Osobowych</i>) to restrain the application of the measure and suspend the processing of personal data in question. After the Authority's refusal to act, the Commissioner challenged its decision before the Administrative Court. The case is now pending in the Supreme Administrative Court, the highest instance of administrative justice in Poland. In the cassation, the Commissioner presented an extended argumentation based on EU data protection law and the Charter (Articles 7, 8, 10).</p> <p>In the meantime, after the Commissioner's numerous monitoring reports on the rule of law recent developments in Poland, the measure has also been included in the European Commission's referral to the CJEU initiating infringement procedure against Poland with regard to a set of legal provisions undermining judicial independence.</p>
Legal question	Are Member States allowed to adopt measures that obligate judges to divulge information on their association membership; are such measures compliant with GDPR provisions and the right to private life, data privacy and freedom of thought, conscience and religion (Articles 7, 8, 10 of the Charter), especially when such measure may considerably undermine judicial independence and, therefore, the right to judicial protection enshrined in Article 47 of the Charter?

THEMATIC AREA	DETAILED INFORMATION
Final outcome (of the case, the event, the file etc)	The administrative judicial proceedings concerning the National Data Protection Authority's decision are still pending (cassation in the final instance). Nevertheless, on the 5th June 2023, the CJEU issued the judgment in case C-204/21 (<i>Commission v. Poland</i>) in which it declared that by adopting the discussed measure the Republic of Poland has infringed on the right to respect for private life and the right to protection of personal data guaranteed by the Charter of Fundamental Rights and in Articles 6 and Article 9 of the GDPR.
Relevance of the Charter	The EU law, including the Charter, has played a major role in the proceedings and has allowed to bring the issue to the level of EU law as an additional benchmark of fundamental rights compliance, together with national constitutional law and the ECHR. Application of EU law allowed for a broader and more effective control of the measure, given that the possibilities of constitutional review by common and administrative judges under national law are much restricted. This has also allowed for additional institutional check, including the European Commission's action in infringement procedure, which has been helpful given persisting doubts about the independence of the Polish Constitutional Tribunal.
Reference	The Commissioner's litigation applications, appeal and cassation available on the website of the Office ⁸ .

⁸ <https://bip.brpo.gov.pl/pl/node/17822/revisions/17873/view>; <https://curia.europa.eu/juris/document/document.jsf?text=&docid=274364&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=253461>

1.8. Refusal of transcription of birth certificate stating parenthood of same-sex couple

THEMATIC AREA	DETAILED INFORMATION
NHRI	Commissioner for Human Rights (<i>Rzecznik Praw Obywatelskich</i>)
Purpose of Charter application	Complaints handling and litigation
Date of use/decision/event	24.06.2022
Detailed description of facts (of the case, the event, the file etc)	The right to private and family life as protected under Article 7 of the Charter, was invoked as a protection against the decisions of the Polish Civil Registrar (<i>Urząd Stanu Cywilnego, "USC"</i>) in the case of a Polish child born abroad to a same-sex couple, who was denied a transcription of a Polish birth certificate, necessary to obtain a Polish identity document, as Polish law did not accept parenthood of same-sex couples. The Human Rights Commissioner filed for the Voivodship Administrative Court in Kraków to ask the Court of Justice for a preliminary ruling, which it delivered on 24 June 2022 (see Case C-2/21).
Legal question	Is denial of transcription of birth certificate stating parenthood of same-sex couple by Polish authorities compliant with EU law as a refusal to recognition of parent-child relationship established while exercising freedom of movement and breach of equality principle?
Final outcome (of the case, the event, the file etc)	The CJEU held that Polish authorities are required to recognise the parent-child relationship, no matter the parent's gender, for the purpose of permitting that child to exercise without impediment, with each of their two parents their right to move and reside freely within the territory of the Member States in accordance with the principle of the freedom of movement as well as the right to private and family life.
Relevance of the Charter	The right to private and family life as protected by Article 7 of the Charter protected the party in proceedings
Reference	https://bip.brpo.gov.pl/pl/content/rpo-pytanie-prejudycjalne-dzieci-rodzicow-jednej-plci-postanowienie-tsue

1.9. Pushbacks of migrants arriving from territory of Belarus to the state border (collective expulsions)

THEMATIC AREA	DETAILED INFORMATION
NHRI	Commissioner for Human Rights (<i>Rzecznik Praw Obywatelskich</i>)
Purpose of Charter application	Complaints handling and litigation
Date of use/decision/event	15.09.2022
Detailed description of facts (of the case, the event, the file etc)	The Commissioner filed a complaint with the Voivodship Administrative Court in Białystok against turning back to the state border line (so-called pushback) of a family of seven from Iraq on the basis of the Ordinance of the Minister of Internal Affairs and Administration of 13 March 2020 on temporary suspension or restriction of border traffic at certain border crossings.
Legal question	Whether the ordinance was issued within the scope of the statutory authorisation and whether the act of turning aliens back to the border line complies with national and international law, including EU law.
Final outcome (of the case, the event, the file etc)	The Court declared the contested action ineffective. The Court shared the Commissioner's view that, by introducing the procedure for turning aliens back to the border line, the Ministry of Internal Affairs and Administration exceeded its statutory authorisation, as the Act on the Protection of the State Border, indicated as the legal basis for the border ordinance, only empowered the Minister to order a temporary suspension or restriction of traffic at border crossings. It did not, however, empower the authority to establish any procedure for turning back or expelling aliens from the territory of the Republic of Poland. The Court also shared the position of the Commissioner, according to which application of the procedure for returning aliens to the border regulated by the Border Guard Ordinance infringes the right of aliens to apply in Poland for international protection (refugee status), and thus violates Article 56(2) of the Constitution of the Republic of Poland and Article 18 of the Charter of Fundamental Rights of the European Union, which guarantee this right.
Relevance of the Charter	In his complaint, the Commissioner pointed out that the contested action violated, inter alia, Article 18 (Having been returned to the border, the aliens were de facto denied the possibility to apply for international protection, which is guaranteed by this article) and Article 19 of the Charter of Fundamental Rights of the European Union, which prohibits collective expulsions, which in the Commissioner's view was the case here.
Reference	https://bip.brpo.gov.pl/pl/content/wsa-rpo-pushbacki-sprzecznosc-prawo-polskie-miedzynarodowe-uzasadnienie

1.10. Pushbacks of migrants arriving from territory of Belarus to the state border (individual assessment of international protection conditions)

THEMATIC AREA	DETAILED INFORMATION
NHRI	Commissioner for Human Rights (<i>Rzecznik Praw Obywatelskich</i>)
Purpose of Charter application	Complaints handling and litigation
Date of use/decision/event	27.10.2022
Detailed description of facts (of the case, the event, the file etc)	The Ombudsman filed a complaint with the Voivodship Administrative Court in Białystok against the decision of the Commander of the Border Guard Post in Bobrowniki concerning the departure from the territory of the Republic of Poland of two aliens - an adult male and an unrelated minor.
Legal question	Whether issuing an order for aliens to leave the territory of the Republic of Poland, the consequence of which is returning such aliens to the state border line, without examining the individual situation of the person, is compliant with national and international law, including EU law.
Final outcome (of the case, the event, the file etc)	Voivodship Administrative Court reversed the challenged decision. The Voivodship Administrative Court shared the Commissioner's view that he had reasonably alleged that the Border Guard had wrongly assumed that the minor was the child of another person and had issued a single decision against both of them. Such an action violates, primarily, Article 4 of Protocol No. 4 to the ECHR, according to which collective expulsion of aliens is prohibited. In the opinion of the Voivodship Administrative Court, due to so-called non-refoulement principle (under Article 33(1) of the Refugee Convention and under Article 19 of the Charter of Fundamental Rights of the EU), applicable to given circumstances, the Border Guard should have also instructed the detained aliens about the possibility to apply for international protection; additionally, the Guard should have examined their situation in the context of the threats described in this principle.
Relevance of the Charter	The Ombudsman accused the contested decision of, inter alia, violating Articles 18 and 19 of the Charter of Fundamental Rights of the European Union by failing to apply them and preventing aliens from submitting applications for international protection, despite their desire to do so, and then returning the aliens to the border line, i.e. de facto to Belarus, where they were in danger. The Voivodship Administrative Court shared the Ombudsman's position regarding the violation of Article 19 of the CFR.
Reference	https://bip.brpo.gov.pl/pl/content/rpo-maloletni-cudzoziemiec-wydalenie-bialorus-skarga-wsa-wyrok

1.11. Rental of social housing resources in Cracow

THEMATIC AREA	DETAILED INFORMATION
NHRI	Commissioner for Human Rights (<i>Rzecznik Praw Obywatelskich</i>)
Purpose of Charter application	Complaints handling and litigation
Date of use/decision/event	21.06.2023
Detailed description of facts (of the case, the event, the file etc)	On the basis of the applicant's application, in which she indicated that Resolution No. XXX/794/19 of the Krakow City Council of 5 December 2019 on the rules for renting premises forming part of the housing resource of the Municipality of Krakow and temporary premises was not compliant with the statutory provisions, the Commissioner for Human Rights filed a complaint with the Voivodship Administrative Court in Krakow, challenging the resolution in its entirety (RPO case ref. no. : BPK.7211.6.2022.SP).
Legal question	Conditions for satisfying housing needs from the housing stock of the Municipality of Krakow.
Final outcome (of the case, the event, the file etc)	Paragraph 23(1)(1), par. 28(5)(1) and par. 33 of the appealed resolution as well as par. 1 of Appendix No. 4 of Resolution No. XXX/794/19 of the Krakow City Council of 5 December 2019 on the rules for renting premises forming part of the housing stock of the City of Krakow and temporary premises were declared invalid by first instance court.
Relevance of the Charter	<p>Article 34(3) of the Charter states that, with a view to combating social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices. The Charter was also helpful in that it contains several expressly mentioned rights which are not formally stipulated in national law and can only be invoked via legal interpretation of other, more general, constitutional norms. In the discussed case, Polish constitution, according to the Constitutional Tribunal's case law, does not stipulate the right to housing assistance nor any obligation of the State authorities to provide for such assistance.</p> <p>In addition, Article 47 of the Charter was relevant to the case, through the Commissioner's ability to challenge provisions of the resolution which he considered to be in violation of the law. The case was heard by an independent and impartial court, without undue delay.</p>
Reference	https://www.nsa.gov.pl/ewokanda/wsa/krakow/ (Case number: III SA/Kr 1892/22)

2. Advisory functions (including impact assessment and legal scrutiny)

2.1. Forest management plan for the Białowieża Forest District (admissibility of judicial review)

THEMATIC ARE	DETAILED INFORMATION
NHRI	Commissioner for Human Rights (<i>Rzecznik Praw Obywatelskich</i>)
Purpose of Charter application	Advisory functions, including impact assessment and legal scrutiny Complaints handling and litigation
Date of use/ decision/event	17.11.2017 (judgement of the Supreme Administrative Court, II OSK 2336/17); 15.03.2023 (the Commissioner's address calling to implement the CJEU judgment)
Detailed description of facts (of the case, the event, the file etc)	The case concerned the approval of a forest management plan for the Białowieża Forest District. In connection with numerous objections, presented by, inter alia, environmental organisations, with regard to the felling of trees provided for in the plan, which were not taken into account during development of the plan, the Commissioner challenged the decision of the Minister of the Environment approving the forest management plan.
Legal question	Admissibility of review of the approval of a forest management plan by administrative courts
Final outcome (of the case, the event, the file etc)	The Commissioner's action was rejected on legal grounds (the courts of both instances held that the act of approval of a forest management plan is not subject to review by administrative courts). The Commissioner's follow-up action intended at implementing the CJEU's judgement has not resulted in any outcome yet.
Relevance of the Charter	Article 47 of the Charter (together with the provisions of the Aarhus Convention) was cited in the case as requiring an interpretation of national law that would allow for judicial and administrative review. The accuracy of this argumentation put forward by the Commissioner in the course of the case was confirmed by the CJEU judgment of 2 March 2023 in Case C-432/21 (infringement procedure), which held that the design of the procedure for drawing up forest management plans (which did not provide for the possibility of judicial review of such plans) violated, inter alia, Article 47 of the Charter. The Commissioner then took action to implement the CJEU judgment (amendments to the law allowing the forest management plan to be subject to judicial and administrative review).
Reference	https://orzeczenia.nsa.gov.pl/doc/0E07A55164 ; https://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-432/21 ; https://sprawy-generalne.brpo.gov.pl/index.php?sprawa=17126

2.2. Amendment of Supreme Court judges' retirement age (2018)

THEMATIC AREA	DETAILED INFORMATION
NHRI	Commissioner for Human Rights (<i>Rzecznik Praw Obywatelskich</i>)
Purpose of Charter application	Advisory functions, including impact assessment and legal scrutiny
Date of use/ decision/event	20.10.2018
Detailed description of facts (of the case, the event, the file etc)	By adopting the Act on the Supreme Court of 3rd April 2018, Polish Parliament has amended the provision governing length of the term of Supreme Court justices and lowered their retirement age to 65 years. The Act entered into force with retroactive effect and applied also to justices appointed before 2018. The reform, combined with other amendments of legal framework of justice system in Poland, was widely criticized as an attempt to undermine independence of the Supreme Court. Following the infringement procedure, the European Commission challenged the reform before the CJEU. In judgment of 5 November 2019 (C-192/18) the Court has declared the challenged measures non-compliant with EU law.
Legal question	Is retroactive amendment of justices' retirement age non-compliant only with EU anti-discrimination law or also with the Charter and EU Treaties as an infringement of judicial independence and the right to effective judicial protection?
Final outcome (of the case, the event, the file etc)	The Commissioner has raised the problem of compliance of the challenged measure even at the stage of the legislative procedure, and has been monitoring and urged the Parliament to repeal the reform throughout the process. On 20th October 2018, the Commissioner has participated in the hearing of the European Parliament's LIBE Committee, speaking about the situation of the rule of law in Poland, in particular as regards independence of the judiciary. In November 2018, after the CJEU's judgment, the Parliament decided to repeal the reform.
Relevance of the Charter	<p>Invoking the Charter in the discussed case has had an added value by bringing the issue of internal matter (organisation) of justice under the EU law, with reference to the principle of effective judicial protection and, therefore, additional scrutiny of EU institutions which could then serve to convince national authorities to resolve the given fundamental rights problem.</p> <p>Application of the Charter was, in particular, helpful, in that it was followed by a reference to an already existing case-law based on the Charter, i.e. the Hungarian case, the facts of which were very similar. Upon request of the European Commission, the Court of Justice of the European Union ruled that the abrupt and radical lowering of the retirement age for judges, prosecutors and notaries in Hungary violates EU equal treatment rules. According to the Court's judgment of 6th November 2012 (case C-286/12), the forced early retirement of hundreds of judges and prosecutors in the course of 2012 law constituted unjustified age discrimination.</p>
Reference	https://bip.brpo.gov.pl/pl/content/adam-bodnar-public-hearing-%E2%80%9C-situation-rule-law-poland-particular-regards-independence-judiciary%E2%80%9D

2.3. Amendment of national Broadcasting Act (prohibition of discriminating content inciting hate or violence)

THEMATIC AREA	DETAILED INFORMATION
NHRI	Commissioner for Human Rights (<i>Rzecznik Praw Obywatelskich</i>)
Purpose of Charter application	Advisory functions, including impact assessment and legal scrutiny
Date of use/decision/event	29.12.2020
Detailed description of facts (of the case, the event, the file etc)	<p>A draft law amending the Broadcasting Act and the Cinematography Act was submitted for public consultation. The draft aimed to implement Directive 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) due to a change in the market situation.</p> <p>The Commissioner for Human Rights noted that the requirements for broadcasts and other communications were set out in Article 18(1) of the Broadcasting Act. In the light of the proposed amendment to the aforementioned article, such broadcasts and other communications could not contain content inciting hatred or violence or discriminating on the grounds of race, disability, gender, religion or nationality or inciting perpetration of acts of terror. In turn, the newly introduced Article 47p prohibits broadcasts, user-created videos or other communications on sharing platforms containing, inter alia, incitement to violence or hatred against a group of persons on the grounds of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. The catalogue of discriminatory grounds included in Article 47p was therefore much broader than in Article 18(1). The use of such a distinction was difficult to explain. In the Commissioner's view, the inclusion of a uniform solution appears to have been justified by the need to protect groups most vulnerable to discrimination. Otherwise, the different wording of Article 18(1) and Article 47p of the Broadcasting Act should have to be justified.</p> <p>The Commissioner asked the Minister to analyse the presented comments, and to include the submitted proposals in further work on the draft Act (draft of 7 September 2020) amending the Broadcasting Act and the Cinematography Act.</p>
Legal question	Implementation of the provisions of Directive 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) into Polish legal order.
Final outcome (of the case, the event, the file etc)	Amendment of the Broadcasting Act in line with the Commissioner's recommendations.
Relevance of the Charter	Article 21 of the Charter of Fundamental Rights - incorporation of all the grounds contained in this article of the CFR into the Broadcasting Act in the context of the prohibition of broadcasts containing discriminatory content.
Reference	https://sprawy-generalne.brpo.gov.pl/pdf/2020/12/XI.812.10.2020/2455340.pdf

2.4. Incapacitated persons' right to vote (discrimination on grounds of mental and intellectual disability)

THEMATIC AREA	DETAILED INFORMATION
NHRI	Commissioner for Human Rights (<i>Rzecznik Praw Obywatelskich</i>)
Purpose of Charter application	Advisory functions, including impact assessment and legal scrutiny
Date of use/ decision/event	08.11.2021
Detailed description of facts (of the case, the event, the file etc)	<p>Polish Constitution stipulates complete exclusion of incapacitated citizens' right to vote in national elections. Consequently, provisions of the Polish Electoral Code include same exclusion with regard to national and EU elections. In its decision dated April 2019, the District Court in Nowy Sącz decided to enter a partially legally incapacitated person into voters register for the elections to the European Parliament. The proceedings were held with participation of the Polish Helsinki Foundation for Human Rights, which chose to join the case for strategic litigation purposes. In its decision, the Court, referred to the case law of the European Court of Human Rights on the right to vote of mentally disabled persons and some cases on legitimate restrictions of the right to vote of the CJEU. Referred provisions included Article 39 of the Charter of Fundamental Rights according to which 'every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides [...]' and that the elections shall be 'direct [and] universal'. The Court decided to disregard the provisions of the Electoral Code and urged the competent body to enter the applicant into the register of voters for EU elections.</p> <p>On 8 November 2021, the Commissioner decided to join the proceedings subsequently initiated by the Polish Helsinki Foundation for Human Rights before the Senate's Committee of Petition. The judgment cited above served as an argument to convince the Senate Members to amend the contested legal provisions of the Electoral Code.</p>
Legal question	Is a complete and automatic exclusion of incapacitated persons from the right to vote in EP election compliant with the Charter and the right to vote (Article 39), prohibition of discrimination (Article 21), and the right to social, political and professional inclusion of persons with disabilities (Article 26) enshrined therein?
Final outcome (of the case, the event, the file etc)	Following the presented opinions, the Senate decided to initiate legislative procedure partially addressing the claim to give partly incapacitated persons the right to participate in the elections to the European Parliament. The legislative project is now being processed in the Lower Chamber of the Parliament.
Relevance of the Charter	Given that the area of EP elections is not covered by the Polish Constitution, the Charter has served as a proper, self-standing equivalent benchmark for fundamental rights compliance review. With reference to the Charter's principle of equivalence between it and the ECHR, application of the Charter facilitated invoking the ECHR case-law which in itself has not concerned Poland as binding standards to be implemented by the Member States.
Reference	https://bip.brpo.gov.pl/pl/content/rpo-senat-prawa-wyborcze-ubezwlasnowolnieni-sejm-odpowiedz

3. Human rights monitoring and reporting, education and awareness raising

3.1. Report on the legal situation of LGBT persons in Poland

THEMATIC AREA	DETAILED INFORMATION
NHRI	Commissioner for Human Rights (<i>Rzecznik Praw Obywatelskich</i>)
Purpose of Charter application	Human rights monitoring Reporting Human rights education Awareness raising
Date of use/decision/event	2019
Detailed description of facts (of the case, the event, the file etc)	Commissioner's report entitled: The legal situation of non-heterosexual and transgender people in Poland. The international standard for the protection of the human rights of LGBT persons and the state of compliance with it from the perspective of the Commissioner for Human Rights, 2019 edition.
Legal question	An assessment of the level of legal protection under Polish law of the rights of LGBT persons in the light of the international legal standard: The report aims to provide an analysis of the legal situation of LGBT persons in Poland - both the provisions of the law and the practice of its application by courts and public administration bodies. In turn, the juxtaposition of this picture of the Polish legal reality with the international standards in particular areas allowed drawing conclusions as to the degree of implementation of international obligations and recommendations. Based on these, the Commissioner's recommendations on the most alarming legal problems that require the intervention of the legislators may constitute guidelines for the measures that seem necessary to ensure full realisation of the human rights of LGBT persons in Poland.
Final outcome (of the case, the event, the file etc)	Case ongoing - Commissioner's recommendations await implementation
Relevance of the Charter	Articles 20-26 of the Charter as a benchmark for interpretation and control of national legislation.
Reference	https://bip.brpo.gov.pl/sites/default/files/Sytuacja_prawna_raport_ZRT.pdf

3.2. Treatment of transgender persons in penitentiary isolation

THEMATIC AREA	DETAILED INFORMATION
NHRI	Commissioner for Human Rights (<i>Rzecznik Praw Obywatelskich</i>)
Purpose of Charter application	Human rights monitoring
Date of use/ decision/event	Since 2020, ongoing
Detailed description of facts (of the case, the event, the file etc)	The individual case of a transgender woman serving a custodial sentence gave rise to introduction of general measures aimed at monitoring the treatment of this group of prisoners in penitentiary units.
Legal question	The need to develop standards for dealing with transgender people in penitentiary isolation.
Final outcome (of the case, the event, the file etc)	Ongoing
Relevance of the Charter	<p>In an individual case proceeded by the Office of the Commissioner for Human Rights, an expert opinion was obtained on treatment of persons deprived of liberty, concerning, in particular, the situation of transgender persons. The opinion included an overview of international standards, including selected provisions of the Charter of Fundamental Rights that may be relevant to the treatment of this group of detainees.</p> <p>On 27 April 2021, a webinar was held, organised by the Office of the of the Commissioner for Human Rights, as part of efforts to identify and monitor the situation of transgender prisoners in penitentiary units, which have been ongoing since 2020. The aim of the meeting was to exchange knowledge and experiences and to try to answer key questions on how to ensure individual approach to conditions of imprisonment and pre-trial detention with regard to the needs of transgender persons, with a particular focus on the needs of persons in process of transitioning. Legal issues and practices of the Prison Service were discussed. The conclusions are applied to further monitor the status of respect for the rights of the group of prisoners in question.</p>
Reference	https://bip.brpo.gov.pl/pl/content/rpo-dostep-do-lekow-osoby-transseksualnej-w-zakladzie-karnym

Conclusions

Although the cases selected for the purposes of this study originate from the higher level courts in Poland, it is important to highlight that in some cases Charter application by district or regional level courts may have significant consequences for overall structure of fundamental rights protection in Poland.



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