

Mapping of national human rights structures in Poland

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



35 YEARS
COMMISSIONER
FOR HUMAN RIGHTS
1988 – 2023

Iceland 
Liechtenstein  Norway
Norway grants  grants

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Executive summary of the analysis

The aim of this report is to map the national human rights structures in Poland. The report presents the human rights structures in Poland in a broad sense. It looks at all parliamentary and governmental bodies and/or departments focusing on fundamental rights at independent bodies and other organs with a wide fundamental rights remit (NHRIs, equality bodies and Ombudsperson type institutions) and at other actors relevant for selected fundamental rights. For each entity, the report outlines their mandate, functional capacity and practice. Subsequently, the report conducts a short analytical overview of the entity's role in the general system of human rights protection in Poland.

The report is structured in the following way. The first part introduces the report, defining the scope of the analysis, explaining the methodology applied in the analysis and listing the institutions mapped. The second part is divided into three chapters according to the three types of institutions mapped. Each of the institutions is then described and assessed. The third part presents general conclusions of the mapping of the national human rights structures in Poland and examines the potentials identified throughout the analysis.

One of the key takeaways from the report is the **proliferation of the national human rights entities in Poland**. A number of human rights entities both in the parliamentary and governmental bodies and/or departments as well as among other actors relevant for selected fundamental rights have been established over the recent years. This may be seen as a positive development in the sense that it decentralises the human rights protection system, so far mainly focused on the Commissioner for Human Rights (Ombudsman). However, this phenomenon also brings certain risks as the growing number of human rights structures requires a clear division of tasks and competences between them as well as cross-institutional coordination, which have so far been relatively rare.

Introduction

Definitions and scope of the analysis

The present analysis mapping the national human rights structures covers a broad institutional picture of state or state-related bodies which do or may play a role in enforcing human rights or fostering them in other way. Firstly, for the purposes of this mapping the definition of these structures covers all institutions, bodies or cooperation platforms and initiatives (especially cooperation networks) which have been either legally established or are working internally or at interinstitutional level in a permanent manner. Secondly, when it comes to its scope, reflected in the list of the analysed bodies, the definition follows a substantial approach to the mission of human rights protection or fostering, regardless of formal designation of the mandate of these institutions. Bodies which only partially or in a secondary way do or might participate in human rights enforcement have also been included. Following this logic, institutions such as Supreme Audit Office (NIK) which is, in general, a public expenditure control institution, have been mentioned and analysed. Thirdly, the definition included not only public institutions in the strict sense of the term, but also other semi-public entities or other types of entities which exercise public tasks or have a formally assigned mission following a given public interest. Therefore, the list of the analysed bodies also includes self-government professional authorities and associations as well as some bodies of independent public structures, such as universities.

The map of the human rights structure in Poland, presented herein, has followed the proposed division of relevant bodies into three categories i.e. **governmental or parliamentary bodies; independent bodies and other organs with a wide fundamental rights remit; and a large category of other actors covering many kinds of (sectorial) bodies and cooperation platforms**. It is necessary to precise that the first category, with regard to governmental bodies, has been limited only to those bodies which function within the structure of central government institutions, mainly within the competent ministry or the Chancellery of the Prime Minister. Other bodies, of which relation to the central government institutions is only functional or detached (with a formal linkage to separate specialised public bodies under the government's supervision) have been put in the third category. This category includes, therefore, several ombudsperson type bodies and regulatory or supervision bodies with, however, legally and structurally less or more independent standing from other public administration structures. In vast majority of cases, their mandate is limited to some specific rights or sector of activity (e.g., data protection or financial market regulatory authorities).

The second category has been based on the criterion of broadness of the mandate, meaning the legal standing to scrutinize compliance relating to a wide spectrum of rights and freedoms (not sectorial bodies). Therefore, less institutions can be found in this category, as the system of independent national-level human rights protection, according to the Polish constitutional setting, is much centralised around the institution of the Commissioner for Human Rights. Although the Ombudsman for Children and the Supreme Audit Office have, accordingly, only partial or secondary role with regard to that of the Commissioner for Human Rights, they have been assigned to this category due to their relatively strong formal independence in exercising their activity.

Methodology of the analysis

Each description of the institutions identified according to the conceptual framework described above is followed by an analytical overview which aims at both formal and substantial delineation of their actual or potential engagement in fundamental rights protection. These individual overviews have been based on two-fold criteria.

Firstly, the analysis concerned resources and tools that might be used for fundamental rights protection. The analysis focused on five types of assets of different nature:

- material (technical and administrative) resources and human resources, including contact networks;
- accessibility of a given institution (formal and informal channels for individual claims or dialogue with civil society organizations);
- visibility (recognition and presence in public debate, including media);
- reputation and authority (persuasion and impact capacities);
- systemic coherence (setting with regard to other bodies, established cooperation and coordination channels, competence overlaps);

Secondly, the criteria of the analysis concerned the actual activity of a given body or the potential for its expansion, divided into three capacity types:

- cooperation capacity, including involvement in formal/informal and horizontal/vertical cooperation platforms, and openness to civil society and all relevant stakeholders;
- coordination capacity meaning, for the purpose of the analysis, the potential of exercising an informal leading role or informal coordination of actions among independent institutions, which results from the specific context of NHRIs' legal status as autonomous and independent bodies;
- information management capacity (coordination of national data collection on the monitoring and implementation of recommendations from the international human rights system);
- participatory capacity (fostering, leading or providing a platform for consultation among national actors), including all phases of monitoring and implementation of human rights standards.

Governmental or Parliamentary bodies and/or departments focusing on fundamental rights

Parliamentary committees for fundamental rights issues

Committees of the sejm (the Lower Chamber of the Parliament)

Overview

The Sejm's work is divided among a number of permanent, ad hoc and investigatory committees which include proportionate participation of deputies from all political groups in the Parliament. Among its 29 permanent committees, the Sejm has two committees which are of particular importance for fundamental rights protection. Legal initiative projects which touch upon issues of human rights implementation are dealt with by **the Justice and Human Rights Committee** (Komisja Sprawiedliwości i Praw Człowieka). The other one is **the Petitions Committee** (Komisja do Spraw Petycji). In practice, without the explicit formal mandate relating to human rights issues, the latter is very often engaged in legislative works in this area due to its competence regarding the constitutional right to petition. It is important to mention that the right to petition allows individuals to address all public institutions with claims to undertake specific actions within their mandate, with a binding time for reply and the obligation to provide a statement of reasons for the final decision. The position of the Committee on all petitions are discussed and voted by its members, which allows for a structured debate with the participation of other public institutions' and civil society organisations' representatives. It is worth noting that individuals exercise the right to petition very often to launch a legislative procedure as this procedure is considerably simplified and much more accessible with regard to the formal framework of citizens' legislative proposals (744 petitions have been filed till now with the Sejm of the present term which began in 2019)¹.

Human Rights, the Rule of Law and Petitions committee (of the Senate)

Overview

The subject matter dealt with by the Senate's committee covers civil rights and freedoms and their institutional guarantees, matters relating to the functioning of the judiciary and public security, the rule of law and respect for human rights, civil society institutions and non-governmental organisations. The Committee also takes decisions on petitions addressed to the Senate and its bodies. The

¹ https://www.sejm.gov.pl/Sejm9.nsf/agent.xsp?symbol=PETYCJE_KOM&NrKadencji=9&KodKom=PET

remarks on the Senate's Committee are similar as those relating to the Sejm's committees mentioned above. The Committee may touch upon any matters related to the EU Charter of Fundamental Rights and, in particular, matters related to 'Justice', such as referred to in Article 47 of the Charter, right to an effective remedy and to a fair trial; Article 48, presumption of innocence and right of defence; Article 49, principles of legality and proportionality of criminal offences and penalties, or Article 50, right not to be tried or punished twice in criminal proceedings for the same criminal offence.

Analysis

The parliamentary committees with human rights remit present a strong potential for strengthening fundamental rights protection. They are often a sound platform for the public debate on given fundamental rights issues, allowing for active participation of civil society. Due to the right to petition framework in Poland, which allows every citizen to address a petition to public institutions with a binding deadline for reply, the competent parliamentary committees are relatively accessible for individuals and present a particular participatory capacity aiming at amending existing legislation or introducing new legal acts which may concern fundamental rights protection. The committees have also considerable resources regarding substantive information and expertise, and make use of the Chambers' own legal research units and of the possibility to involve external experts on specific issues. Given the Parliaments' legislative power, the actions adopted via the committees are of general and systemic scope, which is an important advantage of them as potential fundamental rights actors.

Government Plenipotentiary for Equal Treatment

Overview

The Government Plenipotentiary for Equal Treatment is a body appointed by the Prime Minister. The Plenipotentiary is supported by the Office of the Government Plenipotentiary for Equal Treatment. However, it is to be noted that **the role of the independent equality body in the meaning of the EU antidiscrimination directives has been entrusted with the Commissioner for Human Rights**. The role of the Government Plenipotentiary for Equal Treatment is therefore restricted to designing and executing the government's policies concerning equal treatment. The mandate of the Government Plenipotentiary covers issues such as discrimination based on gender, race, ethnic origin, nationality, religion, belief or any other opinion, age, disability and sexual orientation. The Plenipotentiary may touch upon any matters related to equality and the Charter of Fundamental Rights, in particular as outlined in Article 20, equality before the law, Article 21, non-discrimination principle as well as Articles 22-26, related to more specific aspects of equality and non-discrimination.

As for the competences of the Government Plenipotentiary, she/he can draft or deliver opinions on legal initiatives concerning equal treatment or address other competent bodies to initiate legislative changes when necessary for the protection of the equal treatment principle. The Government Plenipotentiary also performs some monitoring functions with regard to the respect of antidiscrimination law, as well as promotion and cooperation for better protection and awareness on discrimination issues and its prevention and management. Quite importantly, the institution

oversees developing the government's multiannual policy on equal treatment with regard to strategic programming and coordination of antidiscrimination actions and legislative changes with other public institutions as well as to greater accountability of the government in the field of equal treatment. The Plenipotentiary is required to present an annual report on the implementation of the government's equal treatment policy to the Council of Ministers.

Analysis

In principle, the mandate described above allows for taking broad action in the field of equal treatment, especially for pushing forward necessary amendments of law, which due to the general scope of legislative action can potentially have a considerable impact on the implementation of the equal treatment principle. An important potential can be identified also in the explicit legal mandate on cooperation covering international institutions and participation in national and international programs and projects financed from external subsidies. This potential is, obviously, closely connected with the current governmental policy and priorities. In a report presented by the Commissioner for Human Rights to the Government Plenipotentiary, the Commissioner concluded that the latter's past actions on initiating and pushing forward necessary amendments of law had proven to be ineffective and considerably insufficient². The Commissioner also pointed out to the necessity of securing institutional independence to national equality bodies – in the current legal and organizational framework only the Commissioner can be considered as the entity fulfilling the European standards in this respect. The Plenipotentiary has no formal complaint procedure. Notwithstanding these flaws, the institution presents a potential regarding engagement capacity, which has been exploited in the past through cooperation with other public institutions and civil society.

Government Plenipotentiary for Disabled Persons

Overview

The Government Plenipotentiary for Disabled Persons is a specialised governmental body within the Ministry of Family and Social Policy. The Plenipotentiary is appointed by the Prime Minister upon the initiative of the Minister of Family and Social Policy and forms a part of the system for implementing the government's policies on persons with disabilities. Yet, the Plenipotentiary's competences cover also other more permanent tasks and competences delineated in the Act on Professional and Social Rehabilitation and on Employment of Persons with Disabilities of 27th August 1997, such as the implementation of a special funding programme (PFRON) and the control of public and private entities with regard to the respect of standards of employment of persons with disabilities. Quite importantly, the law specifies also that the Plenipotentiary shall manage his or her office, which forms a separate unit of the Ministry of Family and Social Policy, based on his or her regulatory autonomy. The Office employs, at present, fifty persons, which represents a solid basis for fulfilling the mandate of the Plenipotentiary for Disabled Persons in many areas. **The Plenipotentiary may focus, in particular, on Article 26 of the Charter of Fundamental Rights concerning integration of persons with disabilities.**

² <https://bip.brpo.gov.pl/sites/default/files/WG%20RPO%20do%20PRT%20-%20ustawa%20o%20r%C3%B3wnym%20traktowaniu-%20raport%202013.01.2021.pdf> [03.04.2023].

The Office of the Plenipotentiary for Disabled Persons is divided into:

- Division for Vocational Rehabilitation and Public Aid (in charge of presenting proposals of legislative changes, legal analysis of programmes and strategies concerning persons with disabilities, delivering information on the legal framework of employment of persons with disabilities and educational campaigns and trainings);
- Unit for Social Inclusion and Cooperation with Local Authorities (coordination and deployment of social policies concerning persons with disabilities, delivering information on legal framework concerning social inclusion, legal provisions on the sign language, public funds programmes both for public and private sector projects);
- Division for Administrative Proceedings (concerning the Minister's administrative tasks involving social security instruments, financial aid for persons with disabilities and special refunding programmes for regional authorities);
- Division for Supervision over Granting Disability Status (in charge of general and individual control proceedings concerning various procedures on official disability status recognition);
- Division for Analysis and International Cooperation (in charge of drafting and implementing the general Strategy for Persons with Disabilities, international cooperation, monitoring the implementation of international acts concerning the rights of persons with disabilities, including EU law, in particular with regard to the participation in the EU Disability Platform, and presiding over the official Committee for the Implementation of the Convention on the Rights of Persons with Disabilities)
- Social Communication Unit (in charge of cooperation with the civil society and NGOs working in the field of the rights of persons with disability, organisation of scientific and educational events and projects, individual assistance, consultation and intervention pursuant to complaints, cooperation with other public institutions implementing social and professional inclusion programmes, organization of the work of the National Consultation Council for Persons with Disabilities and the Polish Sign Language Council);
- Special Unit for Legislation and Special Unit of Legal Advisers;

Analysis

The legal and institutional framework of functioning of the Government Plenipotentiary for Disabled Persons allows for a broad involvement in activities concerning the rights of persons with disabilities, also within more general programmes and public initiatives or mechanisms concerning broader issues of fundamental rights protection. What is important, the legal provisions on the Plenipotentiary explicitly provide a legal basis for the cooperation with other public institutions (e.g. the Commissioner for Human Rights and public services competent for employment) and civil society, as well as for the participation in international cooperation programmes. The Plenipotentiary has also been charged with the task of monitoring EU and international law implementation as well as compliance with the obligations provided for by them in individual cases involving private entities as far as employment conditions are concerned. Thanks to the active role in drafting the government's multiannual strategy for persons with disabilities and the inclusion in legislative works concerning their social and professional inclusion the activities of the Plenipotentiary can

have a more general impact. Concerning the visibility of the institution, the Plenipotentiary herself/himself takes part in and coordinates various platforms and initiatives the participation of other public institutions and civil society, notably via the coordination of works of the National Consultative Council (*Krajowa Rada Konsultacyjna*), the Committee for the implementation of the Convention on the Rights of Persons with Disabilities or the participation in platforms such as the Polish Council on the Sign Language. The institution presents, therefore, a considerable engagement, coordination, and participatory capacities.

Specialised units within the Ministry of Foreign Affairs

Overview

There are several units which are active in the field of fundamental rights policy within the structure of the Ministry of Foreign Affairs. One of them is the Department of United Nations and Human Rights which is responsible for the policies of Poland at the fora of the UN system, the Council of Europe and, with regard to human rights, the forum of the EU and the OSCE. The department coordinates the foreign policy of the state in the field of human rights and is responsible for the preparation of positions on matters related to this field. The Ministry declares as one of its priorities the involvement in an intergovernmental coalition of 106 states for democratization, called 'Community of Democracies' which has been founded during a conference in Poland in 2000 and has its Secretary General Office based in Warsaw. Notwithstanding the scope of action of the department, the task of representing Poland in the human rights protection proceedings (such as in the proceedings before the ECHR) has been delegated to a special Minister's Representative for proceedings before the ECHR.

The Ministry also coordinates works of a special inter-ministerial Committee for the European Court of Human Rights judgments' execution, which is composed of members from different public institutions, mainly other relevant ministries. The Committee constitutes an advisory panel established mainly for the purpose of drafting proposals of positions concerning the most important problems arising from the applications regarding Poland to the ECHR and for its judgments, as well as proposals of actions aimed at preventing breaches of the Convention for the Protection of Human Rights and Fundamental Freedoms by Poland. In addition, the Committee deals with the monitoring of the implementation of the ECHR's judgements regarding Poland and the preparation of the information on the status of implementation of such judgments. The Committee also provides opinions on the relevant drafts of legal acts, giving rise to particular doubts as to their compliance with the Convention and with the ECHR case law. Legal provisions establishing the Committee provide for the possibility to involve in its works also representatives of civil society, which in practice is realised through the organisation of one plenary meeting in an open formula, with the participation of NGOs and representatives of the legal professions. The participation of civil society is not strictly legally secured but is envisaged in a special Programme of Cooperation of the Foreign Affairs Minister with NGOs, which includes dedicated funding for the involvement of civil society organizations in some works of the Ministry but not for the participation in committees and other consultative bodies. The Commissioner for Human Rights takes part in quarterly sessions of the Committee. Generally, reports on the meetings of the

Team and annual reports on the implementation of the ECHR's judgments are made publicly available on the website of the Ministry of Foreign Affairs.

Analysis

Despite many advantages of the current framework of functioning of the Committee, a number of ECHR judgments remain unimplemented. Although the participation of the civil society in the Committee sessions is formalized, NGOs could be given more legal guarantees of their involvement in the works of the Ministry, not only limited to the Committee for ECHR which has a narrow scope of activities in comparison to the general fundamental rights policy activities and mechanisms in the international arena that the Ministry is in charge of³. With engagement and transparency on the government side, the Ministry's bodies, especially the Committee for ECHR can have a considerable impact on fundamental rights protection in Poland. For this reason, the existing committees have proven to be, in general, quite an effective platform for debate, and their cooperation with the civil society could be further extended.

Specialised units within the Ministry of Justice

Overview

The Department of International Cooperation and Human Rights in the Ministry of Justice is charged with several tasks concerning human rights compliance within the judicial system. One of the tasks is to expand knowledge on the current human rights standards, especially the case law of the European Court of Human Right among judges, public prosecutors and other civil servants working within the structures of system of justice. Externally, the Department cooperates with the Ministry of Foreign Affairs in cases brought before international human rights protection mechanisms and concerning judicial proceedings and public prosecution. Internally, the Department takes part in consultation processes of or initiates legislative projects relevant for the system of justice in order to analyse their compliance with human rights standards. The Department engages in a few international cooperation frameworks, e.g. within the Council of Europe bodies or the Venice Commission.

Analysis

The role of the Department is to execute ministerial decisions as regards policies related to the international cooperation and fundamental rights protection. The Department plays a vital role in the effective realisation of the tasks mentioned above. The role of the Department is, however, rather secondary in shaping general human rights policy as it is limited to the matters covered by the competence of the Ministry of Justice.

³ See point 4 of the Brighton Declaration of 20th April 2012 on the Future of the European Court of Human Rights (https://www.echr.coe.int/documents/d/echr/2012_brighton_finaldeclaration_eng) concerning the commitment of the States Parties to work in the spirit of cooperation with civil society.

Central state bodies with a wide fundamental rights remit (NHRIs, Equality Bodies, Ombudspersons, etc.)

Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*)

Overview

The Office of the Commissioner for Human Rights Office was established in 1987. According to the Constitution and the Act of 15 July 1987 on the Commissioner for Human Rights (*Journal of Laws of 2023 item 1058*), the Commissioner is independent of other state bodies and is appointed by the Sejm, with the consent of the Senate, for a five-year irrevocable term, which grants him/her a strong mandate and independence guarantees. The Commissioner for Human Rights is the central, constitutional authority for human rights protection in Poland. The Office of the Commissioner is based in Warsaw and is supported by three regional offices (in Wrocław, Gdańsk and Katowice). Having a central institutional position and a broad scope of powers, **the Commissioner's activity has a considerable potential of coordinating the activities of other bodies with human rights remit in Poland.** This potential is based on the centralized model of NHRI adopted in our country, according to which the Commissioner has the general competence and obligation to protect and ensure the protection of human rights by public institutions in Poland. Other institutions with human rights remit constitute only specialized bodies most of which have been appointed at statutory level and their appointment does not exclude the competence of the Commissioner to exercise his/her competence in these areas (see Trociuk, *S. Ustawa o Rzeczniku Praw Obywatelskich. Komentarz, LEX, 2020, Article 1*). This means that the Commissioner has the power to act independently in the areas of competence of these specialized bodies, which entails, in relevant cases, the duty to oversee whether they carry out their mandate correctly in terms of the duty to protect constitutional rights and freedoms as required of them. In several cases, the duty to cooperate is formulated explicitly in the Act on the Commissioner for Human Rights, as well as in other laws (e.g. with regard to the Ombudsman for Children or to PUODO, the national data protection authority; see *ibid.*) In combination with the competence to address 'competent authorities' mentioned in Article 16 para. 1 of the Act on the Commissioner, this creates a potential for coordination based not only on the actual possibility of such coordination and cooperation in which the Commissioner has been repeatedly participating, but also based on the general mandate to ensure respect of constitutional rights and freedoms by the competent public authorities, including specialized bodies with human rights remit.

The Commissioner for Human Rights protects human and civil rights and freedoms as set forth in the Constitution and other laws but, quite importantly, also in international and EU law acts. All persons subject to the Polish law, both Polish citizens and foreigners, and stateless persons, have the right to apply to the Commissioner for Human Rights for assistance in the pursuance of their rights and freedoms which have been violated by public authorities. The jurisdiction of the Commissioner is not geographically determined. In practice, the mandate of the Commissioner covers all situations of violation of human rights in which Polish state authorities are or could be directly or indirectly involved. This extends to situations taking place outside the territory of the Republic of Poland which concern Polish citizens. In accordance with the broad definition of the Commissioner's mandate in the Constitution, the catalogue of fundamental rights and freedoms that are safeguarded by the Commissioner also includes the EU Charter of Fundamental Rights and other provisions and general principles of EU law. The Commissioner for Human Rights may, among others:

- Approach agencies, organisations and institutions whose activities have violated human rights or civil rights or liberties, with a motion for them to present their opinions and conclusions on how to solve the problem, and may demand that disciplinary action be instituted or official sanctions applied;
- Approach relevant agencies with proposals concerning legislative initiatives or the issuance or amendment of any legal acts regarding civil rights and liberties;
- Apply to the Constitutional Tribunal to examine the constitutionality of normative acts and participate in proceedings initiated by citizens and other entities (with the exception of the President's motions lodged before signing a given legislative act);
- Request the prosecutor's office to institute preparatory proceedings in cases involving offences prosecuted ex officio, demand that administrative or civil proceedings be initiated, and participate in such proceedings;
- File a cassation appeal with the Supreme Court against a legally binding judgement which terminates legal proceedings;
- File an extraordinary complaints against final judgments of common courts, on the basis of the Act on the Supreme Court;
- Participate in preliminary procedure initiated by courts before the Court of Justice of the European Union;
- Present an amicus curiae opinion in cases of complaints lodged with the European Court of Human Rights;
- Address issues submitted by the Ombudsman for Children;
- Cooperate with NGOs and civil society organisations on the issue of promoting human rights and freedoms.

The Commissioner for Human Rights submits to the Sejm and the Senate annual reports on the Commissioner's activities and on the state of observance of human and civil rights and freedoms. The annual reports are then published.

The Commissioner has been also assigned special mandates covering more detailed mechanisms of fundamental rights protection. In 2005, Poland ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Commissioner for Human Rights is responsible for the implementation of the tasks of **the National Preventive Mechanism in Poland**. This role was assigned to the Commissioner in January 2008. The Commissioner for Human Rights submits annual reports on its activities to the Parliament in this regard. Task forces of the National Preventive Mechanism of the Commissioner for Human Rights conduct visits (also unannounced ones) to all kinds of detention facilities. After each such visit a report is prepared containing a description of irregularities identified and recommendations for removing the breaches of law (by amending the existing regulations or eliminating loopholes and issuing recommendations regarding specific situations, such as standards for a given facility). Such recommendations are then forwarded to the relevant bodies.

Under the 2010 Act on Equal Treatment, for the purpose of implementing the European Union directives the Commissioner for Human Rights was also entrusted with tasks related to **the implementation of the principle of equal treatment into the Polish legislative system**. The Act amended the existing act and granted to the Commissioner for Human Rights new competences in addition to the already broad constitutional mandate. These include analysis, monitoring and support of equal treatment of all individuals, conducting independent studies on discrimination, drafting and publishing independent reports and making recommendations regarding discrimination-related issues, performing additional information-related obligations towards the parliament by providing annual information on the Commissioner's activities in the area of equal treatment and information on the observance of the principle of equal treatment, and drawing up conclusions and recommendations on actions to be taken in order to ensure that the principle of equal treatment is observed.

Moreover, since 2012 the Commissioner for Human Rights **has been holding the function of the independent mechanism to promote, protect and monitor the implementation of the Convention on the Rights of Persons with Disabilities** (under Article 33, paragraph 2 of the Convention). The government intended also to entrust the Commissioner for Human Rights with a new additional task of handling complaints of persons who report breaches of EU law in connection with the implementation of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. Up to now the implementation of the EU directive has not been completed.

Analysis

The potential of the Commissioner for Human Rights in the field of effective fostering of fundamental rights standards in Poland is especially important due to the broad mandate and competences of the institution. It includes not only reporting and observation powers but also active participation or own-initiative initiation of judicial proceedings, especially with regard to cases concerning actions of public administration institutions. The activity of the Office of the Commissioner includes also public campaigning, educational and training initiatives as well as regular information for the public and media to reach to relatively large audience to raise awareness on human

rights. The Commissioner actively participates in various consultative mechanisms and cooperation frameworks, including horizontal and vertical cooperation structures (such as ENHRI, ENO, EQUINET, and participation in UN bodies' works). The Commissioner also has an important participatory capacity with regard to civil society and academia as a result of an established practice of the office. The legal basis of this cooperation is set out in Article 17a of the Act of 15 July 1987 on the Commissioner for Human Rights.

The Commissioner has significant resources in comparison to other human rights institutions in Poland. The funding for the Commissioner's work suffices to carry the Commissioners' duties and address complaints directed to the Office by citizens despite their remarkably high numbers. In 2021, for instance, the number of individual cases (complaints) referred to the Commissioner reached 74,279. The Office also heard 917 complaints during in-person meetings in the CHR Office contact points, and 40 941 telephone calls were answered with the Commissioner's staff providing explanations and advice to concerned persons. Among the complaints received by the Commissioner there were 10 308 that initiated explanatory proceedings. Almost 1600 applications resulted in an official recommendation letter issued by the Commissioner.

Ombudsman for Children (*Rzecznik Praw Dziecka*)

Overview

The Ombudsman for Children is an independent human rights institution established in the Polish Constitution. The procedure of appointment of the Ombudsman is similar to that of the Commissioner for Human Rights and involves the voting by both chambers of the Polish parliament. The Ombudsman for Children examines cases concerning the protection of children's rights, as reported by citizens, as well as takes up issues concerning solutions aimed at changing the law or practices incompatible with the universally understood welfare of the child, by directing general recommendations to relevant entities and institutions. The mandate of the Ombudsman can be understood relatively broadly, even though the institution has been established in the Constitution as a secondary specialised control body alongside the general mission of the Commissioner for Human Rights. From the wording of the Act on the Ombudsman for Children, according to which the Ombudsman is to "safeguard the rights of the child", it should be inferred that the Ombudsman's area of interest includes all violations (in the form of actions and omissions) of children's rights and freedoms in all spheres of social life, not only in the family but also in the society and in relations with public institutions. The Ombudsman for Children may, in particular, take action with regard to violation of Article 24 of the EU Charter of Fundamental Rights, as regards the protection of the rights of the child.

Analysis

The Ombudsman for Children has been gradually granted more competences and legal powers which are, with some constitutional limitations, similar to those of the Commissioner for Human Rights and include the power to initiate and participate in administrative and judicial proceedings as well as the power to participate in constitutional review before the Constitutional Tribunal. The

Office employs around seventy employees. The Ombudsman and the Commissioner for Human Rights are legally obliged to cooperate with each other. The Ombudsman engages in various educational activities, public campaigning on children's rights and cooperation with the civil society. It is worth noting that some programmes such as the **children's mental health campaign** with the establishment of a special helpline for children seeking aid have had a wide outreach in public debate. The Ombudsman for Children is also active in social media and traditional media. The institution has powers to engage in fundamental rights protection when children's rights and interests are at stake.

Supreme Audit Office (*Najwyższa Izba Kontroli* ("NIK"))

The Supreme Audit Office has been established in the Constitution of the Republic of Poland of 1997 in its chapter devoted to bodies responsible for state control and for defence of rights. The Commissioner for Human Rights and the National Broadcasting Council are established in the same chapter of the Constitution. The Supreme Audit Office is an institution for **oversight over public expenditure**, with a broad mandate covering the central and local government authorities, the National Bank of Poland ("NBP"), state legal persons and entities as well as local self-government authorities, legal persons and entities linked to them as well as other entities and economic operators using public resources. It should be noted that the extent of the Office's audit powers varies as regards individual types of authorities. It is the broadest in the case of the central government and is limited mainly to financial management in the case of independent bodies. The Office annually audits the execution of the state budget and conducts other audits covering compliance and performance aspects, according to the annual plan that is presented to the Sejm. The Office has wide discretion as regards the selection of audit topics. In 2021, the Office completed over 160 audits. The Office's President is appointed by the Parliament for the term of 6 years. The Office reports to the Sejm. Its headquarters are located in Warsaw but the Office also has sixteen regional departments located in each Voivodeship, with staff of about 1600 persons, the auditors making around 70% of that number.

Analysis

While the Office has no explicitly defined tasks or obligations in ensuring the observation of human rights in Poland, judging by its published audit reports one can see it has a potential to play a significant role in that field. The Office has frequently conducted audits in the areas directly or indirectly related to human rights. One should mention several audit reports published in the past six months on: public support for the development of foster family care of children⁴, providing apartments to people with disabilities⁵ the state's activity in preventing and combating the effects of online crimes, including the identity theft⁶, education of deaf and hard of hearing children⁷, the

⁴ <https://www.nik.gov.pl/kontrole/P/22/031/>

⁵ <https://www.nik.gov.pl/kontrole/P/22/004/>

⁶ <https://www.nik.gov.pl/kontrole/P/21/042/KPB/>

⁷ <https://www.nik.gov.pl/kontrole/P/22/075/>

correctness of the fine-related proceedings by municipal police and the enforcement of fines⁸, and ensuring accessibility for people with special needs by municipalities⁹.

It is also worth mentioning that the Office, when compared to central audit institutions of other countries, has a high public profile and a well-developed information function. Practically all its audit reports, sent to the Parliament and other bodies, are also immediately published on its website. The Office's audit results are frequently reported by the media, which gives the institution a significant potential of bringing issues to the attention of the public, and thus of exercising indirect pressure on the executive to deal with them. However, one should also mention that the prosecutors' follow the NIK's information on infringements too rarely.

⁸ <https://www.nik.gov.pl/kontrole/R/21/003/LKI/>

⁹ <https://www.nik.gov.pl/kontrole/R/21/001/KAP/>

Other actors relevant for selected fundamental rights

The President of the Office for Personal Data Protection (Prezes Urzędu Ochrony Danych Osobowych ("PUODO"))

Overview

The President of the Office for Personal Data Protection is a data protection authority responsible for upholding the fundamental right of individuals to data privacy through enforcing and monitoring compliance with data protection law in Poland. In Poland the right to personal data protection is protected under Article 51 of the Polish Constitution, Article 8 of the EU Charter of Fundamental Rights and Article 16 of the Treaty on the Functioning of the EU. Initially, the Office for Personal Data Protection was established in 1997 as the Bureau of the General Inspector of Personal Data Protection (*Biuro Generalnego Inspektora Ochrony Danych Osobowych* ("GIODO")). Currently, the Office operates based on the rules outlined in the General Protection Data Regulation ("GDPR")¹⁰. Its specific mandate and legal status are set out in the Data Protection Act of 2018 (*ustawa z dnia 10 maja 2018 r. o ochronie danych osobowych* (Journal of Laws of 2019, item 1781)).

According to Articles 51-54 of the GDPR, the public authority responsible for monitoring the application of the GDPR must be independent, meaning that it is required to have full independence in performing its tasks and exercising its powers. The GDPR also sets out the conditions for appointment of the members of such authorities. In Poland, the President of the Office is elected by the members of the Lower Chamber of the Polish Parliament (*Sejm*) and is approved by the Senate. The mandate lasts 4 years and it may only be held once by the same person. The President of the Office may be revoked in a limited number of circumstances using the same procedure as in their election.

The competences of the PUODO are listed in Article 57 of the GDPR. They include e.g. **the competence to monitor and enforce the application of the GDPR; promote public awareness and understanding of the risks, rules, safeguards and rights in relation to data processing;** advise the national parliament, the government and other institutions and bodies on legislative and administrative measures relating to the protection of natural persons' rights and freedoms with

¹⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance) OJ L 119, 4.5.2016.

regard to data processing; promote the awareness of controllers and processors of their obligations under the GDPR; upon request, provide information to any data subject concerning the exercise of their rights under the GDPR; handle complaints lodged by a data subject, or by a body, organisation or association, investigate the subject matter of the complaint and inform the complainant of the progress and the outcome. So as to fulfil these tasks in line with Article 58 of the GDPR, PUODO is equipped with investigative, corrective, authorisation and advisory powers.

As regards administrative practice, the PUODO has not yet published a report on its activity in 2022.¹¹ However, the 2021 report indicates a significant increase in the number of complaints filed with the PUODO: there were 8318 of them in 2021, compared to 6442 in 2020. According to PUODO this reflects, on the one hand, the existence of problems with personal data protection by the administrators, and on the other hand an increased awareness of data subjects' rights. However, in 2021 there were 225 complaints filed with the Voivodeship Administrative Court in Warsaw against decisions or orders of the PUODO. For comparison, in 2020 there were 112 complaints and in 2019 there were 89. Out of the 225 complaints to the Voivodeship Administrative Court in Warsaw in 2021, 49 have been appealed to the Supreme Administrative Court.¹²

The President of the Office for Personal Data Protection is also a member of the European Data Protection Board (EDPB).

Analysis

The office is divided into administrative units and specialised departments. The latter are further organized according to their areas of expertise that need to be covered. According to the 2021 report, by 31 December the office had 267 employees, including 236 specialists in various areas and thirty-one administrative employees. The 2021 budget of PUODO amounted to PLN 39 246 000, while the 2021 spending was PLN 38 531 000.

The office is accessible to all citizens. Complaints may be filed both in person and electronically, while the user-friendly website explains how it can be done. Formal requirements for the complaints are rather limited, yet the complainants are sometimes requested to provide additional information, especially regarding their motions¹³. It is worth noting that 2021 was a year of a significant increase in the number of complaints filed with the PUODO, as well as PUODO's decisions and complaints to the Voivodeship Administrative Court in Warsaw against decisions or orders of the PUODO.

The office enjoys some visibility. The annual reports submitted to the relevant institutions are published and stored on PUODO website. The website also contains updated information on PUODO's activities. The PUODO is also present on certain social media platforms such as Twitter or LinkedIn. Furthermore, the PUODO is rather active in consultation processes. In 2021, the PUODO provided its opinions on 758 drafts of legal acts and regulations regarding data protection. The office also undertakes **various educational and promotional activities to raise awareness**, such

¹¹ PUODO submits the reports annually, no later than by 31st August, to the Sejm, the Council of Ministers, the Commissioner for Human Rights, the Ombudsman for Children and the Attorney General.

¹² Sprawozdanie z działalności Prezesa UODO w roku 2021.

¹³ The Commissioner for Human Rights has been receiving some relatively frequent complaints regarding issues linked to formal requirements of motions to the Office.

as granting of the Michał Serzycki award promoting data protection and the right to privacy. The office is engaged in various mechanisms of international cooperation. Mostly through its membership in the EDPB, it takes part in EDPB's committees, subcommittees and task forces. It also is open to bilateral cooperation with other national data protection agencies to whose requests it replies. The PUODO actively and frequently participates in international workshops, conferences and other events.

The National Broadcasting Council (*Krajowa Rada Radiofonii i Telewizji* ("KRRiT"))

Overview

The National Broadcasting Council is a public agency established by Articles 213-215 of the Polish Constitution. It is responsible for safeguarding the freedom of speech, the right to information and the public interest regarding radio and television broadcasting. More specific rules regarding the mandate, competences and appointment of the Council are laid out in the Broadcasting Act of 1992 (*ustawa z dnia 29 grudnia 1992 r. o radiofonii i telewizji* (Journal of Laws of 202,2 item 1722)). The KRRiT's activity is related to Article 11 of the EU Charter on Fundamental Rights, freedom of expression and information. The KRRiT consists of five members of whom 2 are elected by the Lower Chamber of the Polish Parliament (*Sejm*), 1 by the Senate and 2 by the President of Poland. Their mandate lasts 6 years and can be revoked by a joint decision rejecting KRRiT's annual report and taken by *Sejm* and Senate and approved by the President. The mandate may only be held once for a full term by the same person. Members of KRRiT are subject to constitutional liability. Members of the KRRiT can be individually revoked but only in specific circumstances. Members of the KRRiT should not be members of political parties, trade unions or perform any other public activities incompatible with their function.

The main task of the National Broadcasting Council is **to uphold the freedom of speech in the radio and television as well as to safeguard the independence of broadcasters and the interests of audiences, ensuring that broadcasting is open and pluralistic**. In particular, the KRRiT is responsible for: determining the directions of the state policy with regard to broadcasting; determining the conditions under which broadcasters carry out their activities; making decisions on licenses for broadcasting of programmes; recognising entities as a social broadcaster or withdrawing this status; exercising control over the activities of broadcasters; researching the content and reception of radio and television programmes; determining the amounts of fees for granting the licence, entry into the register and the periodic licence fees; providing opinions on draft legislative acts and international agreements concerning radio and television broadcasting; initiating scientific and technical progress and staff training in the field of broadcasting; organising and initiating cooperation with other countries in the field of broadcasting; cooperating with relevant organisations and institutions in the area of protection of copyright, performer's rights, producer's rights and broadcaster's rights in the field of radio and television broadcasting.

The KRRiT submits its annual reports by the end of May to the Sejm, Senate and the President of Poland, regarding its activity in the preceding year and the key issues concerning the public radio and TV. The Sejm and the Senate must approve the report or otherwise all the KRRiT members are revoked within 14 days, following the President's approval. The KRRiT also informs the Prime Minister on annual basis on its activity in the preceding year and on the fundamental issues concerning the public radio and TV. Due to the mandate area and the scope of powers of the KRRiT, the institution can play a role in the protection of certain fundamental rights, especially political rights, namely the freedom of expression, speech, and information and, in particular, media freedom and media pluralism.

Analysis

Apart from the five elected members, in terms of personnel the KRRiT has an office consisting of specialist departments and administrative departments. In terms of financial resources, in 2021 the KRRiT spending amounted to PLN 63 100 000, while it paid PLN 44 100 000 into the national budget. In 2022, the KRRiT budget amounted to PLN 68 000 000 and the budget for 2023 was increased by 25% to PLN 83 100 000. It exceeded the budgets of other important institutions such as the Commissioner for Human Rights, the Constitutional Tribunal and the Ombudsman for Children.¹⁴ The Council is open to citizens' complaints which may be filed via post or electronically. The KRRiT website offers two types of complaint forms: one for expressing an opinion or sending a request, and another one to send a complaint concerning a show, programme or VOD service.

The Council is well visible and publicly recognized. The annual reports submitted to the relevant institutions are published and stored on the website. The website also contains updated information on the Council's activities. The KRRiT is also present on Twitter. Moreover, the KRRiT undertakes other various educational and informational activities such as granting Dr Paweł Stępa award for best publications related to media. The Council has competence to act on an international forum. Within the EU, it is a member of the European Regulators Group for Audiovisual Media Services ("ERGA") as well as other bodies supporting the European Commission. Within the Council of Europe, the KRRiT cooperates with other bodies for the protection of media freedom and pluralism and participates in the works of the Steering Committee on Media and Information Society (CDMSI). The KRRiT also takes part in other international initiatives.

In August 2021, Poland implemented the Audio-Visual Media Services Directive (AVMSD), which requires Member States to introduce independence guarantees to national broadcasting authorities.¹⁵ Most of the changes to the Broadcasting Act were in line with the Directive. However, in recent years the National Broadcasting Council has been subject to public criticism. The controversies resulted from a media reform, following which the KRRiT no longer was responsible for electing the heads of national radio and TV stations. Instead, a new body, the National Media Council (*Narodowa Rada Mediów*) was established for their election. On 13 December 2016, the Constitutional Tribunal

¹⁴ See: KRRiT ma dostać 25 proc. więcej z budżetu państwa, <https://www.wirtualnemedial.pl/artykul/krrit-dotacja-z-budzetu-panstwa>, published on 31/08/2022, accessed on 24/04/2023.

¹⁵ Katarzyna Klafkowska-Waśniowska, Wpływ nowelizacji dyrektywy Unii Europejskiej o audiowizualnych usługach medialnych na regulacje w krajach członkowskich, Fundacja im. Stefana Batorego, <https://www.batory.org.pl/wp-content/uploads/2021/07/Ekspertyza-wp%C5%82yw.nowelizacji.dyrektywy.audiowizualnej.pdf>.

ruled (in the case K 13/16 that the deprivation of the KRRiT of their competence had been unconstitutional. The Constitutional Tribunal's ruling has not yet been implemented and the National Media Council continues to operate.¹⁶

Financial Ombudsman (*Rzecznik Finansowy*)

Overview

The role of the Financial Ombudsman is to support customers in disputes with financial market players. The Financial Ombudsman's competences vary from counselling, intervention and amicable proceedings to support provision during court proceedings. The body has been set up on the basis of the Act of 5 August 2015 on complaints handling procedures by financial market entities and on the financial Ombudsman (*ustawa z dnia 5 sierpnia 2015 r. o rozpatrywaniu reklamacji przez podmioty rynku finansowego i o Rzeczniku Finansowym* (Journal of Laws of 202,2 item 187, as amended). The Financial Ombudsman's activity relates to Article 21 and Article 38 of the EU Charter of Fundamental Rights in terms of non-discrimination and consumer protection, respectively.

The Prime Minister supervises the Financial Ombudsman. The Financial Ombudsman is appointed by the Prime Minister following a motion of the Minister of Finance and they can be revoked in the same way. The mandate lasts 4 years and it cannot be held by the same person more than once.

The Financial Ombudsman's tasks include taking action to protect customers of the financial market entities whose interests they represent, and in particular reviewing applications in individual cases brought as a result of the failure of the customers' claims to be accepted by a financial market entity in the course of dealing with a complaint; processing applications concerning failure to perform actions resulting from complaints decided upon in accordance with the customers' wishes and within the time limit; providing opinions on draft legal acts concerning the organisation and functioning of financial market entities; submitting motions to the competent authorities to undertake legislative initiative or to issue or amend other legal acts concerning the organisation and functioning of the financial market; informing the competent supervisory and control authorities of irregularities found in the functioning of the financial market entities, and organising educational and information activities related to the protection of the interests of clients of financial market entities. In 2022, the Financial Ombudsman undertook various activities to facilitate the access to the financial sector to Ukrainian refugees.

Taking into consideration these tasks, the mandate of the Financial Ombudsman partly overlaps with the mission of fundamental rights protection in the financial market, especially, yet not solely, with regard to consumer rights. Notwithstanding the present practice of the institution, its mandate presents a potential for expansion in this domain.

¹⁶ <https://bip.brpo.gov.pl/pl/content/rpo-spolki-rtv-wladze-powolywanie-tk-sejm>, 19 April 2023, accessed on 8 August 2023.

The Financial Ombudsman submits annual reports on its activity to the Prime Minister and the minister relevant for financial institutions.

Analysis

In terms of financial resources, in 2022, the Financial Ombudsman's revenue amounted to PLN 34,115,470.92, of which 97.7 % was made up of contributions from financial market entities. The remaining revenues came from payments from out-of-court dispute resolution and revenue from the operation of the Fund for Financial Education.

The Financial Ombudsman has placed various forms on its website regarding motions to intervene, together with a template proxy form. The forms also explain the conditions under which complaints might be filed. In 2022, the Financial Ombudsman received 40 600 complaints and requests from clients of financial market subjects and 16 700 individual requests for intervention from clients whose complaints had been rejected by a financial market subject (which was 13% less than in 2021). Out of 9 900 interventions the Financial Ombudsman undertook, almost 27% resulted in a positive outcome.

The Financial Ombudsman undertakes various initiatives to ensure its visibility. The annual reports submitted to the relevant institutions are published and stored on the website. The website also contains updated information on the Financial Ombudsman's activities. The Financial Ombudsman appreciates its presence on social media. Its annual report mentions the growing number of Facebook followers (16 500), LinkedIn followers (1 000) and Twitter followers (650). The report underlines specialist activities of the Financial Ombudsman therein and notes the potential for promoting the institution on social media.

In 2022 the Financial Ombudsman participated in the proceedings before the Court of Justice of the EU in the case C-520/21 which concerned the permissibility of lenders to claim remuneration for the use of funds made available to borrowers by the bank after the cancellation of the loan agreement (so-called remuneration for the use of capital). The Advocate General's opinion of 16 February 2023 on the case contained conclusions in line with the Financial Ombudsman's motions, which may indicate the potential for persuasion and impact of the institution even at the EU level. It also took part in various national-level proceedings. It presented important views in 29 cases and initiated a discussion regarding the legal character of a bank credit, which resulted in a request to the Supreme Court to present a statement on the issue. The Financial Ombudsman also cooperated with other national bodies with similar mandates. For instance, it requested the President of the Office for Competition and Consumer Protection to examine whether a bank's practice may constitute a practice violating the collective interests of consumers, which resulted in an initiation of proceedings. The Financial Ombudsman also participates in various education activities and organises webinars, meetings and educational campaigns.

The Association of Consumers' Ombudsmen (Stowarzyszenie Rzeczników Konsumentów)

Overview

The Association of Consumers' Ombudsmen aims to **protect consumers' interests** as well as to **support effective work of Consumers' Ombudsmen's**. According to the Competition and Consumer Protection Act of 2007 (*ustawa z dnia 16 lutego 2007 r. o ochronie konkurencji i konsumentów*, Journal of Laws of 2021, item 275, as amended) Consumers' Ombudsmen are responsible for city-level protection of consumers. Their role relates to Article 38 of the EU Charter of Fundamental Rights, consumer protection.

Consumers' Ombudsmen work in most cities within the structures of municipal offices. They are elected and can be revoked by the city council. Given that their mandate, although limited, relates to the protection of consumers, Consumers' Ombudsmen have a potential in protecting fundamental rights of individuals.

Consumers' Ombudsmen provide legal advice to consumers free of charge. They help with drafting complaints and procedural motions. They may also act on behalf of consumers in legal proceedings or join the consumer's proceedings. Consumers' Ombudsmen do not have any enforcement competences.

As the Association of Consumers' Ombudsmen is an association of public entities, it is important to note its special status.

Analysis

The Consumers' Ombudsmen are present at a local level and thus may be more accessible to average citizens and more aware of the challenges they face. Moreover, they are supposed to provide legal advice for free, which makes them accessible to consumers in need.

Their close connection with the municipal office means that their visibility and participation in public debate differs and is dependent on the public relations' strategies of a given municipal office. Moreover, there is a brief mention of the Consumers' Ombudsmen, their competences and how to find them on the website of the Office for Competition and Consumer Protection.

Ombudsman for Small and Medium Enterprises (Rzecznik Małych i Średnich Przedsiębiorców)

Overview

The Ombudsman for Small and Medium Enterprises has been established in the Small and Medium Enterprises' Act of 2018 (*ustawa z dnia 6 marca 2018 r. – Prawo Przedsiębiorców* (Journal of Laws of 2023, item 221)). Their key role is the **protection of micro, small and medium-size enterprises**, in particular with regard to the principle of freedom of economic activity, the enhancement of con-

confidence of entrepreneurs in public authorities, impartiality and equal treatment, sustainable development and the principle of fair competition and respect for good morals and legitimate business interests. The activity of the Ombudsman for Small and Medium Enterprises relates to Article 16 of the EU Charter of Fundamental Rights, freedom to conduct a business.

The Ombudsman for Small and Medium Enterprises is appointed by the Prime Minister following a motion of the Minister of Development and Technology and may be revoked using the same procedure. Before filing the motion, the Minister seeks the opinion of representative organisations of employers. The mandate of the Ombudsman for Small and Medium Enterprises lasts 6 years and it may not be held by the same person more than once.

The main tasks of the Ombudsman for Small and Medium Enterprises are: providing opinions on draft legislation concerning the interests of micro, small and medium-sized enterprises and on the rules of pursuing business activity; assistance in the organisation of mediation between enterprises and public administration entities; cooperation with non-governmental, social and professional organisations whose aim is to protect the rights of enterprises in the SME sector; educational and information activity related to performing business activity in Poland, in particular in the field of entrepreneurship and business law. Given the mandate and tasks of the Ombudsman for Small and Medium Enterprises they may have a potential in protecting fundamental rights.

The Ombudsman for Small and Medium Enterprises publishes annual reports on its activity.

Analysis

The Ombudsman for Small and Medium Enterprises also considers complaints. The website provides a template which may be sent to the office via post or electronic mail. The Ombudsman for Small and Medium Enterprises is required to respond within a month, whether they decide to act or not. In terms of resources and capacity, on 31 December 2022 the office had 56 employees divided between the main Warsaw office and the four field offices. The budget of the Ombudsman for Small and Medium Enterprises for 2022 was PLN 18 000 000 while the spending amounted to 12 406 661.

In 2022, the main activity of the Ombudsman for Small and Medium Enterprises was to undertake intervention in individual cases. The Ombudsman joined administrative and court proceedings as well as provided legal opinions on drafts of relevant legal acts. Moreover, the Ombudsman undertook various educational and informational activities by participating in and organising various conferences and events.

The Ombudsman for Small and Medium Enterprises seeks to ensure their visibility and participation in public debate. While in general in 2022 the Ombudsman noted a decline in media mentions compared to the preceding year, this may have been related to the end of the COVID-19 restrictions on economic activity and the aid to businesses, which was a recurring topic across all media. The Ombudsman for Small and Medium Enterprises has a website where it publishes e.g. the annual reports on its activity and various news. Moreover, it is present on social media such as Facebook, with a significantly increased number of followers in 2022 (13 130), Twitter (2 3000) and YouTube.

Patients' Rights Ombudsman (*Rzecznik Praw Pacjenta*)

Overview

The Patients' Rights Ombudsman was established in the Act on Patients' Rights and Patients' Rights Ombudsman of 2008 (*ustawa z dnia 6 listopada 2008 r. o prawach pacjenta i Rzeczniku Praw Pacjenta* (Journal of Laws of 2022, item 187,6 as amended)) in order to **protect the rights of patients**. The Patients' Rights Ombudsman's activity relates to various rights protected by the Charter, e.g. in Article 1, human dignity, Article 2, right to life, Article 7, right to private life or Article 35, health care. The Patients' Rights Ombudsman is a central government administrative body responsible for the protection of patients' rights. The Ombudsman is answerable to the Prime Minister.

The Patients' Rights Ombudsman is appointed by the Prime Minister from among the candidates in an open and competitive selection procedure. The call for the position is announced in a publicly accessible place and in the public information bulletin. The Patients' Rights Ombudsman may be revoked by the Prime Minister.

The scope of duties of the Patients' Rights Ombudsman's includes e.g. conducting proceedings in cases of practices that infringe collective rights of patients; development of draft acts on the protection of patients' rights, and their submission to the Council of Ministers'; issuing publications and conducting educational programmes popularising knowledge on the protection of patient's rights; cooperating with public authorities to ensure that patients' rights are respected; presenting to relevant public authorities, organisations, institutions and professional associations of medical professions the assessments and proposals aimed at ensuring effective protection of patients' rights; cooperating with non-governmental, social and professional organisations whose statutory objectives include protection of patients' rights; analysing patient complaints in order to identify risks and areas in the health care system that are in need of repair. The Patients' Rights Ombudsman also cooperates with the Psychiatric Hospital Patients' Rights Ombudsmen in order to ensure the protection of psychiatric hospital patients' rights.

As the Patients' Rights Ombudsman controls, within their mandate, the activities of healthcare providers and clinical trial operators, **the Ombudsman has a potential in protecting fundamental rights of citizens**.

Analysis

The Patients' Rights Ombudsman's office is divided into specialist departments and administrative departments. The report published in 2022 and covering the years 2019-2021 underlines the biggest challenge the Patients' Rights Ombudsman had to face over the past years, namely the COVID-19 pandemic. During that time, the Patients' Rights Ombudsman noted a significant increase in the number of complaints, undoubtedly connected to the challenges brought by the pandemic to the healthcare system.

Nonetheless, the rising number of complaints is also indicative of the increased awareness of the institution. To increase its visibility, the office undertakes various educational and promo-

tional activities. It is often mentioned in local and national media and it actively posts updates on its social media sites, Facebook and Twitter.

The Patients' Rights Ombudsman tries to take an active part in public debate. Recently the Patients' Rights Ombudsman delivered a public statement expressing regret and concern with the draft act on quality in healthcare and on patients' safety, which was not passed by the parliament.¹⁷ The reason for its rejection by the Senate was the unconstitutionality of the provisions concerning liability for medical mistakes, which would effectively discriminate against patients who receive publicly funded treatment outside of hospitals. The draft act was also critically assessed by the Polish Chamber of Physicians and Dentists (*Naczelna Izba Lekarska*) who argued that the act would neither improve the quality of healthcare nor positively impact patients' safety.

Passenger Rights Ombudsman supporting the President of the Rail Transport Office (*Rzecznik Praw Pasażera Kolei przy Prezesie Urzędu Transportu Kolejowego*)

Overview

The Passenger Rights Ombudsman supporting the President of the Rail Transport Office has been established by the Railway Transport Act of 2020 (*ustawa z dnia 28 marca 2020 r. o transporcie kolejowym* (Journal of Laws of 2020, item 602)) for conducting proceedings for the out-of-court settlement of disputes concerning contractual obligations, including those of ticket vendors or tour operators, towards passengers, arising from contracts for the carriage of passengers, goods or animals by means of railway transport and concerning services provided to passengers by a railway company, a railway infrastructure manager, a railway station infrastructure manager, station owner or station manager. As the Ombudsman's mandate and tasks relate to the protection of rights of railway passengers, which fall under EU law, the Ombudsman may play a role in terms of fundamental rights protection. Their activity may relate to Article 45 of the EU Charter of Fundamental Rights, freedom of movement and of residence.

The Passenger Rights Ombudsman supporting the President of the Rail Transport Office is appointed by the President of the Rail Transport Office for a term of 5 years and may be revoked using the same procedure. The Passenger Rights Ombudsman supporting the President of the Rail Transport Office is answerable to the Prime Minister.

Analysis

The Passenger Rights Ombudsman has a very specialised mandate related to the protection of railway passengers' rights. The Ombudsman is accessible to citizens and open to their complaints, with online complaint forms available. The proceedings before the Ombudsman may not last longer than 90 days, which significantly improves consumers' position as compared to long court proceedings. The Ombudsman has a dedicated website and regularly presents information on railway

¹⁷ 'OŚWIADCZENIE RZECZNIKA PRAW PACJENTA' <https://www.gov.pl/web/rpp/oswiadczenie-rzecznika-praw-pacjenta> (published on 14/04/2023, accessed on 18/04/2023).

transport issues and railway passengers' rights¹⁸. According to the Ombudsman, on average 2/3 of the proceedings result in a resolution that is satisfactory for both parties¹⁹.

Passenger Rights Ombudsman supporting the President of the Civil Aviation Office (Rzecznik Praw Pasażera przy Prezesie Urzędu Lotnictwa Cywilnego)

Overview

The Passenger Rights Ombudsman supporting the President of the Civil Aviation Office has been established in the Civil Aviation Act of 2002 (*ustawa z dnia 3 lipca 2002 r. Prawo Lotnicze*, Journal of Laws of 2002, item 1235, as amended) and is responsible for alternative dispute resolution (ADR) proceedings regarding passenger disputes with flight operators, tour operators or ticket vendors. As the mandate and tasks relate to the protection of the rights of civil aviation passengers, which falls under EU law, the Ombudsman may play a role in terms of fundamental rights protection. Their activity may relate to Article 45 of the EU Charter of Fundamental Rights, freedom of movement and of residence. The Passenger Rights Ombudsman supporting the President of the Civil Aviation Office is appointed by the President of the Civil Aviation Office for a term of 5 years and may be revoked using the same procedure.

Analysis

The Passenger Rights Ombudsman has a very specialised mandate related to the protection of civil aviation passengers' rights. The Ombudsman is accessible to citizens and open to complaints, with online complaint forms available. The proceedings before the Ombudsman may not last longer than 90 days, which significantly improves consumers' position as compared to long court proceedings. The Ombudsman has a website where it posts relevant updates on its activities²⁰. The Ombudsman also joins public debate by commenting on passenger rights' issues. They however do not take part in legislative works which is the competence of the President of the Civil Aviation Office.

In 2022, the Ombudsman received around 3 600 complaints. However, due to limited resources, the time of considering the complaints was prolonged²¹. The increased number of complaints was connected with the greater awareness of the EU-wide trend to use ADR proceedings convenient for consumers. Nonetheless, the limited financial resources led to limited human resources due to budget constraints. According to the Ombudsman, it is crucial to strengthen the personnel of the office to ensure its effectiveness²².

¹⁸ <https://www.pasazer.gov.pl/> (access on 30/10/2023).

¹⁹ <https://www.pasazer.gov.pl/en/about-the-ombudsman/additional-information-and-statistics> (access on 30/10/2023).

²⁰ <https://pasazerlotniczy.ulc.gov.pl/?lang=en> (access 30/10/2023).

²¹ https://pasazerlotniczy.ulc.gov.pl/upload/sprawozdania/SPRAWOZDANIE_za_rok_2022.pdf, p. 9 (access 30/10/2023).

²² *Ibidem*, p. 10.

President of the Office for Competition and Consumer Protection (Prezes Urzędu Ochrony Konkurencji i Konsumentów ("UOKiK"))

Overview

The President of the Office for Competition and Consumer Protection established based on the Competition and Consumer Protection Act of 2007 (*ustawa z dnia 16 lutego 2007 r. o ochronie konkurencji i konsumentów*, Journal of Laws of 2021, item 275, as amended) is **a central governmental administration body responsible for competition and consumer protection**. The President of the Office for Competition and Consumer Protection is answerable to the Prime Minister. The President of the UOKiK may deal with cases within the scope of Article 16, freedom to conduct a business and Article 28, consumer protection, of the Charter of Fundamental Rights.

The President of the Office for Competition and Consumer Protection is appointed by the Prime Minister from among candidates in an open and competitive selection process. The call for the position is announced in a publicly accessible place as well as the public information bulletin. The President of the Office for Competition and Consumer Protection may be revoked by the Prime Minister.²³ However, Poland, 2 years after the deadline for the transposition started working on an amendment²⁴ of the Competition and Consumer Protection Act implementing the ECN+ Directive, which requires strengthening the independence of the office. In the current draft, the President would be appointed for a 5 year- term and could not be dismissed without a cause. One person could only hold the mandate twice. The draft would also introduce rules prohibiting the staff to seek or take instruction from the government or any other public or private entity when performing their duties. These further safeguards of functional autonomy of the office remain a vivid subject of the public debate²⁵.

The President of the Office for Competition and Consumer Protection has a broad mandate.²⁶ The primary antitrust instrument used by the President of the Office are proceedings concerning competition restricting practices, i.e., abuses of a dominant position and prohibited agreements (cartels). Since 2004 the Office for Competition and Consumer Protection has provided its opinions on state aid schemes and individual state aid decisions before their notification to the European Commission. The President of the Office has also the power to conduct proceedings concerning practices infringing collective consumer interests, which may lead to a decision ordering the enterprise involved to cease the practices in question and pay a fine. Further consumer protection activities include reviewing B2C contracts with regard to prohibited clauses, i.e. contract terms setting forth consumers' interests in a way that infringes the law or good practices. The major instrument used by the UOKiK in this area are inspections of contracts used by enterprises. Finally, to protect the health and life of consumers, the UOKiK carries out proceedings concerning general product safety. According to the President of the

²³ See for a critical assessment: M. Bernatt, *Populism and Antitrust. The Illiberal Influence of Populist Government on the Competition Law System*, pp. 66-78.

²⁴ Available <https://www.sejm.gov.pl/sejm9.nsf/druk.xsp?documentId=DADF58847536C14EC125894800411FF0>, accessed on 15 March 2022.

²⁵ Bernatt M., Sznajder M., *The Rule of Law in Economic Law: On the Extension of the LM Test Application in the General Court's Judgment in Case T-791/19, Sped-Pro v. European Commission, and Its Consequences for Competition Law Enforcement in Poland*, *Europejski Przegląd Sądowy* 2022; M. Bernatt, *Populism and Antitrust. The Illiberal Influence of Populist Government on the Competition Law System*, pp. 175-214.

²⁶ See M. Bernatt, *Populism and Antitrust. The Illiberal Influence of Populist Government on the Competition Law System*, pp. 95-99.

Office for Competition and Consumer Protection's annual report press release, in 2022 the Office issued **577 decisions regarding consumer protection and 376 decisions regarding competition protection**. The discrepancy in the numbers of cases concerning consumer protection and competition protection is particularly visible with regard to the UOKIK's activity concerning digital platforms and online markets. With only one competition law decision ever concerning digital markets, in 2022 the Office undertook various initiatives concerning the protection of consumers online. One of the major focus areas was the social media market, wherein the UOKIK issued guidelines regarding advertising transparency by online influencers and actively monitored the market and enforced the rules.²⁷

Analysis

In terms of capacity and resources, the budget of the UOKIK in 2021 was PLN 108 million and on 31 December 2021 it had 568 employees. Moreover, in the past years the employees of the UOKIK have been characterised by a high turnover and it is worth noting that 21% of the employees had a low employment duration (up to 5 years). When it comes to the UOKIK's accessibility, the consumers' power to file complaints is limited. While anyone may file a complaint, the UOKIK is not bound by the complaint, nor it is required to send a reply to the complainant.²⁸ In case the UOKIK decides to take on the complaint, if it initiates proceedings wherein the complainant may or may not be included as a third party.

The UOKIK ensures its visibility through its website where it posts updates on its main activity, as well as through its activity on social media such as Twitter, YouTube, and Instagram. The latter is a new addition wherein the UOKIK both investigates current trends of the digital economy (e.g., proceedings against Instagram influencers) as well as educates the platform users about their rights as consumers. The UOKIK runs various informational campaigns, organises competitions as well as cooperates with academia and practitioners in organising relevant events. The UOKIK participates in various international cooperation mechanisms such as European Competition Network, Consumer Policy Network, Consumer Protection Cooperation, International Consumer Protection and Enforcement Network and Consumer Safety Network. The cooperation with these and many others mechanisms allows for the exchange of best practices as well as participation in the process of drafting international guidelines or EU standards.

Centre for Consumer Information At the Office for Electronic Communication (*Centrum Informacji Konsumentkiej przy Urzędzie Komunikacji Elektronicznej ("UKE")*)

Overview

The Centre for Consumer Information at the Office for Electronic Communication has been established based on the Telecommunications Law (*ustawa z dnia 16 lipca 2004 r. Prawo telekomunikacyjne*, Journal of Laws of 2022, item 1648, as amended) and is a governmental administration body

²⁷ UOKIK: UOKIK activities in 2022, available: https://uokik.gov.pl/news.php?news_id=19402, accessed on 15 March 2023.

²⁸ Marta K. Sznajder, *Uczestnictwo konsumentów w postępowaniach antymonopolowych w państwach Europy Środkowo-Wschodniej* [w:] M. Namysłowska et al., *Wyzwania dla prawa konsumenckiego w wymiarze globalnym, regionalnym i lokalnym*, CH Beck 2022.

responsible for **regulation of the market of telecommunications and postal services**. Their activity may relate to Article 11 of the Charter, freedom of expression and information.

The tasks of UKE relate to the assignment of frequencies for broadcasting of radio or television programmes (in agreement with the President of the KRRiT), holding competitions for frequencies for digital broadcasting of radio or television programmes, keeping a register of telecommunications companies with regard to the provision of conditional access systems, electronic programme guides and multiplexing of digital signals, analysis of relevant markets and imposing, maintaining, changing or lifting regulatory obligations on telecommunications companies with regard to the provision of conditional access systems, electronic programme guides and multiplexing of digital signals. Furthermore, the tasks include regulation, analysis and control of the telecommunications market, regulation and control of the frequency spectrum, regulation in the field of telephone numbering, regulation and control in the field of electromagnetic compatibility, regulation, analysis and control of the postal market.

The President of UKE is answerable to the Minister of Digitalisation. The President of UKE is appointed and dismissed by the Sejm following a proposal of the Prime Minister (until May 2020, the Senate also had the authority to approve the appointment and dismissal of the President of UKE). The term of office of the President of UKE is 5 years.

Analysis

As outlined above, the mandate and tasks of the Centre for Consumer Information at the Office for Electronic Communication in the area of fundamental rights protection is related to supporting consumers who have encountered issues related to telecommunications. The body is also involved in various informational and educational campaigns. It organises events to spread awareness and promote knowledge. The mandate of the Centre is ancillary to other sectorial institutions described in the present study.

EU Funds Commissioner and regional EU Funds Commissioners (*Rzecznik Funduszy Europejskich*)

Overview

The EU Funds Commissioner, established under the Ministry of Funds and Regional Policy, is the official body **responsible for supporting the individuals interested in EU funds, in particular the beneficiaries, project participants and petitioners in their interactions with bodies responsible for implementing EU funds**. The EU Funds Commissioner receives and analyses motions explaining problems and outlining proposals for improvements in the implementation of the operational programmes. The national operational programmes the Commissioner oversees are: Smart Growth, Infrastructure and Environment, Knowledge Education Development, Digital Poland, Eastern Poland, Technical Assistance and European Territorial Cooperation. The Commissioner also provides explanations regarding the motions, as well as reviews the procedures applied

in the operational programme and formulates proposals for improvements to the institutions. The EU Funds Commissioner does not hold administrative, prosecutive or court proceedings, nor does it hold appeal proceedings. It also does not provide advice on how to receive funds for projects.

The management authorities of each regional operational programme have also established regional EU Funds Commissioner. They are present in every voivodeship and thus there are 16 regional EU Funds Commissioners. The regional EU Funds Commissioners work under the Voivodeship Marshalls' Offices and support the national EU Funds Commissioner by decentralising the system of complaints handling.

Analysis

According to the annual reports published by the EU Funds Commissioner, in 2021 the EU Funds Commissioner received 102 motions/complaints (a 25% decrease compared to 2021)²⁹. Based on these motions/complaints, the EU Funds Commissioner has issued recommendations to relevant bodies – in 2021 15 recommendations were issued, and in 2022 only two. The reports discuss examples of motions/complaints concerning delays in proceedings, incorrect organisation, or issues regarding the level of treatment by the officials, which may fall under the rights protected under the right to good administration (Article 41) or the right to an effective remedy (Article 47) of the Charter of Fundamental Rights. None of these reports, however, have mentioned the Charter or rights guaranteed by it.

In the course of the research, we have reached out to the EU Funds Commissioner and the regional EU Funds Commissioner asking whether they had received any motions or complaints based on the Charter, and if yes, how they were dealt with. The EU Funds Commissioner replied that they had not received any motions or complaints based on the Charter. The regional EU Funds Commissioners also publish reports on their activities for each of the past years. The reports are available on their websites and describe the issues they have been working on and solutions they seek to implement. While most of the replies stated that the respective Commissioners did not deal with cases concerning the EU Charter, 3 have described cases which related to the application of the Charter.³⁰ In terms of media presence, the Commissioners do not have their own information or communication channels and rely on the general governmental website and respective Voivodeship marshals' websites, nor are they present in any social media.

Coordinator for Compliance of EU Funds with the Charter of Fundamental Rights at the Managing Authority (*Koordinator ds. Karty Praw Podstawowych w instytucji zarządzającej*)

According to the self-assessment report relating to the horizontal condition of respect of the Charter of Fundamental Rights of the European Union in implementing the European Structural and Investment Funds, drafted by the Ministry of Funds and Regional Policy³¹, each institution

²⁹ https://www.funduszeuropejskie.gov.pl/media/115618/2022_Raport_roczny_RFE.doc, p. 5 (access on 30/10/2023).

³⁰ See more: M. Sznajder, C. Węgliński, M. Wróblewski (ed.), *The role of national bodies with a human rights remit in ensuring fundamental rights compliance of EU funds*, Baseline report prepared by the Office of the Commissioner for Human Rights (Poland), 2023.

³¹ Report of 6th February 2023 (submitted to the European Commission).

which, within the scope of its mandate, performs the tasks at any stage of programme implementation they supervise, is responsible for the application of the Charter and is required to analyse the compliance of the implementation of operations financed from EU funds with the latter. **The managing authorities** decide on the form in which the compliance with the Charter is to be assessed. Each institution is also responsible for ensuring that beneficiaries are adequately informed about the obligation to apply the Charter when implementing a project and for providing information on how to file complaints about any potential violation, by these institutions, of the rights enshrined in the Charter.

In accordance with the solution adopted by the Ministry, appropriate analysis and examination of incoming complaints (including those concerning rights covered by the Charter of Fundamental Rights) shall be conducted in each institution individually. In addition to that, the institutions that have verified the complaint shall, regardless of their findings, notify the complainant on additional possibilities to proceed in order to protect their rights under the Charter and advise them with regard to the institution competent to handle the complaint in accordance with the general system of protection of fundamental rights, established within the administrative structure of EU funds implementation. This system does not replace other existing institutions for fundamental rights protection such as the Commissioner for Human Rights or the system of judicial protection (mostly under the administrative judiciary).

The mission of general coordination of activities aiming at ensuring compliance with the Charter (such as policy of programmes design and their implementation, monitoring, individual conformity assessment, awareness campaigning and training) has been entrusted to management authorities. To ensure consistency of the Charter implementation within the complex structure of EU funds institutions at national level, all managing authorities shall submit to the central monitoring committee annual reports on activities conducted and observations made with respect to it, including information coming from complaints handling. Each management authority shall appoint a so-called Coordinator for Compliance of EU Funds with the Charter of Fundamental Rights, working in close cooperation with the EU Funds Commissioner and Regional EU Funds Commissioners (internal Charter compliance bodies functioning within the governmental administration structure).

Analysis

As the Coordinators for Compliance of EU Funds with the Charter of Fundamental Rights at the Managing Authority have been established only recently (at the time of writing this study) across the managing institutions, it remains unclear how the bodies will function in practice. Certainly, they need to be well trained on the compliance of EU funds with the Charter for Fundamental Rights. Moreover, it is important to establish a clear division of competences and/or cooperation mechanisms between the Coordinators and the EU Funds Commissioners.

Voivodeship Trade Inspectorate (*Wojewódzka Inspekcja Handlowa*)

Each voivodeship has a Voivodeship Trade Inspectorate, as required by the Trade Inspection Act of 2000 (*ustawa z dnia 15 grudnia 2000 r. o Inspekcji Handlowej*, Journal of Laws of 2020, item 1706). The Voivodeship Trade Inspectorate is **a state control authority responsible for the protection of the interests and rights of consumers as well as the national economic interests**. The Voivodeship Trade Inspectorate's activity may relate to Article 38 of the Charter of Fundamental Rights, consumer protection. Voivodeship Trade Inspectors are appointed by the Voivodeship Governors upon approval of the President of the Office for Competition and Consumer Protection.

The tasks of the Voivodeship Trade Inspectorate are, e.g., control of the legality and reliability of the operation of enterprises conducting economic activity, within the meaning of separate provisions applicable to the sectors of production, trade and services; control of products placed on the market with respect to their compliance with the essential or other requirements set out in separate provisions, excluding products subject to the supervision of other competent authorities; control of chemical substances, their mixtures, products and detergents intended for consumers, within the scope defined in the regulations on chemical substances and their mixtures; control of energy-using products placed on the market or put into service; control of vehicles, items of equipment or parts intended for consumers with regard to the manufacturer's obtaining confirmation of compliance with the technical requirements; control of products traded or intended to be traded, including with regard to labelling and adulteration, and control of services (this control does not include control of the commercial quality of agri-foodstuffs at producers' sites and control of the health-related quality of foodstuffs specified in separate provisions); control of retailers' and wholesalers' compliance; control of compliance by entrepreneurs whose activity consists in the sale of digital receivers; undertaking mediation in order to protect the interests and rights of consumers; organising and conducting permanent amicable consumer courts, and conducting consumer counselling.

Analysis

In terms of fundamental rights protection, the mandate of the Voivodeship Trade Inspectorate relates to the protection of consumers. It is one of the mechanisms within the framework of consumer protection. Its mandate is ancillary to other relevant sectorial bodies.

Polish Chamber of Commerce (*Polska Izba Handlu*)

The Polish Chamber of Commerce is the industry's economic chamber of the retail trade sector. It currently groups around 30,000 shops, food and drug wholesalers and companies from the FMCG sector. The Polish Chamber of Commerce is one of the key social partners in the law-making process, taking part in consultations of draft laws, reconciliation conferences and parliamentary committee meetings, it is involved in legislative processes and submits draft laws. Their activity may relate to Article 16 of the Charter of Fundamental Rights, freedom to conduct a business.

Together with other organisations, since 2021 the Polish Chamber of Commerce has been co-authoring the Code of Good Practice for the Franchise Market - the most advanced and mature self-regulation in the Polish legal system supporting the development of franchising.

Areas of work of the Polish Chamber of Commerce include public affairs and public relations activities, monitoring of legislative processes, trade-related information activities, support of legislative activities, communication regarding the activities of member companies, support of image building and integration of the sector community.

Analysis

In terms of fundamental rights protection, the mandate of the Polish Chamber of Commerce relates to the protection of consumers. It is one of the mechanisms within the framework of consumer protection.

State Labour Inspectorate (*Państwowa Inspekcja Pracy* ("PIP"))

Overview

The State Labour Inspectorate aims to **effectively enforce labour laws**, including on occupational health and safety, through effective and targeted inspections and preventive measures aimed at reducing accident risks and at respecting labour laws. The State Labour Inspectorate's activity may relate to Articles 27-34 of the Charter of Fundamental Rights, regarding solidarity and the rights of workers. The State Labour Inspectorate is answerable to the Sejm. The General State Labour Inspector is appointed by the Marshal of the Sejm upon approval of the State Labour Council and the relevant Sejm committee. Under the National Labour Inspector there are regional Labour Inspectors.

The task of the State Labour Inspectorate is to inspect workplaces and supervise compliance with labour law and occupational health and safety regulations, e.g. whether the employer fulfils their obligations (remuneration for work, working time, holidays, protection of the rights of women, employed disabled persons and young persons, as well as broadly defined occupational health and safety requirements). The inspectors also analyse the causes of accidents at work (serious, fatal and collective ones) of which the employer is obliged to inform the PIP. Failure to inform the PIP of such accidents may be grounds for punishment by the labour inspector. Given the mandate of PIP regarding in particular the social rights connected to workers' right, it has potential in protecting fundamental rights protection.

Analysis

The State Labour Inspectorate is the **key body responsible for the protection of workers' rights and it has a significant potential to protect fundamental rights in that respect**. According to its 2021 annual report, it received 50 502 complaints and handled 59 570 controls in workplaces³². These high numbers speak of the importance of the Inspectorate. Among some of

³² <https://www.pip.gov.pl/files/130/Sprawozdania/934/Sprawozdanie-PIP-2022.pdf> (access on 30/10/2023).

the detailed results for, 2022 the Inspectorate mentions eliminating direct threats to life or health, conducting examinations regarding toxic substances and assessing work and pay contracts, which are all crucial aspects of the protection of social human rights of workers.

The State Labour Inspectorate publishes its annual reports on its website where it also publishes information on its activity. Moreover, it engages in promotional and educational activities by organising webinars and competitions, publishing podcasts and publications as well as organising social campaigns. The mandate of the inspectorate is, however, limited and does not cover all human rights violations at workplace, especially with regard to collective actions and issues without direct link to workers' rights.

Representatives for the Protection of Human Rights in the Police (*Pełnomocnik Komendanta Głównego Policji ds. Ochrony Praw Człowieka i pełnomocnicy terenowi*)

Overview

In the Polish police, since 2004 there has been a network of Representatives for the Protection of Human Rights in the Police. At present, there is a Representative of the Commander-in-Chief of Police for the Protection of Human Rights, functioning at the central level. In the field, their tasks are performed by the so-called Field Representatives operating at the levels of: Voivodeship Police Headquarters, Capital City Police Station, the Central Bureau of Investigation of the Police, the Bureau of Internal Affairs of the Police, the Central Counter-Terrorism Sub-Division of the Police, the Central Forensic Police Laboratory and 5 police force schools. The Commander-in-Chief of the Police is answerable to the Minister of Internal Affairs.

The main tasks of the Representatives are to promote human rights and to ensure that standards of their protection are observed in police units, as well as to monitor, on an ongoing basis, the actions of police officers in terms of respecting human dignity and observance of human rights in their activities and to propose solutions aimed at maintaining high standards in this respect. Their tasks may relate to Article 1-5 of the Charter of Fundamental Rights, concerning the protection of human dignity and Articles 47-48 related to justice.

Analysis

The above-mentioned fundamental rights bodies in the structures of the police, in particular the Representative of the Commander-in-Chief of Police for the Protection of Human Right, have been established following many critical voices about the lack of formal channels for raising issues related to human rights and non-discrimination principle with regard to Police officers' activities. The standing, powers and capacities of these bodies, in view of the criteria applied in the present analysis, are not significant from the perspective of the general structure of fundamental rights protection mechanisms in Poland but their very establishment has been, however, a key step with regard to the protection of individuals' rights in the Police.

Prison Service (*Służba Więzienna*)

Overview

The Prison Service, subordinate to the Minister of Justice, according to the Prison Service Act of 9 April 2010 (*ustawa z dnia 9 kwietnia 2010 r. o Służbie Więziennnej*, Journal of Laws of 2022, item 2470, as amended), is a uniformed and armed apolitical formation with its own organisational structure. It performs, according to the principles set out in the Act of 6 June 1997 - Executive Penal Code (*ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*, Journal of Laws of 2023, item 127), tasks in the scope of execution of temporary custody and penalties of deprivation of liberty, coercive measures resulting in deprivation of liberty, and penalties of deprivation of liberty in the electronic supervision system. The Prison Service implements the arrangements contained in the European Prison Rules, the Standard Minimum Rules for the Treatment of Prisoners and the Convention for the Protection of Human Rights and Fundamental Freedoms, including ensuring that persons sentenced to imprisonment or temporarily detained persons have their rights respected, in particular by having provided humane conditions, respect for dignity, health care and religious care. The Prison Service tasks may relate to Article 1-5 of the Charter of Fundamental Rights, concerning the protection of dignity.

The basic tasks of the Prison Service include conducting penitentiary and social rehabilitation activities for persons sentenced to imprisonment, primarily by organising work conducive to the acquisition of professional qualifications, teaching, cultural and educational activities, activities in the field of physical culture and sports, and specialised therapeutic interventions; exercising pre-trial detention in such a way as to secure the proper course of criminal proceedings regarding an offence or a fiscal offence; ensuring that persons sentenced to imprisonment or held in pre-trial detention, as well as persons subjected to custodial sentences and coercive measures resulting in deprivation of liberty, have their rights respected, in particular by having provided humane living conditions, respect for their dignity, health care and religious care; humane treatment of persons deprived of their liberty; protection of the public from offenders or fiscal offenders held in prisons and detention centres; ensuring order and security in penal institutions and detention centres; execution on the territory of the Republic of Poland of temporary custody and penalties of deprivation of liberty and coercive measures resulting in deprivation of liberty if they are to be executed in penal institutions and detention centres and if they result from the implementation of a ruling issued by a competent authority; cooperation with relevant formations of other states and with international organisations on the basis of international agreements and arrangements.

Analysis

The scope of responsibility of the Prison Service as regards fundamental rights is rather limited and restricted to maintaining the minimum level of prisoners' rights. Thus, while relevant for the protection of the fundamental rights of prisoners, the Prison Service does not play a key role from the perspective of the general structure of fundamental rights protection mechanisms in Poland but plays an important role in cases relating to possible fundamental rights issues in detention facilities.

Fundamental rights bodies in the institutions of the military

Overview

Although the applicability of EU fundamental rights standards to the military services is in principle limited, if not excluded, the control of the human rights compliance of many different types of activities and actions exercised by them presents an important part of the national human rights institutions' scope of actions, due to the risk for most basic rights and freedoms of individuals at stake. The internal institutions listed below do not have a strong mandate and self-standing status, yet their very existence may play some intermediary role in individual cases or general activities requiring action of the military institutions' heads.

Council for Women's Affairs in the Ministry of National Defence (Rada ds. Kobiet w Ministerstwie Obrony Narodowej)

Pursuant to Decision No. 19/MON of the Minister of National Defence of 7 March 2018 on the functioning of the Council for Women's Affairs in the Ministry of National Defence, the Council was established as a representation of female soldiers. **The Council is a consultative and advisory body to the Minister of National Defence, focused on matters concerning the military service of women.** The activities of the Council are supervised by the Minister of National Defence. The term of office of the Council is 5 years. Their role may relate to Article 23 of the Charter, equality between women and men.

The Council's tasks include: presentation to the Minister of National Defence of position statements in the form of resolutions on matters relating to the performance of military service by women soldiers; preparation, at the request of the Minister of National Defence, of analyses on the performance of military service by female soldiers; identification of factors affecting the performance of military service by female soldiers; collaboration with the Coordinator for Equal Treatment in the Ministry of National Defence on matters related to the performance of military service by female soldiers; cooperation with the representative bodies of professional soldiers, non-governmental organisations and state and international institutions with their specialised agencies on issues relating to the performance of military service by female soldiers; development of proposals for specific legal solutions related to the performance of military service by female soldiers; informing female soldiers about the actions taken by the Council on matters relating to the military service of female soldiers; promotion of the professional military service of women soldiers; development of regulations for the service functioning.

Accessibility Coordinator in the Ministry of National Defence (Koordynator ds. Dostępności w Ministerstwie Obrony Narodowej)

The Accessibility Coordinator in the Ministry of National Defence is responsible for supporting persons with special needs in accessing services provided by the Ministry of Defence and for monitoring the provision of accessibility to persons with special needs. In addition, the Coordinator draws up an action plan for improving the provision of accessibility to persons with special needs

in the Ministry of Defence. Their role may relate to Article 26 of the Charter concerning integration of persons with disabilities.

Analysis

The fundamental rights bodies in the institutions of the military described above have been established following many critical voices about the lack of formal channels for raising issues related to human rights and the non-discrimination principle. Their standing, powers and capacities, with regard to the criteria applied in the present analysis, are limited from perspective of the general structure of fundamental rights protection mechanisms in Poland. Their very creation has been, however, a key step with regard to the protection of individuals' rights within the military.

Representative of the Commander-in-Chief of the Border Guard for the Protection of Human Rights (*Pełnomocnik Komendanta Głównego Straży Granicznej ds. Ochrony Praw Człowieka*)

Overview

The tasks of the Representative of the Commander-in-Chief of the Border Guard for the Protection of Human Rights include promoting human rights, the principle of equal treatment and the principles of professional ethics; monitoring actions of the Border Guard to ensure observance of human rights, the principle of equal treatment and the principles of professional ethics, as well as proposing solutions to maintain high standards in this respect; establishing and conducting cooperation with national and international entities dealing with systemic protection of human rights, implementation of the principle of equal treatment and professional ethics; maintaining contact with institutions and non-governmental organisations that may support the activities of the Border Guard in the field of human rights protection, representing the Commander-in-Chief of the Border Guard in national and international undertakings related to the protection of human rights and freedoms, implementation of the principle of equal treatment and observance of the principle of professional ethics, as well as in contacts in this respect with entities and institutions outside the Border Guard; cooperation with plenipotentiaries for the protection of human rights appointed by other bodies and institutions carrying out tasks for the benefit of public order; preparing information, opinions, positions and reports related to the protection of human rights, equal treatment and observance of professional ethics; giving an opinion on draft legislation on the protection of human rights, related to the implementation of the principle of equal treatment and professional ethics. Their tasks may relate to Article 1-5 of the Charter of Fundamental Rights, concerning protection of dignity.

Analysis

The Representative of the Commander-in-Chief of the Border Guard for the Protection of Human Rights is an important and necessary body within the structures of the Border Guard. However, in the light of the past developments of border control practice in Poland it is necessary to underline that the body is only of advisory character and cannot intervene in individual cases in decisive way.

State Commission on Paedophilia (*Państwowa Komisja ds. Pedofilii*)

Overview

On the basis of the Act of 2019 on the State Commission for Investigating Acts Against Sexual Freedom and Decency of Minors under 15 Years of Age (*ustawa z dnia 30 sierpnia 2019 r. o Państwowej Komisji do spraw wyjaśniania przypadków czynności skierowanych przeciwko wolności seksualnej i obyczajności wobec małoletniego poniżej lat 15*, Journal of Laws of 2020, item 2219), as amended), the State Commission on Paedophilia undertakes activities to examine cases of sexual abuse. The Commission takes steps to ensure that state authorities, organisations, and actors in the field of combating sexual abuse respond promptly and takes measures to enable perpetrators of such abuse to be held accountable. It also takes both preventive and educational activities. Their tasks may relate to Article 1-5 of the Charter of Fundamental Rights, concerning the protection of dignity as well as Article 24 concerning the rights of the child.

The State Commission on Paedophilia is a functionally autonomous authority. It comprises of 7 members: 3 appointed by the Sejm (with 3/5 majority), 1 appointed by the Senate (with 3/5 majority), 1 appointed by the President, 1 appointed by the Prime Minister, and 1 appointed by the Ombudsman for Children. The term of the mandate lasts 7 years.

Analysis

The State Commission on Paedophilia is an important institution, especially in the light of many complaints regarding paedophilia, which may concern also issues not penalized any longer *rationae temporis*. However, so far, due to the unclear scope of competences in the law, according to the legislator's assessment, the Commission has not been functioning as efficiently as planned. With recent amendments regarding the right to initiate investigative proceedings by the Commission, it shall be possible to assess soon whether they brought the changes desired by the Commission. In April 2023 the Chairman of the Commission resigned, and until November 2023 the position remained vacant which negatively affected the effectiveness of the proceedings of the institution³³.

National Electoral Commission (*Państwowa Komisja Wyborcza*)

Overview

The National Electoral Commission is **the supreme electoral authority responsible for the conduct of elections** (to the Sejm and Senate, the office of the President of Poland, local government bodies and the European Parliament) and referendums (national and local ones) in Poland. Their role relates to Articles 39-40 of the Charter, the right to vote. The National Electoral Commission consists of 9 members: 1 Constitutional Tribunal judge selected by the President of the Constitutional Tribunal, 1 Supreme Administrative Court judge selected by the President of the Supreme

³³ According to statements presented during the press conference held on the 6th of June 2023 <https://pkdp.gov.pl/zaproszenie-na-konferencje-prasowa-panstwowej-komisji/>.

Administrative Court, 7 members qualified to hold a position of a judge, selected by the Sejm. The members of the National Electoral Commission are appointed by the President. The President, however, may not revoke them.

The National Electoral Committee, due to its role, may be seen as a body responsible for the protection of political rights, such as the right to vote.

Analysis

While noting the National Electoral Commission's potential role in protecting the right to vote, the Commission claims to be a body of election administration and does not usually comment on the drafted amendments to the elections code. Nonetheless, within its duties it oversees the respect for the voting rights by other bodies involved in organising elections and referenda.

Bar associations

Overview

Following Article 17 (1) of the Polish Constitution, there are 16 Acts constituting legal bases for **17 self-governance bodies of public trust professions, which gather all persons of the respective profession and, to some extent, carry out public tasks**. Some of them may be relevant to the national human rights structures, such as those within bar associations.

Firstly, the Human Rights Committee of the Polish Bar Council (*Naczelna Rada Adwokacka*) brings together attorneys-at-law from all over Poland who are active in the area of human rights protection. Since 1991, the Human Rights Committee of the Polish Bar Council has undertaken activities for the protection and strengthening of civil liberties and rights, both in Poland and abroad. The Human Rights Committee of the Polish Bar Council develops and adopts positions and resolutions on current issues concerning the protection of human rights and intervenes in cases regarding lawyers in other countries. In recent years, the Human Rights Committee has been actively involved in the law-making process by preparing legislative opinions on the course of parliamentary work. The Human Rights Committee of the Polish Bar Council and its members have regularly appeared as *amicus curiae* in proceedings before the Constitutional Tribunal (e.g. in cases concerning access to defence counsel, operational control and data retention, the practice of detention and pre-trial detention or proceedings against persons with mental disorders posing a threat to life, health or sexual freedom of others). Each year, the Human Rights Committee organises academic conferences devoted to current problems related to the practices relating to human rights and civil liberties. The Human Rights Committee of the Polish Bar Council periodically prepares and submits to the Committee of Ministers of the Council of Europe detailed reports on the execution of judgments of the European Court of Human Rights in key Polish cases. Through active monitoring of the Polish Government's implementation of the judgments of the European Court of Human Rights, it contributes to the dissemination of the Strasbourg standards and jurisprudence in the application of the law in Poland. Members of the Human Rights Committee of the Polish Bar Council are actively

involved in the promotion and protection of human rights also at the local level. Many members of the Human Rights Committee conduct training sessions and workshops on human rights protection standards in Bar Associations in Poland.

Secondly, the National Bar Council of Attorneys-at-Law (*Krajowa Izba Radców Prawnych*) also has a Human Rights Committee within its structures. The tasks of the Human Rights Committee include promoting, on behalf of the self-government of attorneys-at-law, universal respect for human rights and fundamental freedoms; responding to emerging violations of human rights, organising media campaigns to highlight examples of violations of rights and freedoms, and preparing draft positions of self-government bodies concerning violations of these rights; promoting knowledge of effective protection of the rights guaranteed by the European Convention for the Protection of Human Rights and the Charter of Fundamental Rights of the European Union, monitoring the case-law of the European Court of Human Rights and monitoring the state of implementation of its judgments and decisions as well as carrying out other activities contributing to the dissemination of knowledge about human rights and fundamental freedoms and their protection.

Analysis

The Human Rights Committees within the self-government structures of public trust professions, such as bar associations, play a significant role within their organisations, especially as regards their members – professional lawyers. They also undertake some educational activities, aimed especially at younger people.

Human Rights Bodies at universities

Overview

Every university may appoint an Ombudsman. An Ombudsman is an independent and neutral person to whom students, academic and administrative staff can address informal or confidential concerns about the university and its community. The ombudsman's role is to support staff and students in resolving conflicts and to ensure that all members of the university community are treated fairly and equally. The ombudsman role is independent of the university's governance structure. Moreover, according to the provisions of the Act on Higher Education, it is one of the basic tasks of universities to create conditions for people with disabilities to participate fully in the educational process and scientific research. Universities may thus create bodies with human rights remits. For example, the University of Warsaw has an Ombudsman, an Office for Persons with Disabilities, an Anti-Mobbing Coordinator, the Rector's Committee for Preventing Discrimination and an Equal Opportunity Chief Specialist. Their activities may relate to Article 14 of the Charter, the right to education as well as Article 21, non-discrimination.

Analysis

The establishment of university human rights bodies has been an important development within university structures. They symbolise greater awareness and willingness to ensure the re-

spect of students' rights in academia. Nonetheless, as they are embedded in the university structures, they have to cooperate with other decisive actors, and their impact is limited to the university.

Voivodeship Governor's Representative for National and Ethnic Minorities

Overview

Each of the Voivodeship Governors' Offices has a Representative for National and Ethnic Minorities in their structures. Their tasks include organising meetings with the regional representatives of national and ethnic minorities, coordinating the activities of governmental administration entities conducting tasks for the sake of the minorities, taking actions for the respect of minorities' rights and prevention of such rights' violation, taking actions to solve the minorities' problems, taking actions for the respect of regional languages' speakers. The Representatives draw up annual reports on their activities, which are publicly available on the Ministry for Internal Affairs and Administration's website. Their role may relate to Articles 21-22 of the Charter regarding non-discrimination and cultural, religious, and linguistic diversity.

Analysis

The establishment of the office of Voivodeship Governors' Representative for National and Ethnic Minorities has been an important development in regional government structures. In view of national and ethnic minorities' presence in Poland, it is important their rights are protected and the body established at the regional level offers the potential to do so.

Global analysis and identified potentials

Methodology of the global analysis

The overall assessment of institutions analysed in the present mapping study has been based on the following **criteria** which were meant to combine both general conclusions on interactions between the identified institutions and individual assessment results reflecting some systemic issues and flaws of the human rights protection structure in Poland:

- coherence and consistency of the map of institutions;
- degree of complexity of the present structure of human rights protection;
- global analysis of individual actors included in the map (systemic issues);
- effectiveness of interactions and frameworks of cooperation between the actors and the degree of coordination of the actors' activities;
- openness to individuals and civil society (all stakeholders), including visibility and comprehensibility of the system.

The conclusions of the global analysis are presented below according to these criteria.

The analysis is preceded by a proposed visual model of potential synergies between the mapped institutions.

Visual model of the mapping

The proposed visual model of potential synergies between the mapped institutions focuses on possible or hypothetical coordination potentials of some of the institutions within their scope of activity or field (marked by circles). For some of the fields, no unique central body for potential coordination could be identified. The colours used in the visual model represent distinct categories of the coordination potential.

- **Brown** represents bodies with central-level general (cross-field) coordination capacity potential.
- **Dark orange** represents general (cross-field) coordination potential.
- **Dark green** represents field-specific or activity-specific coordination capacity with some cross-field or general coordination potential.

- **Navy blue** represents field-specific or activity-specific coordination capacity potential.
- **Yellow** represents distinct potentials of coordination (indirect coordination capacity).
- Arrows and lines represent key cooperation axes.

Explanation of the assignments of the mapped bodies can be found after the visual model.



Central-level general (cross-field) coordination capacity potential

The institutional and functional structure of the bodies with human rights remit in Poland can be described as an example of not strictly centralised but centripetal model. Among the mapped institutions, the leading role in organizing cooperation between them could be potentially attributed to the **Commissioner for Human Rights**, taking into consideration the central constitutional standing of the institution, its very broad mandate and competences as well as the resources available to the Commissioner. Although there are other institutions with constitutional standing (the Ombudsman for Children, the Supreme Audit Office) they represent less potential for general coordination, due to their limited mandate or specific (limited) type of activity.

General (cross-field) coordination potential

Some of the mapped institutions, despite having a specific activity remit, in functional terms do or can play a substantial role in coordinating human rights protection policy in the country. This is especially observable in the case of the mapped **parliamentary committees (including petitions committees)** which, by initiating the use of their legislative competences of the Parliament as well as the parliamentary control mechanism (parliamentary questions), engage in initiating and coordinating broader human rights policies together with diverse bodies. Similar potential can be exercised by the **Ministry of Foreign Affairs** which, as a part of the government, has particularly significant resources and powers and can potentially initiate necessary changes in legislation and administrative practice when exercising the task of the ECHR judgments implementation. Some coordination frameworks (committees) are already in place and show some general coordination potential.

Field-specific or activity-specific coordination capacity with some cross-field or general coordination potential

Many of the mapped institutions, despite having a rather limited (field-specific) mandate or little broad powers allowing development of larger-scope policy or coordination, could contribute to the role played by the control or supervision authority. For instance, when it comes to matters related to consumer protection there are certain already existing synergies between the key actors. The main body in this area is the **President of the Office for Competition and Consumer Protection**, whose mandate in consumer protection is wide and activity-prolific. Some of the bodies involved with consumer protection, such as the Voivodeship Trade Inspectorate or the Association of Consumers already carry out cooperation with UOKIK, providing assistance during inspections and a hands-on local approach. It should be further noticed that within the mandate to ensure consumer protection, the UOKIK has the capacity to coordinate the work of various other bodies active in the area, such as the Passenger Rights Ombudsmen for the aviation sector and for the

railway sector, the Office for Electronic Communications (already cooperating with the National Broadcasting Council), the Ombudsman for Small and Medium Enterprises and the Polish Chamber of Commerce (that may also engage in a closer bilateral cooperation relating to their aims).

Similar potential can be identified in the mandate, powers, and resources of the **President of the Office for Personal Data Protection**. Although the scope of the human rights remit of the Office is limited to data protection issues, given the expanding data processing in different public services, fields and private market sectors, it can, in some specific cases, play an important role of coordination of policies aiming at protecting the right to privacy (for example involving UOKIK and its competition supervision or consumer protection powers). The powers of institutions such as the **Patients' Rights Ombudsman, for the Ombudsman for Children, and the Government Plenipotentiary for Disabled Persons** (see notably the cooperation axis with the Patients' Rights Ombudsman) can play such a role too. With the same standing and resources as those mentioned with reference to the Ministry of Foreign Affairs, some other **Ministries** can hypothetically play a coordination role with respect to a given human rights issue or field of public policy.

Field-specific or activity-specific coordination capacity potential

Some of the mapped institutions have a limited scope of activity, relating mostly to one specific field of activity. This, in general, prevents them from playing a cross-field coordination role, but enables their involvement in actions coordinated by other bodies. This is the case, for instance, with: the **National Broadcasting Council**, the mandate of which covers a limited area of the media market, the National Electoral Commission (administration and supervision of elections and political parties' system) or the **Ministry of the Interior and Administration** (supervision of the police forces). The **Police Representative for Human Rights** has been also mentioned in this category, given their past involvement in and coordination of activities concerning some human rights issues (e.g. the right to assembly) within the internal structure of the police.

Distinct potentials of coordination (indirect coordination capacity)

As mentioned before with reference to some of the mapped bodies, there may be situations in which certain institution, without exercising relevant powers with respect to human rights or related legal frameworks compliance, have indirect impact on fundamental rights protection and implementation of the EU Fundamental Rights Charter. This is the case with the Supreme Audit Office (exercising only overview and reporting powers) or the public trust professions' self-government bodies which, gathering and representing interests of legal professionals in Poland, very often engage in the public debate or educational and promotion activities concerning fundamental rights protection as a key issue from the point of view of their clients' interests.

Coherence and consistency

The overall picture of the institutions and other types of bodies involved in fundamental rights protection in Poland is complex and complementary. The system of protection of freedoms and rights, in its constitutional design, has been centralized around the Commissioner for Human Rights with a minor exception of a separate institution of the ombudsman in the field of children rights' protection. Nevertheless, a more focused analysis shows some overlaps and departures from the original structure over time. In the last twenty years it has been possible to observe a very intense proliferation of smaller specialised bodies which were assigned some tasks and competences overlapping with the general mission of human rights protection in specific fields. This tendency has been especially driven by the implementation of various pieces of EU legislation concerning data protection and functioning of the common market (consumer protection, oversight of anti-discrimination legislation, financial market, competition control).

Although the proliferation of the institutions and the overlapping of their competences which actually do or potentially can contribute to fundamental rights protection is not a negative phenomenon in itself, in some areas it leaves doubts as to the final distribution of tasks. Following this observation, the institutions with a broader mandate such as the Commissioner for Human Rights or the Supreme Audit Office have remained vigilant in their monitoring of other actors' activities. Proliferation of institutions, in this perspective, represents an important potential for the general effectivity of the system by a well-balanced distribution of duties and resources and internal control of activities within the system by multiple actors. In order to achieve the efficiency of the system, among the institutions there is a need for permanent and effective structures of communication and cooperation, which are lacking at present. More detailed observations on this point are presented in the section on coordination.

Complexity of the map

As mentioned above, in the last twenty years there has been an intense proliferation of the oversight institutions to which individuals can address their claims of potential human rights violations. Such proliferation results, obviously, in an increasing complexity of the system which may impede overall effectivity of the fundamental rights protection structure in Poland. Firstly, as already mentioned, some of the newly created institutions have been assigned missions that might result in situations of overlap of competences. In most of the cases the legislator has not precisely determined the rules of proceeding in cases of conflict/of cooperation in such cases. This leaves final resolution of such cases to the institutions themselves, by way of dialogue, and allowing also for joint or (in cases of conflicting views) parallel actions. Although such a situation presents an advantage from the perspective of individuals who may address their claims to both sectoral and general institutions, in many cases the lack of clarity about the division of competences allows for shifting responsibility and refusal to proceed with such claims. This presents a considerable risk for realisation of the right to effective protection of fundamental rights.

It is worth noting, without any detailed research available on this issue, that in many cases the problems mentioned above such as responsibility shifting are probably a result of the lack of mutual awareness and comprehensibility of the system of the institutions involved in human rights protection in Poland. In practice, many officials working in the institutions described in the present study may not be aware of the precise scope of their competence in relation to competences of other institutions. This is partly due to the lack of precise legislative or doctrinal framework of the mutual relations and convergences. In case of the Commissioner for Human Rights, for instance, the act provides that institutions to which the Commissioner addresses their letters and recommendations are obliged to cooperate with the Commissioner³⁴. In practice, this does not mean that the Commissioner's recommendations are binding or enforceable, as the constitutional framework of the NHRI system in Poland does not involve any formal coordination. Having considered that, a broader impact of cooperation on final coordination of tasks would require more communication and dialogue-based channels of cooperation.

Interactions and coordination of activities

Firstly, although there exist some networks of actors involved in human rights protection in Poland, they tend to be either vertical (international networks) or strictly limited to a given sector of activity, without the engagement of institutions with possibly overlapping competences or with broader mandates. More horizontal and inter-sectoral/global networks would help to trigger the potential of coordinated actions, also by increasing mutual awareness of capacities and actual work both among the actors themselves and the general public.

Secondly, in many cases, even if a given institution participates in some cooperation frameworks, such participation rarely aims at or results in systemic and broad coordination of efforts but rather enables mere knowledge and experiences exchange between the officials. Most of such cooperation is limited to individual, one-time initiatives such as scientific conferences or debates involving mutual exchange of human rights actors. Although this may indirectly lead to some coordination results, the existing horizontal national frameworks and platforms of dialogue or cooperation are largely deficient, especially with regard to well-established and formalised permanent networks.

As far as the coordination of activities of human rights bodies in Poland is concerned, it is, at present, lacking larger scope and structural organisation. This is, in particular, well observable in cases posing human rights problems of inter-sectoral character. An enhanced coordination of the system would not only present a way to overcome the growing complexity of the map of human rights institutions but could also lead to more effective results and task distribution. As results from the individual assessments presented above, especially those which concern the third category of mapped institutions, many of the specialised sectoral entities have a very considerable effectivity potential. This potential relates to the concentration of specific knowledge and experience con-

³⁴ See Article 17 of the Act of 15 July 1987 on the Commissioner for Human Rights.

cerning a given range of issues or to the closeness of a given field in cases of decentralised locally based bodies. Investing in such institutions together with securing better coordination of activities could help overcome the issues of overburdening the central human rights institutions. Establishment of more developed cooperation networks could also help the relevant actors to get to know each other as a remedy for the complexity of the issue at the institutional level.

In terms of coordination, it should be further noted that there is a lack of a general national human rights strategy in Poland. While certain bodies, mainly within the government and ministries, have created strategies for human rights protection, they focus on sectoral issues rather than human rights protection in general. Furthermore, these strategies are rarely adjusted to the reality of Polish human rights issues and often simply follow international strategies and guidelines (see e.g. the strategy for the protection of the rights of persons with disabilities for 2020-2030, which is based on the UN guidelines and has been negatively assessed by the Commissioner for Human Rights³⁵). In this context it should be further stated that at this point it remains unclear whether Poland has yet established the EU Charter Focal point and what institution has been assigned this role. When designing the framework for the compliance of EU funds implementation with the Charter for Fundamental Rights, the Coordinators for the Charter have been planned at each managing institution. However, it is not clear whether they would establish the national Charter focal point.

Openness and comprehensibility

Most of the institutions within the human rights structures in Poland demonstrate a sufficient degree of openness. Individuals may reach them with a complaint and/or a motion, which in most cases should be the subject of the institution's review and response regarding actions taken. **The complaints and/or motions may often be filed on template forms available on the institutions' websites. Most institutions allow for complaints and/or motions to be filed in person, by post or electronically, in an oral or written form.** In general, the formal requirements for the motion/complaint to be effectively filed are low, which allows for most of them to be considered and guarantees accessibility.

Most of the institutions make efforts to ensure their visibility through establishing their media presence, sometimes trying to adjust to the social digital transformation and make active use of social media. With the few exceptions, such as the Commissioner for Human Rights who frequently comments and takes action on day-to-day matters and legislative developments that may impact human rights protection, most institutions rarely get active and voice their concerns even on matters within their areas of interest. Their presence and visibility in the mainstream media remains, therefore, limited.

³⁵ <https://bip.brpo.gov.pl/pl/content/uwagi-rpo-do-projektu-strategii-na-rzecz-osob-z-niepelnosprawnosciami>

Conclusion

This report outlines the **national human rights structures in Poland**. It presents the human rights structures in Poland in a broad sense. It looks at all parliamentary and governmental bodies and/or departments focusing on fundamental rights, at independent bodies and other organs with a wide fundamental rights remit (NHRIs, equality bodies and Ombudsperson type institutions) and at other actors relevant for selected fundamental rights, and outlines their mandate, functional capacity and practice. Finally, the report conducts a short analytical overview of the entity's role in the general system of human rights protection in Poland.

One of the key takeaways from the report is the **proliferation of the national human rights entities in Poland**. A number of human rights entities both in the parliamentary and governmental bodies and/or departments as well as among other actors relevant for selected fundamental rights have been established over the recent years. Therefore, the current system seems to be at a crossroads between the initially adopted centralised system of protection of fundamental rights and an incremental proliferation of specialised sectoral bodies, which partly is a consequence of the implementation of EU legislation. This may be seen as a positive development in the sense that it decentralises the human rights protection system, so far mainly focused on the Human Rights Commissioner (Ombudsman). While it may contribute to a broader protection of fundamental rights in general, it could positively benefit from the establishment of a broader cooperation scheme which would allow for a better distribution of tasks between these institutions and bodies in situations when systemic risks for human rights protection appear.



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