

# SUMMARY

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## Report on the Activities of the Commissioner for Human Rights in 2023



RZECZNIK  
PRAW OBYWATELSKICH

# SUMMARY

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## Report on the Activities of the Commissioner for Human Rights and on the State of Observance of Human and Civil Rights and Freedoms in 2023



COMMISSIONER  
FOR HUMAN RIGHTS

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**Report on the Activities of the Commissioner for Human Rights in 2023**  
**and on the State of Observance of Human and Civil Rights and Freedoms – Summary**

In 2023, the office of the Commissioner for Human Rights was held by Marcin Wiącek

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# Foreword by the CHR

Dear Readers,

In the fight for human and civil rights, trust is of greatest importance. Social processes, due to their nature, pose numerous challenges and risks. It is therefore easier to tackle them if we trust each and the bodies established to defend our rights. In 2023, the number of applications for assistance submitted to the Commissioner for Human Rights (79 698) was the



largest in history, which we noted with great satisfaction. For the CHR Office, it is an important confirmation that our relations with citizens are heading in the right direction and achieve increasingly better assessment. This trend is also reflected by the results of the CBOS periodic survey on public trust in state institutions.

However, a larger number of cases referred to the CHR Office also means a larger number of problems experienced by citizens, which raises our obvious concern. Unfortunately, in 2023 numerous irregularities and sometimes even chaos in the functioning of our legal, justice and health care systems could not be remedied. In very many areas we see serious problems with the implementation of relevant legislation and the performance of duties arising from the Constitution or the country's obligations under international treaties. All this, to a large extent, impacts daily lives of citizens and causes their discomfort, disappointment and numerous complaints. This is because they reasonably expect that over the years, the state (authorities) should be increasingly effective in meeting people's basic needs, including the observance of their rights and freedoms.

I strongly encourage you to carefully read the summary and the full version of the *Report on the activities of the Commissioner for Human Rights* available on the website [bip.brpo.gov.pl](http://bip.brpo.gov.pl). The report is not merely a map of important problems, supported by numbers and specific data. It also contains many suggestions as to what should be done and in what sequence to make life in Poland better year by year so that it becomes a source of satisfaction and pride for the citizens.

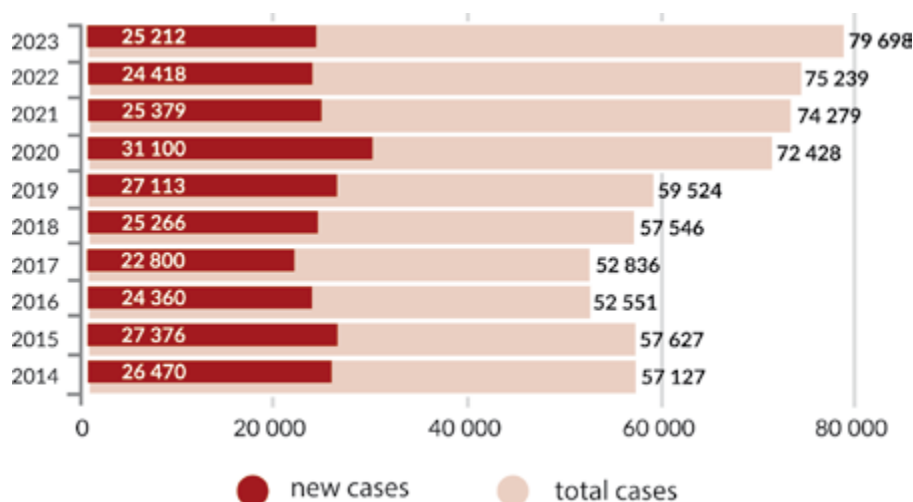
**Marcin Wiącek**

Commissioner for Human Rights

# Introduction

In 2023, the number of applications for assistance submitted to the Commissioner for Human Rights remained very high and reached 79 698, the most in the history of the Commissioner's office (for comparison, in 2019 the number of incoming applications was 59 524). Also, the Office employees provided advice by telephone in 32,460 cases, and received 2174 in-person visits of citizens seeking assistance at the CHR Office or the Commissioner's Regional Representative Offices.

**Figure 1. Inflow of applications to the CHR Office in the last ten years (2014–2023)** (the data is also presented in table 1 in the section “Tables”).



The constant very large inflow of applications has been caused e.g. by the Commissioner's power to apply extraordinary remedies (cassation appeals in criminal cases, or extraordinary complaints) unavailable to the parties to court proceedings, by the changing profile of applicants who seek the protection of their rights (the increasing number of applications by foreigners remaining under the authority of the Polish state, including Ukrainian citizens seeking refuge from

the war), and the increasing complexity of the legal system, including its constant and often uncoordinated changes that cause confusion as to the current legal situation.

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

Assistance by the Commissioner for Human Rights is sought by persons who believe that in handling their cases, the public authorities have acted in contravention of the law or with excessive lengthiness, or have failed to take sufficient action. Such opinions are verified as a result of explanatory proceedings undertaken by the Commissioner. The findings and assessments made in the course of such proceedings provide a basis for formulating general conclusions contained in the Commissioner's annual report. An important group of applications are those that do not allege infringement of the law by public authorities but seek information on current legal situation or request explanation of relevant regulations. This confirms the continuous unmet need for legal information. People who are uninformed or ill-informed cannot effectively protect their freedoms or rights.

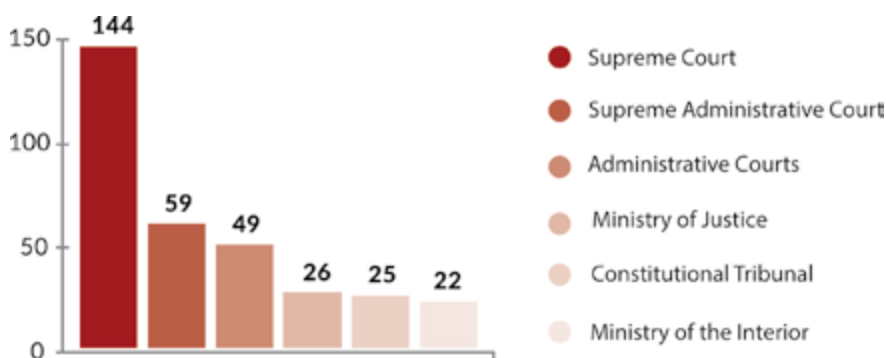


RPO Marcin Wiącek presenting a report on the activities of the Commissioner for Human Rights



In 2023, in 48.7% of the cases the Commissioner’s action was limited to the provision of explanations or information to the applicants on measures and remedies available to them. In 36% of the cases relevant proceedings were started in the form of requests to relevant bodies to examine the matters, or of explanatory proceedings undertaken independently by the Commissioner. Apart from conducting proceedings in individual cases, the Commissioner sent 206 problem-specific letters of intervention to the competent authorities. Among them were 89 letters concerning the need to take legislative action in order to remove the identified violations of human and civil rights and freedoms caused by the content of normative acts. The Commissioner’s intervention letters are a tool which enables assistance provision not only to persons whose freedoms or rights have been violated and who have turned to the CHR for their protection, but also to all people who are in a similar legal situation. Therefore, they make it possible to multiply the effect in the Commissioner’s comments and opinions are taken into account by the relevant bodies.

**Figure 2. Main addressees of the Commissioner’s general intervention letters and case-specific legal remedies** (the data is also presented in table 2 in the section “Tables”).

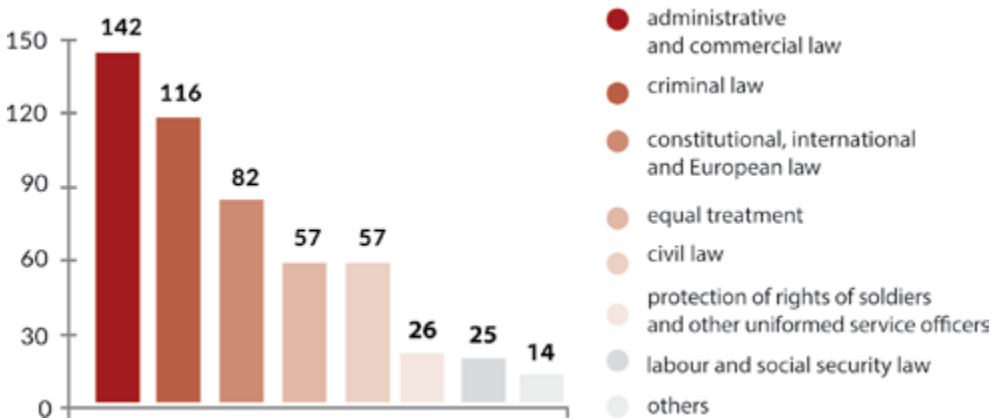


In 2023, apart from the intervention letters that are a persuasive means of influencing public authorities, the Commissioner made use of procedural measures available to him under the law for the protection of people’s freedoms

and rights. The Commissioner filed 3 applications with the Constitutional Tribunal and joined 22 proceedings (including 15 constitutional appeals) initiated before the Tribunal by other entities. He also filed 93 cassation appeals with the Supreme Court regarding criminal cases and civil cases, 48 extraordinary complaints with the Supreme Court, 54 cassation appeals with the Supreme Administrative Court, 18 complaints with voivodeship (i.e. provincial) administrative courts, and joined 46 proceedings before national common courts in which he has the same powers as a prosecutor.

In the exercise of the mandate of the National Preventive Mechanism within the meaning of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Commissioner carried out 76 preventive visits to places where people were deprived of their liberty.

**Figure 3. The Commissioner’s general intervention letters and case-specific legal remedies by problem area in 2023** (the data is also presented in table 4 in the section “Tables”).



The Commissioner also safeguards the observance of the principle of equal treatment. He examines applications submitted to him with regard to this area (in 2023, 728 such applications were received). The CHR analyses and monitors the

implementation of the principle of equal treatment and carries out independent research on discrimination.

The Commissioner has also been designated by Poland as Poland's national independent mechanism for supporting, protecting and monitoring the implementation of the Convention on the Rights of Persons with Disabilities. The task is carried out e.g. by including references to the provisions of the Convention in the Commissioner's intervention letters, appeals and opinions on draft legislation.

In 2023, the office of the Commissioner for Human Rights was continued to be held by Marcin Wiącek. The positions of Deputy Commissioners were held by Wojciech Brzozowski, Stanisław Trociuk and Valeri Vachev.

# Key problems relating to human rights in Poland

In 2023, the state of observance of human and civil rights and freedoms did not change significantly compared to 2022. The assessments contained in the *Report on the activities of the Commissioner for Human Rights in 2022* remain valid.

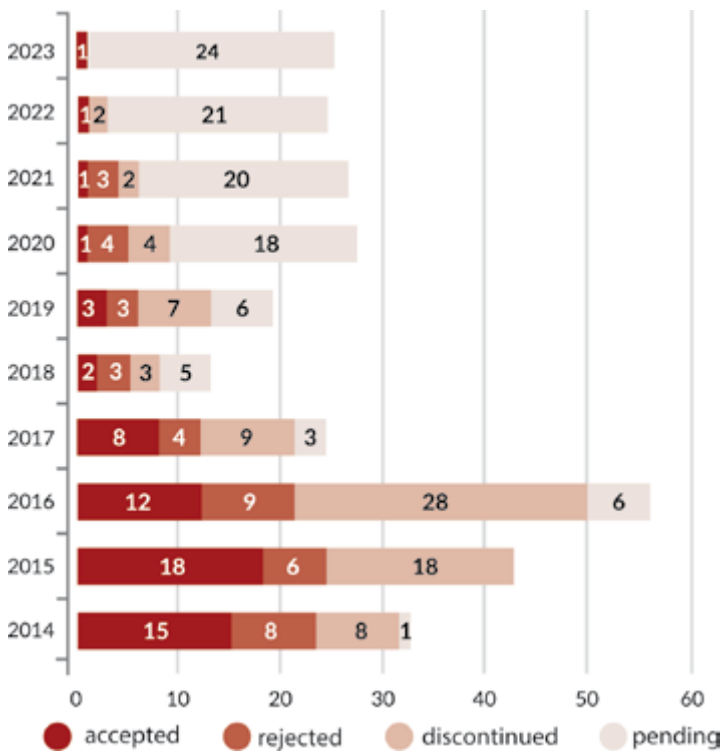
The **systemic crisis in the functioning of courts, which started with the change of the procedure for electing judges to the National Council of the Judiciary, remains unsolved**. Moreover, it was exacerbated by the successive changes in the functioning of common courts, administrative courts and the Supreme Court. The changes brought no improvement in the efficiency of the justice system but at the same time undermined, in a systemic way, the guarantees of independence of judges and the judiciary. Currently, in many cases pending before courts, the initial stage of the proceedings is focused on the determination by the parties whether the judicial panel meets the criteria of impartiality and independence. This extends the duration of the proceedings. The judgments of the European Court of Human Rights (ECHR) in the case *Wałęsa v. Poland* and of the Court of Justice of the European Union (CJEU) questioned the status of the Supreme Court's Chamber of Extraordinary Control and Public Affairs as a body established by law. Furthermore, the ECHR challenged the new extraordinary appeal procedure called extraordinary complaint, introduced into the Polish legal system six years before, and stated that it breached the principle of legal certainty that requires respect for final judicial decisions.

The ECHR and the CJEU judgments regarding the Polish judicial system, including the Supreme Court, require urgent implementation. This is primarily a duty of the legislator. In particular, it is necessary to remove the objections regarding

due empowerment and status of judges appointed after the changes impacting the National Council of the Judiciary, and the requirements of the admissibility of extraordinary complaints filed with the Supreme Court.

The jurisprudence of the European Court of Human Rights (the cases *Xero Flor v. Poland* and *M. L. v. Poland*) challenged the status of the Constitutional Tribunal issuing judgments with the participation of persons appointed as judges in violation of the law. The ECHR stated that the participation of persons not authorized to adjudicate as the judges of the Constitutional Tribunal can be considered a factor that undermines the binding force of its judgments. Hence, **fundamental legislative changes are required to bring the functioning of the Tribunal in line with the international and constitutional standards.**

**Figure 4. Applications examined by the Constitutional Tribunal: to find laws and regulations inconsistent with the Constitution; constitutional appeals; motions and questions of law to the Tribunal, joined by the CHR in 2014–2023** (the data is also presented in table 5 in the section “Tables”).



**The regulation introducing, into the criminal law, life imprisonment sentence without the possibility to apply for release on parole needs to be changed.** The regulation violates the prohibition of cruel and inhuman punishment, arising from the Polish Constitution and international law.

**The systemic problems in the application of pre-trial detention as the most severe preventive measure in criminal proceedings, including the problem of lengthiness of pre-trial detention, remain unsolved.** Despite the judgments of the Constitutional Tribunal, the Polish law does not yet unambiguously determine the rules of extending pre-trial detention, which make it possible to predict its maximum duration after the judgment of the first instance court. Furthermore, the solution making it possible to apply pre-trial detention solely on the grounds of severity of potential penalty for the act allegedly committed is inconsistent with the constitutional and international standards.

The amended penitentiary law provisions have excessively **limited telephone contacts of persons deprived of liberty with the outside world.** The minimum standard set by the legislator (one telephone call per week) has often been interpreted by the prison administrators as not subject to increase, which violates the constitutional right to the protection of family life.

The legal situation in the area of covert interference by the police and other state services with people's right to privacy and freedom of communication strongly contradicts the standards set by the Constitution and international law. The Constitutional Tribunal's judgment of 2014 regarding the matter has not been implemented into the legal system. **The provisions in force allow the police and other services to use operational control on a large scale and to collect telecommunications, postal and internet data without any limitations. At the same time, these provisions do not ensure effective control, independent of the executive, over the acquisition of these materials and data.** An application to the court for ordering operational

control is submitted together with materials justifying the need for its conduct, i.e. together with materials selected by the applicant and supporting their position, rather than with all the materials gathered in the case. As regards telecommunications data, the courts receive aggregate information on such data acquired, but have no tools to verify the correctness of their gathering. Despite the passage of 18 years since the announcement of the judgement of the Constitutional Tribunal, the authorities have not implemented the signalling decision on the need to introduce an obligation on the part of public authorities for the police or other state services to inform the person subjected to operational control of the completion thereof if the control has brought no results and no further procedural activities have been conducted with regard to the person.

In 2023, the legislative system still contained provisions **restricting the right of German minority to the teaching of its language**. The German minority was entitled to one hour per week of German language teaching while other national and ethnic minorities had three hours per week of their language lessons. The situation is discriminatory and justifies the statement that it **violates the constitutional right of a national minority to preserve and develop its language**.

In the field of protection of foreigners' rights, **appreciation should be expressed for the continuation, in 2023, of actions taken both by the public and the authorities to provide assistance and shelter to Ukrainian citizens seeking protection in Poland due to the Russian aggression**. However, our assessment of the public authorities' actions taken in connection with the migration crisis provoked by the Belarusian authorities on the Polish-Belarusian border is different. Foreigners who cross the Polish border against the law **are pushed back to the border line of Belarus pursuant to regulations that do not meet human rights standards arising e.g. from the case law of the European Court**

**of Human Rights.** In such cases, the public authorities apply regulations that exceed beyond the powers provided for in relevant parliamentary acts and, in the case of people intending to apply for the refugee status, contradict Poland's international obligations and other national regulations. The currently developing jurisprudence of administrative courts in this area confirms the opinions formulated by the Commissioner for Human Rights. **Increasing problems with the protection of foreigners' rights are also caused by the lengthiness of administrative proceedings conducted by voivodes in order to legalise foreigners' stay in Poland.** Poor organisation of work, e.g. requesting a foreigner after several months to remove formal errors in the application, as well as staff shortages lead to some proceedings lasting not only months but sometimes years.

As regards the freedom of speech and the right to information, **the National Broadcasting Council, which is the constitutional state body that should act as the guardian of the public interest and of the freedom of speech, has been deprived of its influence on the structure of bodies that manage the operations of the public broadcasters, as confirmed by the Constitutional Tribunal in its judgment issued in 2016 and not yet implemented.** In that period, the National Media Council (an extra-constitutional agency, which is not apolitical) took decisions on appointing and dismissing members of the public radio and television bodies. At the end of 2023, such decisions were taken by the Minister of Culture and National Heritage. This leads to the conclusion that the current legal situation does not yet meet the standard required by the Constitution as it does not guarantee a non-political process of appointing members of the bodies of public broadcasting companies.

The Commissioner's numerous calls in recent years to regulate the **publication of local press by local government entities** have not brought the expected results. Local governments, as an element of the system of public authorities, are



not beneficiaries of the freedom of the press and other social media. Their press publishing activity negatively impacts the local press market and undermines the basic functions of the press, which are to fulfil the rights to reliable information, openness of public life and public scrutiny and criticism.

**Changes to the electoral law, made immediately before the beginning of the election process should be assessed negatively.** They raise doubts from the point of view of the standard developed in the jurisprudence of the Constitutional Tribunal, according to which the passage of at least six months between the entry into force of significant changes in the electoral law and the first activity provided for in the electoral calendar is a necessary component of adequacy of *vacatio legis*. The provision on voting outside Poland, according to which a valid vote cast by a person with full electoral rights may be deemed invalid only because the electoral administration unit established for the purpose of the elections has failed to forward the voting results to the district electoral commission within the deadline needs to be criticised. The regulation violates the essence of the constitutional right to vote, enjoyed by Polish citizens.

Despite the Commissioner's numerous calls, **there has been no breakthrough in the functioning of the system of legal incapacitation.** It is still used instead of the system of supported decision-making, although in many cases incapacitated persons are able to express their opinion. Such subjective treatment violates the inherent human dignity.

The high inflation and growing costs of living in many cases lead to situations when **social benefits in amounts calculated according to the law are insufficient to meet people's basic needs.** In 2023, the amounts of the benefits did not keep pace with the increase in the cost of living, in particular the increase in rents, water and heating prices. As a result, families finding in difficult material and social situation do not receive adequate support from public authorities.

Complaints received by the Commissioner reveal the problem of **excessively lengthy time of waiting for a disability certificate**. The consequences of the situation are borne by people with disabilities who are unable to exercise their rights. The inefficient procedure of disability degree assessment leads to undue postponement of the exercise by such persons of their constitutional right to assistance in securing their subsistence, adaptations at work and social communication.

**The constitutional directive regarding support to the development of social housing has not been sufficiently implemented** despite the fact that the Commissioner has repeatedly raised the issue. As a result, in municipalities there are long queues of people waiting for municipal housing. Moreover, municipalities have no housing units for people evicted pursuant to a valid court ruling.

**There has been no improvement in the implementation of the constitutional right of equal access to publicly funded health care.** For years, there have been problems with sufficient numbers of doctors and nurses, the excessively bureaucratic system and its underfunding. Doctors working under civil law contracts often provide health care services in excess of daily and weekly working time standards and in violation of regulations on mandatory resting time. This poses a risk to patients and doctors themselves. As a result, access to publicly funded healthcare remains difficult and fails to meet the constitutional standard.

The legal situation created by the Constitutional Tribunal's judgment on the permissibility requirements for abortion causes **women's uncertainty as to whether at all and in what situations they may seek termination of pregnancy. This, in certain circumstances, may be considered as inhuman treatment.** Among medical practitioners, the situation leads to concerns regarding potential criminal liability for conducting the procedure. The situation requires intervention by the legislator.

In the field of environmental protection it is important to note the need to take account of the case-law of the Court of Justice of the European Union, according to which **citizens and their organisations should have legal recourse to courts in cases involving the drawing up of forest management plans.**

The problem of illegal landfill sites also needs to be resolved, including charging landowners with the cost of disposing of waste dumped on their land by third parties. Environmental protection is in fact a constitutional obligation of public authorities.

As regards taxes, **problems continued to occur as a result of the introduction of the so-called Polish Deal.** The applicants questioned e.g. the repealing of the provisions that allowed tax deductibility of health insurance contributions, which caused an increase in the tax burden. The introduction of the increase despite earlier announcements that the tax burden would be reduced does not build taxpayers' trust in the state and its laws.

The above-described problems were signalled, in a major part, in the previous reports on the activities of the Commissioner for Human Rights. They were identified in the examination of incoming applications as well as proceedings initiated on their basis. The problems and other issues relating to the protection of individual freedoms or rights are described more precisely in the full detailed version of the report on the activities of the Commissioner in 2023.

In this publication, the numbers under which cases are handled at the CHR Office are given in brackets. More detailed information may be obtained at the Office. Those interested should quote the case number or find the case on our website [bip.brpo.gov.pl](http://bip.brpo.gov.pl).

## Elections

2023 was an election year: the citizens elected MPs and senators and took part in a national referendum. In this context, complaints were received by the Commissioner who took action to protect their rights.

### ■ Amendment of the Electoral Code

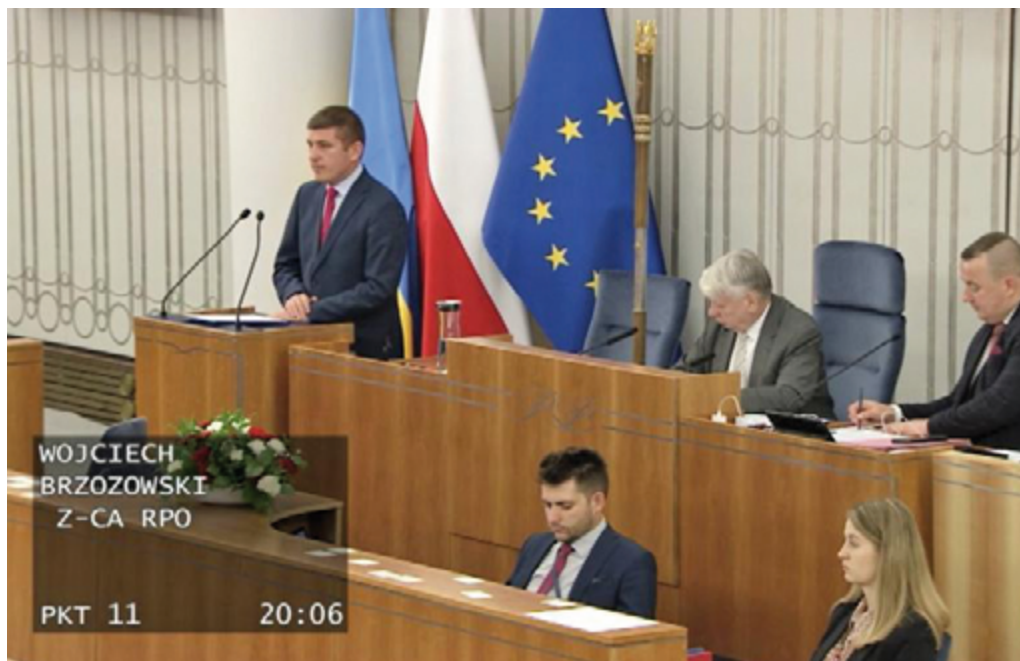
At the beginning of the year, the Sejm passed an amendment to the Electoral Code. The aim was to increase turnout in elections and the transparency and clarity of the electoral process. The National Register of Voters was also introduced. The Commissioner's opinion on the bill was sent to the Speaker of the Senate. The CHR stated that some of the proposed solutions were formulated in a way that could lead to a violation of citizens' constitutional rights and freedoms. In particular, he pointed to the fact that the duty to provide free-of-charge municipal transport to voters applied only to rural and rural-and-urban municipalities. This could lead to unequal treatment of citizens in the same situation, and violate the principle of equality. The Commissioner's objections also concerned the possibility for scrutineers to record, using their own equipment, the activities of local electoral commissions throughout the time of voting rather than only before the opening of the polling station and after its closure for voters, as was the case before. The Commissioner also expressed objections to omitting the principle of openness of registers in the case of the National Register of Voters, and to the requirement to have a PESEL number for EU citizens who take part in elections in Poland. On a positive note, the Commissioner appreciated the provision of transport to the polling station for voters with disabilities and elderly people. (VII.602.1.2023)

## ■ Limited time of vote count in polling stations abroad

In the public debate and complaints sent to the Commissioner, concerns were raised about the limited time of counting votes in polling stations abroad. The election commissions in polling stations abroad have 24 hours from the end of the voting to count the votes. If the results of the count are not provided to the district voting commission within the time limit, the voting is deemed not to have taken place. In the Commissioner's view, this violates the essence of electoral law and makes the validity and effect of the voting dependent on circumstances that are beyond the control of citizens and are caused by inefficiency of the electoral administration. Furthermore, the Constitution does not make the right to take part in elections dependent on the place of residence. The Commissioner requested the Speakers of the Sejm and the Senate to consider amending the legislation to remove the time limit for counting votes in polling stations abroad. In reply to the request the Senate took legislative initiative but no legislative work on the bill was undertaken by the Sejm. At the session of the Senate of the Republic of Poland, the Commissioner was represented by Deputy Commissioner Wojciech Brzozowski (VII.602.6.2023)

In a letter to the Chairman of the National Electoral Commission the Commissioner pointed out that in the case of national referenda, the provision according to which the results of voting in polling stations abroad are deemed null and void if the electoral commission does not receive the voting results within 24 hours does not apply. The National Electoral Commission failed to take this into account in its resolution on the guidelines for district electoral commissions abroad for the elections and referendum held on 15 October 2023. According to the Commissioner, there were no statutory obstacles for the results of the referendum vote to be determined and registered already after the determination and registration of the election results. In his response, the Chairman of the National Electoral Commission stated that the Commissioner's letter had been

irrelevant as all the district electoral commissions had calculated the voting results within the deadline arising from Article 230(2) of the Electoral Code. He also stated that the sequence in which the activities were to be performed according to the guidelines was the only logical and practical solution, and the adoption of the Commissioner's proposal would result in extending the work of the district electoral commissions. (VII.602.6.2023)



Wojciech Brzozowski, Deputy Commissioner for Human Rights at a session of the Senate of the Republic of Poland devoted to amending the Electoral Code, photo: senat.gov.pl

## ■ The need for a sufficient number and appropriate distribution of polling stations abroad

With regard to the voting abroad, the Commissioner received citizens' complaints regarding the establishment of district electoral commissions in individual countries. In his letters to the Minister of Foreign Affairs, the Commissioner pointed out that the establishment of a sufficient number of district electoral

commissions and the appropriate distribution of polling stations, ensuring their accessibility, were crucial for the effective exercise by Polish citizens abroad of their electoral rights set out in Article 62(1) of the Constitution. The Ministry informed that in the planning and establishment of district electoral commissions abroad, the Ministry was guided by the need to ensure the best possible conditions for voters to exercise their right to vote outside the country. The Ministry kept the Commissioner informed of the ongoing works and assured him that, despite the challenges in the area of organising and supporting the election process, the Polish Ministry of Foreign Affairs and the consular service made every effort to ensure the smooth conduct of the elections abroad and the best possible availability of polling stations. (VII.602.10.2023)

### ■ **Ensuring the secrecy of voting**

The Commissioner drew attention to the problems related to the use of transparent ballot boxes in the elections and the possibility for citizens to use envelopes when casting their votes, in the context of ensuring the secrecy of voting in the polling stations. The Commissioner addressed the Chairman of the National Electoral Commission who informed that the electoral law in force did not provide for the possibility for voters to use envelopes when casting their votes at the polling station, as this would constitute a violation of the voting procedure set out in the Electoral Code. (VII.602.11.2023)

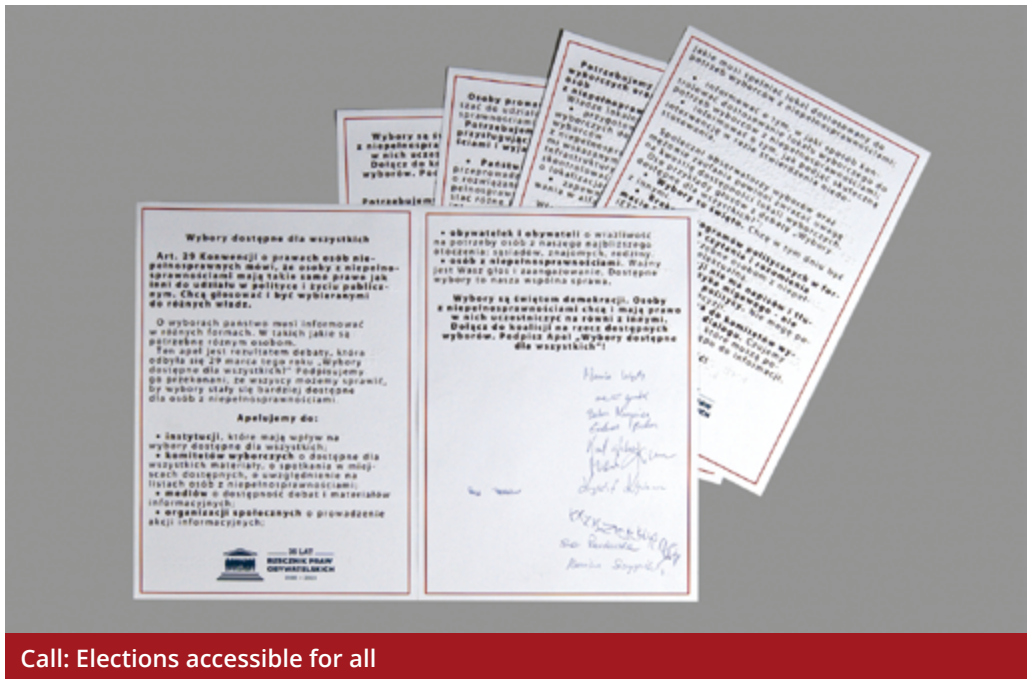
### ■ **Discontinuation of the requirement for election-related complaints to be lodged by an attorney-at-law**

In connection with the petition to the Sejm, the Commissioner pointed out in his opinion that a legislative initiative should be taken to unanimously regulate, in the Electoral Code, the matter of discontinuation of the requirement for election-related complaints to be lodged by an attorney-at-law. At present, the exemption from the requirement for such complaints to be lodged by an attorney exists only

in the case of complaints to the Supreme Court. Yet, the exemption does not arise directly from an act of Parliament but is based on the interpretation contained in a judgment of the Supreme Court. (VII.510.75.2023)

## ■ Accessibility of elections for people with disabilities

On 29 March 2023 at the CHR Office a debate entitled “Elections accessible for all?” was held. It was devoted to the broadly understood accessibility of the electoral process, polling stations, election campaigns, materials and spots, meetings and debates with candidates. The event was attended, among others, by Chairman of the National Electoral Commission Sylwester Marciniak, Government Plenipotentiary for Disabled Persons Paweł Wdówik, Advisor to the President of the Republic of Poland Paulina Malinowska-Kowalczyk, experts and representatives of public authorities and non-governmental organisations.



Call: Elections accessible for all

The debate resulted in a call by the CHR and social organisations for the accessibility of elections – Elections accessible for all – addressed to entities



having influence on the accessibility of elections, to electoral committees, the media, social organisations and citizens.

The signatories called e.g. for the provision of election-related materials in forms accessible to all and for election-related meetings to be held in locations that meet accessibility requirements. They called for lists of candidates to include also people with disabilities. They pointed to the need to ensure the accessibility of election-related debates and information materials on the media. The signatories highlighted the obligation of the election administration and local authorities to provide accessible polling stations.



Press conference at which the call „Elections accessible for all” was signed

The call was presented and signed during a press conference. Its content was read out by representatives of the Polish Association for Persons with Intellectual Disabilities. When signing the call Marcin Wiącek, Commissioner for Human Rights encouraged everyone to support the initiative and pointed out that the call was one of the most important documents he had ever signed. *It calls for the protection of human dignity, and thus I strongly encourage you to support the initiative*, said the Commissioner.



The Commissioner also called for meeting the accessibility requirements in his recorded speech published on 4 June 2024 on the Day of Civil Rights and Freedoms. He said that despite the passage of 34 years since the 1989 elections, people with disabilities were still unable to fully exercise their right to vote and

to stand for election. The CHR emphasized that elections are a celebration of democracy and that people with disabilities wish and have the right to take part in equally with others.

Because of the problems with accessibility of elections as well as difficulties in the exercise of electoral rights by citizens with disabilities, the Commissioner called on the Chairman of the National Electoral Commission and the Chairman of the National Broadcasting Council to take steps to increase the accessibility of elections-related information on the media, especially for voters with hearing impairment. Elections-related programmes and debates of election committee representatives and candidates should be made accessible to deaf and hard of hearing persons and should be translated into the sign language and subtitled in real time, as this is in line with the public interest and disabled people's right to obtain information on an equal basis with others and with their right to vote.

The Chairman of the National Electoral Commission replied that the Commission and other election administration bodies were not entitled to interfere in the ways in which election committees communicate with voters within their election campaigns. He also informed that the National Electoral Commission's website contained information in a form that was clear and understandable for every voter, including voters with disabilities. The National Electoral Commission had also developed information spots on the elections and the referendum and, taking into account the needs of persons with disabilities. They would be presented also in a version translated into Polish sign language and with subtitles in Polish.

The Chairman of the National Broadcasting Council informed that the Electoral Code did not mandate the council to issue a binding regulation on the accessibility of elections-related programmes for people with disabilities. He pointed out that the council would call on the public broadcasters to support people with

vision or hearing impairment by making it possible for them to obtain, from their broadcasts, information on the candidates and their programmes. (XI.602.1.2023)



**Adaptation of polling stations to the needs of people with disabilities is a condition for the universality of elections**

The adaptation of polling stations to the needs of people with disabilities is an important safeguard of the principle of universality of elections and an element of democratisation of the electoral law. The possibility for this group of voters to use alternative ways of voting (postal voting or voting by proxy) is their right. People with disabilities should be able to vote in person at a polling station on an equal footing with other citizens. Therefore, the CHR provided recommendations to local authorities on the organisation and accessibility of polling stations for people with disabilities. (VII.602.6.2014)

## ■ Inspection of polling stations classified as adapted for voters with disabilities: a report

As in the previous years, employees of the CHR Office inspected selected polling stations classified as accessible to voters with disabilities. The inspectors checked the compliance with the accessibility requirements, including, in particular, those set out in the *Regulation of the Minister of Infrastructure on polling stations adapted to the needs of voters with disabilities*. The inspection results were collected and compiled in a separate report. The inspection covered 143 polling stations in eight voivodeships. It revealed that despite the passage of over a decade since the adoption of specific legislation on the accessibility of polling stations for persons with disabilities, there still exist problems with the observance of the regulations. In 76% of the inspected polling stations at least one of the requirements was not met. Almost 40% of the stations failed to meet three or more of the requirements, and 25% failed to meet four or more of the requirements. In many cases, members of electoral commissions at those polling stations were not aware of the requirements set out in the law for polling stations' accessibility for persons with disabilities. This leads to the conclusion that the members are not sufficiently prepared for meeting the accessibility standards, and that training provided to them takes little account of the subject. The results of the inspection show that the existing legislation needs to be supplemented and formulated in a clearer way so as to be more easily understood by those who have no sufficient knowledge of the accessibility standards.

## System of justice and the right to a court

One of the main problems in the protection of human rights and freedoms in Poland, namely the lack of sufficient safeguards of independence of the judiciary

and impartiality of judges, remains unsolved. Relevant judgments of the European Court of Human Rights and the Court of Justice of the European Union remain unimplemented.

## ■ Independence of the judiciary

On 12 January 2023 the Sejm passed an **amendment of the Act on the Supreme Court and Certain Other Acts**, which provided, inter alia, for the transfer of disciplinary cases and immunity-related cases concerning judges from the Professional Liability Chamber of the Supreme Court to the Supreme Administrative Court, and the extension of the scope of the test of judge's independence and impartiality.

The Commissioner provided his opinion on the bill to the Senate. He stated that it did not solve the fundamental systemic problem impacting more than 2,500 judges of common courts and administrative courts, assistant judges and the Supreme Court judges appointed pursuant to the National Judicial Council's resolutions after 6 March 2018. Among the problems that could arise, the Commissioner indicated: overloading of the Supreme Administrative Court; the questioning of the constitutionality of the Supreme Administrative Court's judgments on the grounds of interference with the competences of the Supreme Court; the exacerbation of internal conflicts in the judiciary sector, and the extension of court proceedings in civil, criminal and administrative cases. As a consequence, the new act could lead to increasing distortions in the functioning of the judiciary system in Poland. The Commissioner emphasised that in order to bring Polish law into line with European law, it was necessary to change the rules for appointing members of the National Council of the Judiciary, which was not provided for in the act on which the opinion was issued.

Nevertheless, *the Act amending the Act on the Supreme Court and certain other acts* was adopted. Subsequently, the President of the Republic of Poland referred



it to the Constitutional Tribunal for preventive control of constitutionality. The Tribunal found a number of its provisions to be unconstitutional and held that these provisions were inextricably linked to the entire text of the act. As a result, the amendments did not come into force. (VII.510.5.2023)

The Commissioner drew the Minister of Justice's attention to a systemic problem related to the **right to have a case considered by an independent and impartial court**. The problem arose after the entry into force of the amendment of the Code of Criminal Procedure and other parliamentary acts, of 19 July 2019. After the amendment, there may be situations when in the consideration of applications for damages or compensation for wrongful conviction, pre-trial detention or apprehension, the president of the court considering the case will also represent the State Treasury as a party to the proceedings. This raises doubts as to external impartiality of the court considering the case. The issue regards the perception of such situations by the society, in particular the party seeking damages or compensation. In the opinion of the CHR, a better solution would be to amend the provisions of Chapter 58 of the Code of Criminal Procedure so that in such proceedings the State Treasury is represented by a specialist body i.e. the General Counsel to the Republic of Poland. In his reply the Minister pointed out that the proposed solution raised doubts because of the changed role of the General Counsel as its sole role was to be an institutional representative of the State Treasury in cases specified by the relevant parliamentary act. The Ministry of Justice had no plans to undertake legislative work in this area. (II.510.972.2021)

The Commissioner joined the proceedings before the Constitutional Tribunal regarding the application of the National Council of the Judiciary concerning the constitutionality of the provisions on **the possibility for a resolution of the Supreme Court to be granted the force of a principle of law**. The CHR requested that the challenged provision of the Act on the Supreme Court be

considered as constitutional. In the Commissioner's opinion, resolutions with the force of a principle of law, issued by 7-member judicial panels are an important and useful instrument enabling the Supreme Court to effectively perform its constitutional duty of judicial supervision over the jurisprudence of common courts and military courts. Depriving the Supreme Court of the competence to issue interpretative resolutions with the force of a principle of law would increase the risk of discrepancies in the jurisprudence of the Supreme itself and would make it more difficult for the Supreme Court to counteract discrepancies in the jurisprudence of common courts and military courts. (VII.510.71.2023)



The CHR informed of his intention to join the proceedings before the Constitutional Tribunal regarding the provisions of the Act on the Implementation of the State Budget, which change **the rules of remuneration of judges in 2023** and requested that they be found unconstitutional. In the Commissioner's view, the provisions are ad hoc and arbitrary in nature and contradict the reasons



for issuing, in 2009, the decision on a new system of remunerating judges. The currently challenged provisions circumvent the principle of budgetary autonomy of courts, which derives from the constitutional principle of courts' and tribunals' separateness from and independence of other authorities. In its judgment of 8 November 2023, the Constitutional Tribunal found the challenged provisions to be inconsistent with the Constitution of the Republic of Poland. (III.7042.2.2023)

## ■ **Right to a court and to a fair trial**

In January 2022 the Commissioner requested the Minister of Justice to initiate legislative works aimed at **repealing Article 15zrz<sup>1</sup> of the so-called Act on Covid**. It suspended the limitation periods for prosecuting crimes and tax offences. The reply received from the ministry stated that the provision was no longer necessary and that its repeal was justified. In view of this, the Commissioner requested the Minister of Justice for information on any legislative works started to repeal the provision and on their advancement. The Minister of Justice informed that on 7 July 2023, an act of Parliament was passed according to which Article 15zrz<sup>1</sup> of the Act on Covid was repealed. The change entered into force on 1 October 2023. The Commissioner's request was therefore fulfilled. (II.510.735.2021)

The Commissioner informed of his intention to join the proceedings before the Constitutional Tribunal regarding a constitutional complaint concerning the constitutionality of **Article 15zrz(6) of the Act on Covid**. The CHR requested that the provision be found inconsistent with Article 2 of the Constitution. The introduction of the provision during the pandemic without an intertemporal provision – changing the temporal scope of applicability of the provisions determining the duration of the limitation period – had been contradictory to the constitutional principle of the protection of acquired rights and the principle of the protection of legal relations. The consequence of Article 15zrz<sup>1</sup> and the consequence of Article 15zrz(6) of the Act on Covid had been a violation of the principle of protection of citizens' trust in the context of their right to a fair

trial, including the right to have a case considered „within a reasonable time” and „without undue delay”. The provision of Article 15zrz(6) of the Act on Covid also transferred the duty to take decisions suspending the limitation period for prosecuting an act and suspending the limitation period for executing a sentence to the executive authorities. The fact that the provision was repealed after 46 days (the limitation periods were suspended between 31 March 2020 and 16 May 2020) does not change the opinion that it had all the defects of Article 15zrz<sup>1</sup>(1) of the Act on Covid. (II.510.1008.2023)



In 2023, the Commissioner filed with the Constitutional Tribunal: 3 applications to declare laws and regulations inconsistent with higher-level legislation, 15 notifications about joining proceedings initiated by a constitutional appeal, 6 notifications about joining proceedings initiated by a motion and 1 notification about joining proceedings initiated by a question of law.

Several constitutional complaints, similar to each other, regarding the **time limit for discontinuation of suspended civil proceedings** were lodged with the Constitutional Tribunal. The applicants sought the examination of the

constitutionality of the provision requiring discontinuation of suspended civil proceedings within a time limit starting on the date of issue of the decision on their suspension, and not on the date of the delivery of the decision to the interested party. Both proceedings were joined by the Commissioner for Human Rights. He requested the Tribunal to find that that Article 182(1)(1) of the Act – Code of Civil Procedure, to the extent that it orders discontinuation of proceedings after three months since the „the date of the decision“ understood as the date of its issuance, is inconsistent with Article 45(1) of the Constitution. In the opinion of the CHR, the challenged provision introduces a mechanism that is defective, internally inconsistent and incoherent, which may lead to a violation of a party's procedural rights and, consequently, to the loss of the possibility to pursue claims. (IV.511.194.2023, IV.511.429.2023)

The CHR also joined proceedings before the Constitutional Tribunal concerning **the impossibility to file a complaint regarding the lengthiness of executive proceedings** concerning the suspension of a sentence served by a convicted person. The Commissioner requested the Tribunal to declare inconsistency with the Constitution of Article 2(1b) of the *Act of 17 June 2004 on a complaint concerning violation of the right of a party to have a case examined in preliminary proceedings conducted or supervised by a prosecutor or in court proceedings without undue delay* out Undue Delay is inconsistent with Article 45(1) of the Constitution, to the extent that it excludes the possibility to file a complaint concerning the lengthiness of proceedings regarding the suspension of sentence served by a convicted person. In the Commissioner's view every citizen, including those deprived of liberty, should be entitled to a remedy ensuring that the court acts efficiently in their case. Efficiency and effectiveness are among the core elements of the application of the law by courts, and are preconditions of the effectiveness of the law as such. There are no reasons either to refuse equal treatment by public authorities to persons deprived of their liberty. (IX.517.1422.2023)

The CHR provided to the Speaker of the Senate an opinion on the **amendment to the Act on the State Commission for the Investigation of Russian Influence**, passed by the Sejm on 16 June 2023. The main change to be introduced by the amendment is to deprive the Commission of the competence to apply the so-called countermeasures. In addition, the Commission's decision will not take away the „guarantee of due performance of activities in the public interest”. In his opinion, the Commissioner pointed out that the amendment did not change the main purpose of the act: the establishment of a non-judicial public authority competent for conducting investigation activities and, based on them, assessing actions of specific persons from the point of view of acting „under Russian influence” and „to the detriment of the interests of the Republic of Poland”. Although the amended act would remove some elements to which the CHR raised objections in December 2022, it would still raise significant doubts as to its constitutionality. Even after the amendment, the Act on the State Commission for the Investigation of Russian Influence would not guarantee sufficient protection of the freedoms and rights of persons who, according to the state commission, acted under Russian influence to the detriment of the interests of the Republic of Poland. (II.510.533.2023)

## Rights of persons with disabilities

### ■ **Loss of validity of disability certificates extended by the special Act on covid. The need to shorten the disability certificate waiting time**

During the parliamentary works on the bill amending the legislation on prevention of domestic violence, a provision was introduced that repealed Article 15h of the special Act on Covid of 2 March 2020. The provision determined the validity period of disability certificates. As a consequence of the

amendment, persons with disabilities would have to submit new applications for disability certificates. Those who would not submit them would lose, on 1 June 2023, their entitlement to care allowance, parking cards and benefits under the Act on Social Assistance. The Deputy CHR requested the chairpersons of two relevant Senate committees to take the situation into account in their works on the bill. (III.7064.30.2023)

However, on 6 August 2023, the provision of the Act on Covid that extended the validity of disability certificates was repealed. The Commissioner received information on significant extension of the waiting time for new disability certificates. This was caused not only by an increase in the number of applications received by the Disability Assessment Committees but also by a shortage of doctors in the committees and of funds for their employment. The consequences of the situation were borne by people with disabilities. The Commissioner therefore asked the Government Plenipotentiary for Persons with Disabilities about steps taken to shorten the waiting time for disability certificates. On 30 December 2023, the *Act on special solutions for preserving the validity of certain disability certificates and disability category certificates* entered into force, which extended the validity of the certificates. (III.7064.1246.2023)

## ■ Personal assistance

In connection with the lengthiness of the works on the bill on personal assistance, the CHR sent his comments on the document to the Minister of Family and Social Policy. The Commissioner emphasized the importance of systemic regulation of the issue, with active participation of people with various disabilities. The availability of personal assistance services is a key element of the deinstitutionalisation of care provision to people with disabilities and of the respect for the individual's right to live independently in accordance with their autonomous choice. The introduction of personal assistance services requires urgent change of the disability assessment system and the abolishment or

substantial modification of the system of legal incapacitation. The Commissioner expressed the hope that the new act, constituting a significant step towards the d-institutionalisation of the system of support provision to people with disabilities, would contribute to progress in the implementation of the UN Convention on the Rights of Persons with Disabilities. (XI.7061.5.2023)

## ■ **Implementation of support programmes**

The CHR received complaints from citizens regarding changes introduced by the voivodeship branches of the State Fund for Physical Rehabilitation of the Disabled to the rules of the programme „Independence – Activity – Mobility! Mobility for Persons with Disabilities“. The changes were introduced after a positive assessment of the applications, or even after receiving the notification about co-funding. The citizens stated that they had been required e.g. to present a consent of the guardianship court for the incapacitated person to make a financial commitment within the programme, or to present a statement that their own financial contribution did not come from the incapacitated person’s money. People interested in taking part in the programme had not been informed at any stage of the obligation to present such additional documents. The Commissioner contacted the President of the State Fund for Physical Rehabilitation of the Disabled with regard to the issue. The president assured that the State Fund’s voivodeship branches did not change the rules of the programme. To ensure that the needs of people with disabilities, in particular of incapacitated persons were met, the voivodeship branches of the Fund sometimes requested additional documents in case of doubt. This was not a modification of the rules of the programme but rather a responsible approach to the programme by employees of the branches of the State Fund for Physical Rehabilitation of the Disabled. (XI.7061.8.2023)



Rights of people with disabilities are a priority for the Commissioner for Human Rights

## ■ Works on the regulation implementing the Act on the Support Benefit

Information circulated in the public space on the extended duration of the works on the draft regulation on determining the level of support required by people with disabilities. The Deputy CHR wrote an intervention letter to the Minister of Family and Social Policy in connection with the uncertainties as to the rules of payment of the benefit, expected to enter into force on 1 January 2024. The Deputy Commissioner requested information on the status of the works, the direction of the planned solutions and the participation in the legislative works of people with various disabilities as well as individuals and social organisations working for their benefit. The need to engage persons concerned in the works on regulations impacting people with disabilities is directly mentioned in Article 4(3) of the UN Convention. The identification of the needs of such people and the community providing support to them makes it possible to develop solutions



that meet the expectations to a greater extent. The Commissioner did not receive a response to his letter but the regulation on determining the level of support was published and entered into force. (III.7064.1073.2023)

### ■ **Indexation of the nursing benefit**

The Commissioner wrote an intervention letter to the Ministry of Family and Social Policy with regard to the indexation of the nursing benefit for carers of persons with disabilities. The size of the benefit is dependent on the minimum salary amount. Due to high inflation, in 2023 the amount was increased twice. The regulations on the benefit do not provide for the possibility of increasing it twice a year and thus, in the Commissioner's view, should be amended. The ministry replied that no work was conducted to change the rules of annual indexation of the nursing benefit. (III.7064.81.2023)

### ■ **Insufficient benefits for those most in need**

The Commissioner received complaints about insufficient benefits for families with children, persons with disabilities and their caregivers, and people and families in a difficult living and financial situation. The measures implemented with regard to the size of the child benefit and permanent allowance were in line with the Commissioner's calls but did not constitute a systemic response to the needs of persons who required social protection. Therefore, the Commissioner wrote to the Ministry of Labour and Social Policy again, pointing out that the benefits had not been increased for a long time and were insufficient to meet the needs, particularly in view of the rising cost of living and the falling value of money. No reply to the letter was received. (III.7065.165.2022)

### ■ **Accessibility of the education system for students with hearing disabilities**

The Commissioner drew attention to the need to take action to make the education system more accessible for students with hearing disabilities. He



wrote an intervention letter to the Minister of Education and Science, drawing attention to the need to accept the Polish Sign Language (PSL) as a natural way of communication with and between deaf people in Poland, and to introduce its teaching into the education process. More information on the subject can be found in the section on education. (XI.7036.79.2022)

### ■ **Accessibility of elections for people with disabilities**

The CHR took broad-scale action to ensure full accessibility of elections for people with various disabilities. The Commissioner's Office hosted a debate entitled „Elections accessible for all?“ followed by a call for accessible elections, made by the Commissioner and civil society organisations. The Commissioner also sent intervention letters regarding the issue to the National Electoral Commission and the National Broadcasting Council. He provided recommendations to local governments on organisation and accessibility of polling stations. Employees of the Commissioner's Office also inspected selected polling stations classified as accessible to voters with disabilities. The results of the inspection were presented in a special report. More information on the subject can be found in the section on elections.

### ■ **Gynaecological and obstetrics care of women with disabilities**

In connection with the obstacles faced by women with disabilities in accessing health care services, in particular in the field of gynaecology and obstetrics, the Commissioner wrote an intervention letter to the Minister of Health. In response, the Ministry described measures taken to improve the situation, such as the project „Accessibility Plus for Health“. More information on the subject can be found in the section on the health care system. (XI.815.64.2022)

## ■ Report on teachers' support to students with disabilities

In 2023, the Commissioner issued a report „Support provision to students with disabilities by teachers co-organising the education process, assistant teachers and personal assistants of students with special educational needs“. The document included also the results of a survey conducted in 2022. More information on the report can be found in the section on education.

## Protection of the rights of foreigners, the situation on the border in the context of the war in Ukraine and the crisis on the border with Belarus

### ■ Consequences of the loss of the UKR status by refugees

The CHR Office received complaints from Ukrainian war refugees regarding the loss of the UKR status despite returning to Poland from Ukraine before the expiry of 30 days. Refugees who leave Poland for over 30 days lose the UKR status that is automatically changed to NUE. For a refugee, the loss of the UKR status means, among others, losing the right to free medical care, to social benefits and assistance. The complaining Ukrainian citizens reported that they lost their UKR status despite returning to Poland from Ukraine within 30 days and that they found about the loss by coincidence e.g. when ZUS social insurance company stopped paying their benefits. The CHR wrote an intervention letter to the Government Plenipotentiary for War Refugees from Ukraine, and pointed to the identified problems that could cause the loss of the status. He also requested an explanation of the cases. In a subsequent letter, the Commissioner drew attention to the lack of guidelines for local authorities on changing data in the PESEL register when restoring the UKR status. (XI.541.139.2022). The plenipotentiary

replied that the Ministry of Digitalisation in cooperation with representatives of the Border Guard and the Ministry of the Interior and Administration had developed a correct method of maintaining the restored UKS status in the PESEL register. In order not to lose the UKR status the refugees, on every entry to Poland, have to indicate that the reason for their arrival is the war in Ukraine and should present their electronic document in the diia.pl system. Otherwise, the person's entry to Poland is not recorded in the system covering war refugees but only in the system of the Border Guard. The UKR status can be restored automatically if a Ukrainian citizen, during border check, indicates evacuation from the territory of Ukraine as the reason for their arrival. The Plenipotentiary also informed of plans to conduct an information campaign on the subject among refugees. His explanations were published on the CHR's website also in the Ukrainian language. (XI.541.139.2022)

### ■ **Suspension of child benefits for Ukrainian citizens**

The Commissioner received complaints from Ukrainian citizens whose child benefits had been withheld due to the loss of their UKR status, despite the fact that they had not left the territory of Poland for more than 30 days. Ukrainian citizens taking refuge in Poland from the war point out that the child benefit constitutes a significant part of their budget and, in many cases, is the only source of income for families with children. The CHR wrote to the president of ZUS Social Insurance Institution with regard to the issue. The president explained the applicable procedures and informed that ZUS used the Border Guard register data on Ukrainian citizens' departures from Poland. He also stated that in cases where the legality of stay in Poland had been restored by the Commander of the Border Guard, ZUS restored the payment of the benefit together with the outstanding amounts. To speed up such payments, an additional team of employees had been assigned to the work, and cooperation with the Ministry

of the Interior and Administration and the Border Guard has been established. (III.7064.741.2023)

## ■ Turning people back to the state border line

Already in 2021, in an intervention letter regarding the amendment of the *Regulation of the Minister of the Interior and Administration on temporary suspension or restriction of border traffic at specific border crossing points*, the Commissioner expressed doubts regarding the introduction of provisions making it possible for people who have crossed the border in violation of the law to be pushed back to the country's border line. The regulation makes it impossible for people intending to apply for international protection to cross the border of Poland, and those who have crossed the border against the law cannot effectively file an application for international protection, despite their right to do so, which arises from Article 56(2) of the Constitution. The Commissioner's comments and reasoned opinion contained in the letter remain valid. This is because the CHR Office keeps receiving complaints from persons who have been turned back to the state border line despite the danger faced by them in Belarus and despite having informed the Border Guard officers of the intention to seek international protection in the territory of the Republic of Poland. A particularly worrying practice was the turning back of people recently released from a hospital.

The situation of people crossing the Polish-Belarusian border was also highlighted by the UN Special Rapporteur on violence against women and girls. In the statement following her visit to Poland in March 2023 she called, inter alia, for repealing the Regulation of the Minister of the Interior and Administration on temporary suspension or restriction of border traffic at specific border crossing points.

In the Commissioner's view, the provisions of the regulation issued by the Ministry of the Interior and Administration allowing pushbacks were contrary to EU and

international laws and Polish parliamentary acts. Therefore, in July 2023 the CHR called on the Ministry to repeal these regulations.

The ministry replied that the legislation enabled an adequate response of the state to migration-related risks and provided the necessary safeguards of the protection of human rights. Every case was considered on an individual basis, after analysing the circumstances of crossing the border and after asking the migrants about their intention to seek international protection. In every case, the foreigner's health condition was also assessed. If necessary, an ambulance was called or the foreigners were transported to a hospital. If the foreigners did not intend to seek international protection and their health condition so permitted, they were turned back in a way ensuring their safety and health and accompanied by appropriately trained officers. The ministry's opinion was not supported by the Commissioner who therefore takes further action on the issue. (XI.543.10.2022)

According to the Commissioner, **the main problem to be solved is the so-called *pushbacks* applied by the Border Guard.** The tool was introduced by an amendment to the Regulation of the Ministry of the Interior and Administration. Another procedure for turning foreigners back to the Belarusian side of the border is provided for under Article 303b of the Act on Foreigners. Pursuant to it, the competent commander of the Border Guard post draws up a report on the border crossing by a foreigner and issues a decision ordering them to leave the country's territory. The procedure makes it possible to file a complaint against the decision which does not, however, suspend its execution.

The turning of a foreigner who has crossed the border against the law to the border line can be considered permissible only in exceptional cases referred to in the jurisprudence of the ECHR. In such cases, foreigners need to have guarantees of protection against inhuman treatment. The current legislation in Poland does not meet this requirement and does not guarantee the respect for foreigners' right to apply for international protection in Poland. Therefore, after the change

of the government the Commissioner called on the Ministry of the Interior and Administration again to repeal the regulation and to amend Article 303b of the Act on Foreigners. (XI.543.249.2021)



In 2023, the CHR Office continued to receive complaints from persons who had been returned to the country's border line despite the danger they faced in Belarus

The CHR also joined the case pending against Poland before the European Court of Human Rights and initiated by complaints of foreigners who had been turned back to the border line several times. In his opinion for the Court, the Commissioner emphasized that the application of the regulation of the Ministry of the Interior and Administration on pushbacks without any procedure of assessing the situation of migrants leads to a violation of the Convention for the Protection of Human Rights. He also pointed out that the difficulties arising from the conditions in the facility at which the foreigners were placed could be considered as inhuman treatment. (XI.543.198.2023)

## ■ Lengthiness of legalisation proceedings at voivodeship government offices

For several years, the Commissioner has been receiving complaints concerning the lengthiness of administrative proceedings conducted by voivodes with the aim to legalise foreigners' stay on the territory of the Republic of Poland. The problem has been raised by the Commissioner in numerous letters regarding individual cases as well as general intervention letters but still remains unsolved. The average waiting time for the examination of an application exceeds the statutory deadline. The situation is particularly difficult at Dolnośląskie Voivodeship Office where, in 2022, the average waiting time for a decision granting temporary residence and a work permit was over 7 months. Moreover, between 15 April and 31 December 2022 the applicants were deprived of the right to lodge a complaint concerning the authority's inaction or the lengthiness of the proceedings, as on 15 April 2022, pursuant to the Act on Assistance to Citizens of Ukraine, the provisions on inaction of authorities ceased to apply. Another problem is the insufficient number of staff, which is not adjusted to the large number of processed applications and hinders timely handling of cases. The jurisprudence of administrative courts regarding the issue also highlights the system's shortcomings that require immediate response. The Commissioner raised the problem in an intervention letter to the Minister of the Interior and Administration who assured that the ministry was taking measures to improve the situation. (XI.541.31.2021)

## ■ Conditions at the detention facility for foreigners

Following the findings of the representatives of the National Mechanism for the Prevention of Torture who visited the only detention facility for migrants in Poland in 2022, the Commissioner sent his remarks on the identified systemic problems to the Minister of the Interior and Administration. He pointed out that the living conditions at the facility did not meet international standards of protection of the

rights of people held in administrative detention. Instead, they showed analogies with conditions found in prisons or sometimes even wards for dangerous prisoners. There is no justification for this since the placement in administrative detention is applied as a result of administrative proceedings. The people placed in such detention have not been convicted of a crime and their isolation is not a form of penalty for a committed offence. The procedure of placing foreigners in the detention facility also raises objections. Currently, a migrant may be placed in the detention facility solely on the basis of a vague risk that they will not comply with the rules of living at a guarded centre. Thus, the courts should be required to examine whether placement at a guarded centre would not be more suitable than placement at the detention facility. The Minister did not share the opinion and pointed out that the living conditions at the detention facility for foreigners were in accordance with the national standards set out in the relevant regulation of the Ministry of the Interior of 2015. He also informed of successive improvement of the outdoor and indoor infrastructure of detention facilities in the country, and added that improvement of the conditions at the facility was included in the list of planned projects. (KMP.572.1.2023)

### ■ **Difficult living situation of particularly vulnerable people**

The CHR Office was approached by an association supporting people with disabilities and their families, including people with disabilities from Ukraine who found shelter in Poland due to the war. The association had been contacted by Ukrainian people in need of special support due to their age or disability, to whom, while in Poland, only accommodation without food had been provided by organisations that were paid cash benefits for the support. According to the legislation in force, the cash benefits are due to anyone, in particular individuals, who provides accommodation and food to Ukrainian citizens at their own expense. The Ukrainian citizens concerned do not want to report such cases because of the fear of losing the accommodation or because of insufficient



information available in their language. The Commissioner requested the Government Plenipotentiary for War Refugees from Ukraine for an opinion on how the problems could be resolved. The Plenipotentiary informed that the legislation provided for the possibility to make the cash benefit dependent on the results of verification by the municipal office of the provided accommodation conditions and meals. In case of irregularities in the standard of the provided accommodation or meals the municipality paying the benefits should be immediately notified. The Plenipotentiary emphasised that the observations and comments of non-governmental organisations were an important source of information on the functioning of the mechanisms provided for in the Act on the assistance, and constituted an important contribution to the analysis conducted by the ministry on the quality of assistance provided to Ukrainian citizens. (III.7065.150.2023)

### ■ **School education for children from Ukraine**

The Commissioner raised the issue of education of Ukrainian children and youth at Polish schools one year after the outbreak of the war in Ukraine. More information on the subject can be found in the section on education. (VII.7030.14.2022)

## **Health care and social security system**

### ■ **Shortage of medicines in pharmacies**

There were reports in the media according to which there was a shortage of medicines in Polish pharmacies. The problem concerned antibiotics, particularly at paediatric doses, neurological drugs, diabetes drugs and cold and flu products. There were situations in which patients had to travel to pharmacies as far as several dozen kilometres away. The Chief Pharmaceutical Inspectorate drew

up a subsequent list of medicines with difficult availability and sent it to the pharmaceutical and medical sector's professional bodies. Compared to the previous list, the new one included a larger number of antibiotics. According to the Minister of Health's announcement, 216 medicinal products were not sufficiently available. The Commissioner requested the Ministry of Health to specify measures taken to secure patients' access to medicines. The Minister replied that the situation in the field of availability of medicines was monitored by him on an ongoing basis and that a team to address the issue had been set up. He also stated that the current numbers of prescriptions and the stock levels show that the shortages of medicinal products were not of systemic nature. (V.7013.4.2023)

### ■ **The need for legislative works on access to abortion**

In 2021, the Commissioner drew the attention of the Speaker of the Sejm to the need for legislative changes and for specifying the requirements for legal termination of pregnancy after the Constitutional Tribunal's judgment of 22 October 2020. The judgment found as unconstitutional the provision permitting legal abortion in a case where prenatal tests or other medical examinations show a high probability of a severe and irreversible foetal damage or an incurable life-threatening disease of the foetus. However, no appropriate legislative action was taken to address the problem highlighted by the Commissioner. Therefore, the Commissioner addressed the Speaker of the Sejm again, pointing out that the judgment of the Constitutional Tribunal did not exclude the possibility of adopting new legislative solutions concerning legal abortion. The statement of reasons of the judgment emphasized that in drafting relevant parliamentary act provisions the legislator should be guided by the standards developed in the case-law of the Constitutional Tribunal. In view of the above and the particularly difficult situation of pregnant women in the case the foetus has a lethal defect that may directly lead to its inevitable death in the near future, it is essential

for the Parliament to consider the issue. Women who find themselves in such a situation have to face mental and physical suffering of carrying the pregnancy to term with the awareness that the foetus will die before or shortly after birth. In the case of a lethal defect, forcing a women to carry the pregnancy may put at risk her life, health and dignity. The failure to undertake legislative works after the Constitutional Tribunal's judgment leaves women with the necessity to adopt a heroic attitude, which should not be required by the law. The legislator should balance the constitutional values at stake in such cases. The Commissioner has not received a reply regarding the matter. (VII.5001.11.2021)

### ■ **A threat to mental health as a reason for abortion**

The CHR has been informed of the difficulties in accessing legal abortion by women for whom pregnancy poses a threat to their mental health. There have been cases in which a threat to mental health was interpreted as not providing grounds for an abortion because it concerned the woman's mental health only. In the Commissioner's view, there is a need to increase medical personnel's awareness of the permissible reasons of abortion, which is crucial for respecting female patients' rights and ensuring their access to the abortion procedure. The Commissioner thus sent intervention letters to the Minister of Health and the Ombudsman for Patients requesting them to take a position on the issue. The Minister of Health informed that termination of pregnancy was permissible if the pregnancy posed a threat to the life or health of the pregnant woman. The decision as to whether such circumstances exist may be taken only by a doctor on an individual basis. The list of reasons for termination of pregnancy where it poses a risk to the life or health of the pregnant woman is not closed. In the opinion of the Ombudsman for Patients, pregnancy-related risk to the mental health of the pregnant woman may constitute a reason for the termination of the pregnancy. A threat to the life or health of a woman may mean a threat to her somatic health or mental health. (VII.5001.6.2023)

## ■ Legal basis of the limits on e-prescriptions

Since 3 July 2023, doctors have been bound by limits on e-prescriptions. The limitation constitutes an interference with physicians' right to medical practice, and may lead to a restriction of patients' rights to healthcare services. There may be a need for limiting the numbers of prescriptions issued by doctors. However, such a limitation should be introduced by an act of Parliament or another normative act referred to therein. At present, there exists no commonly applicable regulation providing a legal basis for the limits on e-prescriptions, which have been introduced by the e-Health Centre. The Commissioner requested the Minister of Health to take a position on the matter. In his response, the Minister explained that the aim of the implemented solution was to eliminate excessive issuing of prescriptions by so-called „prescription generating websites“. The introduction of the limit restricted the possibility of issuing unlimited numbers of prescriptions by entities using the health care system's digital solutions solely for generating financial profits. According to the Ministry, it was necessary to eliminate actions which, on the one hand, put patient's safety at risk and, on the other hand, negatively affected the image of doctors and nurses. The introduction of the limits on e-prescriptions was a legal measure aimed at putting an end to the e- prescription trading. Monitoring of the limits was carried out to change them quickly if the need arises. (V.7013.59.2023)

## ■ Gynaecological and obstetrics care of women with disabilities

The Commissioner raised the issue of individual needs of people with disabilities in accessing health care services, with particular emphasis on women seeking gynaecological and obstetric care. Limitations in access to health care remain a problem for all patients. Yet, people with disabilities face additional barriers to obtaining quality medical services. This applies in particular to women with disabilities who seek gynaecological and obstetric care. There are no procedures,

guidelines or recommendations related to the provision of such care to women with various disabilities at each stage of the visit in a way ensuring the necessary improvements and adjustment of medical procedures. The Commissioner requested the Minister of Health to analyse the problem and report on activities planned in this area.

In response, the minister described the measures taken to improve the situation, e.g. the „Accessibility Plus for Health” project under which grants are available for improving accessibility for people with disabilities. He also emphasized that one of the priorities is the development of telemedicine, which, according to the ministry, can also contribute to making medical services more accessible for people with disabilities. (XI.815.64.2022)

### ■ Access to anaesthesia during childbirth

In 2022, epidural anaesthesia, available within the National Health Fund insurance, was used only in 14% of childbirths, according to a report by the Fund. In some voivodeships such anaesthesia is practically unavailable and in others it is used only in the largest cities. The impossibility to have the anaesthesia despite the fact that it is guaranteed by the law may be understood as a violation of the patients’ rights to respect for dignity and intimacy, to pain treatment and the right to health care, pointed out the Commissioner and inquired the Minister of Health about the ministry’s plans for improving patients’ access to anaesthesia during childbirth. In a comprehensive response the minister described solutions for increasing the number of anaesthesiology and intensive care specialists, required by hospitals to provide anaesthesia. In the future, this will eliminate the problem at the local level and guarantee full access to epidural anaesthesia at every healthcare establishment. (V.7010.100.2023)

## ■ Discontinuation of tax deductibility of health insurance contributions

Since 1 January 2022, citizens may not deduct health insurance contributions from their tax. The elimination of this possibility has increased the tax burden on taxpayers who previously had the right to the deduction. As a result, the health insurance contributions significantly increased the tax base for calculating the tax amount due. The changes in the Polish Deal did not restore the possibility to deduct the contributions from the tax. In the opinion of the CHR, it is unacceptable that the state shifts the entire obligation to provide funds for financing health care services onto the citizens. Health insurance is, in fact, a type of social insurance but is separate due to the special area of protection i.e. human health and life. In the case of social insurance, it is the duty of the state to establish a special fund to cover the citizens. The establishment of a social insurance fund is a constitutional duty of the state under Article 67(1) of the Constitution. The Commissioner requested the Minister of Health to take a position on the matter. The ministry did not share the opinion that the changes introduced by the Polish Deal resulted in the unconstitutionality of the regulations on health insurance contributions or the system of public health care. (V.7011.26.2022)



Expert seminar at the CHR Office on health insurance contributions

This issue was also the subject of an expert seminar organised by the CHR Office. During the event, experts in the area of health insurance and taxes presented their views on the constitutionality of the regulations on health insurance contributions after the introduction of the Polish Deal. The conclusions reached during the seminar will be used in further activities of the Commissioner.

### ■ **Too long working hours of doctors providing healthcare services under civil law contracts**

Doctors working for hospitals under civil law contracts are not covered by the provisions of the Act on Medical Activities on mandatory resting time and working time. The provisions apply solely to doctors working under an employment contract. The Supreme Audit Office found that „contracted” doctors sometimes worked over 48 hours without a break. Working time regulations should apply to people providing work in all forms of employment. The observance of the regulations should be supervised with regard to employers and those working under civil law contracts, as in medical professions work in excess of working time limits can lead to a risks to people’s life and health. In the Commissioner’s view, the need to regulate the working time of all doctors derives from the constitutional principle of state supervision of working conditions and from the right of every citizen to health protection. In a letter to the Minister of Health the Commissioner fully supported the Supreme Audit Office’s proposal to introduce, by way of a parliamentary act provision, maximum permissible working time for all medical professions. The minister explained that, for years, the main cause of excessive working hours of medical staff, including doctors, has been the shortage of medical staff. The irregularity pointed out by the Supreme Audit Office, i.e. excessively long hours of healthcare service provision by doctors under civil law contracts, cannot be removed without ensuring a gradual increase in the number of medical personnel. The minister also informed that no work was carried out at the Ministry of Health to introduce provisions regulating the working time of doctors employed under civil law contracts. (III.7044.36.2023)

# Freedom of expression and freedom of the media

## ■ Bill: Provisions introducing the Act – Electronic Communications Law

The government's draft amendment to the Broadcasting Act, the so-called *'Lex pilot'*, gave rise to citizens' fears of the operators' potential obligation to broadcast only public television programmes. The draft also planned for TVP channels to be placed at the top of the list of channels, published by cable TV networks and satellite platforms and in electronic programme schedules. In his opinion to the Sejm, the CHR wrote that the bill restricted the constitutional freedom of the media and the freedom to obtain and disseminate information. Its aim was not to guarantee media pluralism, but to ensure the dominance of the state broadcaster's programmes. Furthermore, the bill restricted the constitutional freedom of economic activity. The bill was withdrawn. (VII.564.2.2023)

## ■ Appointment of bodies of public broadcasting companies

The Constitutional Tribunal's judgment of 13 December 2016, according to which depriving the National Broadcasting Council of the right to take part in appointing and dismissing members of management bodies of TVP and Polskie Radio was unconstitutional, has not yet been implemented. The decisions on their appointment and dismissal are taken by the National Media Council rather than the National Broadcasting Council as the constitutional body. In the opinion of the Commissioner, it is necessary to amend the law by making the National Broadcasting Council a party to the procedures of appointment and dismissal of the public media bodies. The Commissioner thus requested the Speaker of the Sejm for information on the status of works aimed at bringing the current



legal situation in line with the Constitutional Tribunal's jurisprudence regarding the functioning of the public media. No reply to the Commissioner's letter was received. (VII.603.1.2016)



The Commissioner has repeatedly emphasized that a mechanism in which the management board members and the supervisory boards of public broadcasting companies are appointed directly by the government or its members is unacceptable. (photo: wellphoto – stock.adobe.com)

Subsequently, in December 2023, in connection with the changes in the composition of the public radio and television bodies, the CHR sent an intervention letter to the Minister of Culture and National Heritage. The Commissioner stressed that, in light of the Constitution of the Republic of Poland, a mechanism in which members of the management boards and supervisory boards of the public broadcasting companies were appointed directly by the government or its members, without the participation of the National Broadcasting Council, was unacceptable. The Commissioner referred to the need to guarantee the public media's independence of the political powers, including

the government, that had been emphasised e.g. the Committee of Ministers of the Council of Europe, the European Court of Human Rights and the Venice Commission of the Council of Europe. A situation in which the bodies of the public broadcasting companies are appointed by members of the government fails to comply with the standards of independence and pluralism of public media. It is irrelevant whether such an action finds a basis in the law on commercial companies. The functioning of the public broadcasters as sole shareholder companies of the State Treasury does not mean that the appointments and dismissals should be made according to the rules applied in the private sector. The application of the rules of the commercial company law should not lead to a situation where the legitimacy of the bodies of the public broadcasting companies is dependent on a decision taken directly by a body of the executive power. The Commissioner pointed out that restoring the compliance of the legal basis of the public broadcaster's operation with the Constitution and international law requires an urgent amendment of the current legislation. (VII.564.655.2023)

## Education

### ■ Right of schools to regulate students' appearance

The CHR received complaints regarding internal regulations adopted by schools. For example, the regulations of one of the primary schools provided that *„Face make-up, painted nails, coloured hair and piercing in places other than the ears are prohibited”*. The regulation introduced *„penalty points”* for *„inappropriate outfit, make-up or manicure”,* and *„coloured hair or body piercing”*. In this connection, the CHR wrote a letter to the school superintendents. He emphasized that, according to the Education Law, a school may set out students' duties with regard to the observance of the dress code. This means that the regulation of other elements of a person's appearance is beyond the school's powers. Detailed

regulations in this area constitute an excessive interference in people's freedom and privacy, for which there is no statutory basis. The Commissioner further emphasized that schools should provide conditions for students' development, and prepare them for fulfilling family and citizen's duties in line with the principles of solidarity, democracy, tolerance, justice and freedom. The rights arising from relevant legislative acts include the rights to: protection of human dignity, development, freedom of expression and privacy. The task of schools is to support the educational role of the family but the parents have the right to bring up their children according to their own convictions. (VII.7031.4.2022)

### ■ **University recruitment rules and the change of the core curriculum on which the matriculation examination is based**

The Commissioner received complaints regarding the rules of admission to universities in the academic year 2023/2024. According to the high school graduates, universities did not take account of the differences between the old and the new formulas of the matriculation examination. The differences were caused by changes in the core curriculum that was required e.g. for the Polish language examination. The Commissioner addressed the Ministry of the Interior and Administration, suggesting the development of solutions to take account of the differences in university recruitment. It is unacceptable if results of examinations held in different years cannot be compared, and the admission to university departments is in fact dependent on the year of receiving a matriculation certificate, rather than the candidate's knowledge and skills. The use of a centile scale could be a useful solution. The minister replied that he had no powers to develop and implement legal solutions determining the rules of admission to universities. They independently decide on the results of the matriculation examination required for admission to a particular department, and on the form in which they calculate the results, either as a percentage or on a centile scale. (VII.7033.2.2023)

## ■ **New rules of the matriculation examination**

The Commissioner received information about the possible effects of the new rules of the matriculation examination. For example, Polish language teachers raised concerns that the examination requirements and the assessment criteria were unclear and could result in unfair treatment of students. In order to ensure a high quality of external examinations, the assessment criteria should be fair, objective and acceptable for those concerned. The examination results should reflect the actual knowledge and skills of the student. It is of great importance that examiners are thoroughly trained, carefully selected and have appropriate working conditions. Errors in the assessment of the examination tests are a source of major stress for students and translate into difficulties in the university recruitment process. The Commissioner wrote to the Minister of Education and Science and the Director of the National Examination Commission with regard to the issue. The Director assured that it was the Commission's top priority to ensure fair, reliable and objective assessment of the examination tests, and outlined the measures planned for the coming year. The Ministry of Education introduced appropriate measures and mechanisms into the examination system to minimise the number of errors made by examiners and to ensure the possibility of correcting the result if an error in the assessment has been made. (VII.7031.30.2023)

## ■ **Education of children from Ukraine**

The Commissioner studied the reports on the situation in the Polish educational system a year after the outbreak of the war in Ukraine and the admission of Ukrainian children to Polish kindergartens and schools. At the Commissioner's initiative, a survey was also carried out among teachers, parents of Polish pupils and parents of Ukrainian pupils. It is estimated that a large number of Ukrainian children are not covered by any education system. The reason

may be, on the one hand, the lack of a strategy for integrating children with refugee experience into the Polish educational system and, on the other hand, the failure of the parents or guardians of the children to provide information that they continue education in the Ukrainian system. Among the children who do not attend compulsory education there may be those with disabilities or special educational needs, who require special support. The inaction of Polish authorities in cases of where children do not attend any school may constitute a violation of the state's obligations under the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, the Convention relating to the Status of Refugees, the Convention against Discrimination in the Field of Education and the Convention on the Rights of Persons with Disabilities. The Commissioner wrote to the Ministry of Education and Science about the issue, pointing out that the state has a duty to take care of every child in its territory. The minister described the legal regulations introduced with regard to the organisation of education, upbringing and care of children and young people – citizens of Ukraine. He also explained that the ministry had no legal grounds for monitoring whether young refugees from Ukraine, who did not study at Polish schools, were studying remotely studying at a Ukrainian school. The ministry had no legal basis either for collecting and information about the quality and regularity of teaching provided remotely by the Ukrainian system, as this would mean interference in the education system of another country. (VII.7030.14.2022)

### ■ **Accessibility of the education system for students with hearing disabilities**

The Commissioner drew attention to the need to take action to make the education system more accessible to students with hearing disabilities. The need was highlighted also in a report of the Supreme Audit Office. In his intervention letter to the Ministry of Education, the Commissioner also emphasized the need

to accept Polish Sign Language as a natural way of communication with and among deaf people in Poland and to introduce its teaching into the education system. The Polish Sign Language, according to the CHR, should be included in the core curriculum as a subject and not as an additional activity. The Commissioner also pointed out that there is a widespread belief that deaf people know Polish and can communicate by reading a Polish text. However, this assumption is incorrect. Some people with hearing disabilities know Polish but there is also a large group for whom it is, in fact, a foreign language. It is therefore necessary to introduce bilingual education for people with hearing disabilities.

The minister replied that the needs of deaf and hard-of-hearing children and young people are taken into account at every stage of education. There exist organisational and legal conditions for the education, upbringing and care of such children at all types of kindergartens, schools and other institutions in the education system. The decision to employ a teacher with appropriate qualifications or a specialist who is not a teacher, e.g. a Polish Sign Language interpreter, is within the competence of the institution's director. The Ministry of Education is examining the proposal to introduce bilingual education of students with hearing disabilities at special schools in the form of teaching both Polish Sign Language and Polish as a foreign language.

(XI.7036.79.2022)

## ■ Report on support to students with disabilities

The Commissioner issued a report on a social research project conducted in 2022. The document is entitled „Support provision to students with disabilities by teachers co-organising the education process, assistant teachers and personal assistants of students with special educational needs”. The research showed that because of a significant increase in the number of students



with certificates confirming their need for special education, the funding for inclusive education is insufficient. There is also a shortage of specialists who can promptly diagnose such children at psychological and education support centres. There is no sufficient knowledge of the tasks of personnel working with students with special educational needs, both on the part of parents and of schools. As a result there is no coordination between the activities of such staff members. The research has confirmed the need for a new profession of an assistant for students with special educational needs, whose task would be to support specific students. The assistants should have specialist knowledge about the disability of the students to whom they provide care. (XI.411.1.2023)

## Equal treatment and the principle of non-discrimination

### ■ Implementation of the directive on work-life balance for parents and carers

The Commissioner drew the attention of the Government Plenipotentiary for Equal Treatment to the need to implement the *Directive (EU) 2019/1158* of the European Parliament and of the Council of 20 June 2019 on *work-life balance* for parents and carers and repealing Council Directive 2010/18/EU. He pointed out that the directive should contribute to achieving the aim of ensuring equality between men and women in terms of labour market opportunities, equal treatment at work and the promotion of a high level of employment in the Union by facilitating the balancing of work and family obligations for working parents and carers, as enshrined in EU primary law. The deadline for the implementation of the directive was 2 August 2022. The Commissioner also recalled the need to ensure protection against discrimination on the grounds of the exercise or intended exercise of the parents' and carers' rights provided for in the directive.

(XI.022.1.2022) Subsequently, in an intervention letter to the Speaker of the Senate, the CHR commented on the new Act passed by the Sejm on the work-life balance of parents and carers. He stated that the Act would maintain the trend of pushing women out of the labour market during their fulfilment of parental duties. The lack of parental rights being directly rooted in the principle of equality between women and men, and lack of clarity in the area of protection against victimisation may undermine the effectiveness of the anti-discrimination mechanism. The negative stereotypes about the social and professional roles of women and men remain an obstacle to the full realisation of the principle of equality between them. As a result of such stereotypes women have to carry a double burden of professional and domestic duties. This hinders the possibility to achieve real gender equality in social and economic life, particularly in the field of employment. (XI.022.1.2022)

### ■ **Protection against discrimination in sport**

As part of his efforts to strengthen the protection mechanism against gender-based discrimination in sport, the Commissioner submitted comments on the draft amendment to the Act on Sport. The amendment provided e.g. for the imposition on sports clubs and associations of the obligation to adopt regulations on counteracting discrimination, mobbing and other forms of abuse of athletes and other persons taking part in sports competitions. In the CHR's opinion, it must follow from the draft that disciplinary liability should apply not only for undesired acts that have features of an offence but also for other types of undesired acts, including those of discriminatory nature. The requirement for sports organisations to take preventive measures such as training, education and awareness-raising activities deserves positive assessment. The amendment lacks, however, detailed recommendations for clubs and sports federations regarding the methods of counteracting discrimination. The Commissioner stated that the draft focuses on violence and sexual abuse in sport but does not tackle inequality



that is an even greater problem. Discrimination in sport is often related to characteristics such as age, disability, sexual orientation, racial or ethnic origin or nationality. The CHR's comments were sent to the Minister of Sport and Tourism. (XI.518.33.2019)

The Commissioner also commented on the draft amendment to the Act on Sport with regard to the need to establish a clear legislative framework for the prevention and combating of violence and discrimination in the area of physical culture and sport. In his letter to the Chairwoman of the Parliamentary Group on Women's Sport, the Commissioner emphasised the negative effects of the currently fragmented protection against discrimination in sport in the area of employment, as regards both the subjective scope and material scope of the protection. He repeated the call for its strengthening, in the amended Act on Sport, by including therein a list of legally protected characteristics and areas covered by the prohibition of discrimination under the Act on Equal Treatment. (XI.071.4.2022)

### ■ **Requirement to send social insurance statements to ZUS Social Insurance Institution in the electronic form**

The complaints incoming to the CHR Office revealed problems caused by the requirement to send monthly social insurance statements to ZUS Social Insurance Institution only in the electronic form. The problem reflects the phenomenon of digital exclusion of senior citizens and the state's failure to ensure legislation that prohibits discrimination on the grounds of age. Effective prevention of digital exclusion of seniors requires relevant education that has been lacking in the Polish system for years. The Expert Committee on Older Persons, working in support of the Commissioner for Human Rights, submitted its opinion and recommendations on the system of digital reporting and taxation required from NGOs. The problem concerns mainly organisations that gather older people, most of whom lack digital competences. Such organisations include Third Age

Universities, rural women's associations and veterans' organisations whose members are often over 80. In the Commissioner's view, the sudden shift from the requirement to submit documents in the paper form to the requirement to submit them in the digital form, without any transitional provisions and exemptions justified by the circumstances, raises concerns as to compliance with the constitutional principle of non-discrimination and respect of older persons' right to dignity and independent living. The Commissioner requested the Minister of Family and Social Policy to take a position on the issue. The ministry explained that the adopted document *Social Policy for Older Persons 2030: Safety-Participation-Solidarity* provides for the implementation of solutions in the field of older persons' safety, health, strengthening of digital skills, loneliness prevention, social exclusion and active participation in social life, and refers to the need to adjust infrastructure to the needs and capacities of older persons. In 2022, ZUS Social Insurance Institution carried out an information and promotion campaign on creating individuals' profiles in the PUE ZUS electronic system and the use of the tool. In his subsequent letter, the CHR noted that of key importance in such programmes is the actual participation of seniors and the extent to which the solutions are used in practice. Not all activities guarantee support provision to the whole target group and the effective transfer of knowledge. The Commissioner called on the Minister of Family and Social Policy to carry out, in cooperation with the Minister of Digitalisation, a comprehensive analysis of the problem from the point of view of the rights of senior citizens. (VII.801.2.2022)

### ■ **Extension of attorney traineeship because of the birth of a child**

The Commissioner received complaints concerning problems caused by a provision of the Act on Attorneys-at-Law, according to which a trainee attorney may postpone her bar examination if she has given birth to a child in the year in which she seeks the postponement. The provision aims to give the mother

private time to care for her newborn child. According to the complainants, the provision discriminates against fathers who also take care of their children. In his intervention letter to the Minister of Justice, the Commissioner recalled that, according to Article 18 of the Constitution, motherhood and parenthood are protected and safeguarded by the Republic of Poland. Motherhood creates a special bond between mother and child, mainly because of biological aspects of a woman's bodily system. This bond exists before and after the birth of the child. Parenthood, as a term, has been used in the Constitution primarily for the role of the father not to be disregarded. Parenthood refers both to the mother and the father. In the CHR's view, the omission by the legislator of the father's rights in the provision has thus been a mistake. A man should also have the possibility to postpone his bar examination due to the birth or expected birth of his child, as he has equal parental duties towards the child. He should also support his partner, the child's mother, in this special time. The Commissioner requested the Minister of Justice to consider taking appropriate legislative action. The minister fully shared the Commissioner's opinion that a father should also have the possibility to postpone his bar examination because of the birth or expected birth of his child. (VII.561.20.2022)

## ■ Rules of recruitment to the police and other uniformed services

For many years, the Commissioner has been receiving complaints from citizens who have unsuccessfully sought admission to the police or other uniformed services. Persons who, during military conscription, have been assigned the „E” category („permanently incapable of active military service”) have no possibility to seek the change of the category. Consequently, they may not be admitted to a uniformed service as this requires the candidate to have served compulsory military service or to have been considered a reserve soldier. In the light of the Act on Homeland Defence, a change of the assigned “D” or “E” category is possible only in exceptional situations and may not be done because of

a significant improvement of the person's health. The fact that people with the „E” category have no possibility to have their health condition assessed again for the needs of recruitment to state uniformed services raises the CHR's doubts as to the compliance of the regulations with the Constitution. Therefore, the CHR wrote to the Chairman of the Parliamentary Committee on Administration and Internal Affairs with regard to the issue. Yet, no legislative initiative in the area has not been taken. (WZF.603.3.2015)

### ■ **Rules of calculating the retirement pension amount after an officer's reinstatement in the Police Force**

The CHR Office received an application for assistance concerning the calculation of the retirement pension amount after an officer's reinstatement in the Police Force. The amendment to the Act on the Police of 2019 was aimed at protecting the reputation and good name of wrongfully punished officers by overturning flawed disciplinary decisions pursuant to which they had been dismissed. An unexpected effect of the Act was a reduction of retirement pensions of police officers who, during the proceedings aimed at defending their good name (and at their acquittal), worked and paid social security contributions and whose retirement pensions were decreased. In the Commissioner's view, the principles of fairness and social justice require that the retirement pensions be calculated based on the pension basis valid on the officer's reinstatement date, taking into account all subsequent increases in the period when the retirement pension was paid to the person. The Commissioner requested the Ministry of the Interior and Administration to consider taking a legislative initiative to solve the problem. The minister explained that reinstatement to service is a special legal tool enabling the officer's return to service. Reinstatement of a police officer not require any activity on their part and is not dependent on their will or on activity of police authorities. Yet, the return to service as a result of reinstatement, which is an extraordinary measure, requires the reinstated officer to confirm their

readiness to be in service again. The automatic appointment of a police officer to a specific position upon reinstatement only to update their financial benefit is not supported by other provisions. The case described by the Commissioner in his intervention letter concerned the calculation of the retirement pension of a police officer who, upon reinstatement, was not appointed to an equivalent position as he had not declared his readiness to return to service immediately. As a result, he did not undergo the verification process, and, consequently, was dismissed. (WZF.7043.140.2023)

### ■ **Increase in heating prices**

People living in buildings that have no boilers and thus use the municipal heating system complained to the Commissioner that they pay more for heating than those who have their own boilers. This is due to the fact that gas consumers living in detached houses or blocks of flats with own boiler rooms are covered by broader protection under government aid programmes. Moreover, starting from January 2023 the reduced VAT rates on gas and municipal heat ceased to exist. The housing cooperatives concern propose to introduce a single price of gas for households, regardless of whether gas is sold directly to them or to supplying companies. The CHR called on the Minister of Climate and Environment to standardise the situation of households with regard to factors affecting heating costs. The ministry assured that the government is continuously monitoring the effects of the increase in the prices of energy carriers and the possibility of applying effective support mechanisms. (IV.7215.108.2022)

### ■ **The possibility to have a breastfeeding break during the bar examination**

The Commissioner received complaints from mothers planning to take the bar examination. They reported that the possibility to have a breastfeeding break during the examination was dependent on the presentation of a medical

certificate. The issuing of such a certificate is not reimbursed by the National Health Fund, and thus requires a private paid consultation. The problem was important in the context of the constitutionally protected right of women, who combine maternal and professional duties, to respect for their family life. The right to use a breastfeeding break, granted to female employees under the Labour Code, did not require presentation of a medical certificate. The Commissioner requested the Minister of Justice to consider amending the regulations on the conduct of the bar examination in this respect. The minister



**In 2023, amendments were adopted which permit a woman to take a breastfeeding break during the bar examination, without the necessity to present a medical certificate (photo: Анастасія Стягайло/Adobe Stock)**

informed that legislative work had been undertaken at the ministry to change the relevant regulations of the Minister of Justice on the conduct of the bar examination, and that the requirement to present a medical certificate would be replaced with the requirement to provide information about breastfeeding. The

legislative works concerned also the regulation of the Minister of Justice on the examination for public notaries and for bailiffs. On 2 August 2023, an amendment discontinuing the requirement's applicability to the bailiff examination came into effect, and on 23 August 2023 an analogous amendment concerning the examination for attorneys-at-law and for public notaries entered into force. (VII.501.33.2023)

### ■ **No possibility of prison officers 'transfer to other uniformed services**

Prison Service officers may not be transferred to other uniformed services based on the same rules as those applicable to officers transferred from other services to the Prison Service. The CHR requested the Minister of Justice to undertake legislative work to remedy the situation. He received a reply that it is not within the competence of the Ministry of Justice to initiate solutions to be included in the pragmatic regulations of services remaining within the competences of another ministry. (WZF.7040.2.2023)

### ■ **Toilets adapted to the needs of adults with disabilities**

Adults who, due to illness, disability or old age, remain in a lying down position in some buildings have no place for hygienic activities. They are often carried out in unhygienic conditions not ensuring human dignity, e.g. on the floor of a public toilet or in a car. A coalition of NGOs, called „Changing diapers in Poland“ has created 30 suitable places in the country. Yet, the citizens' action is not enough. There are about 150,000 people in need of such places. In the opinion of the CHR, a systemic solution is needed in the form of amending the legislation. The requirement to provide equal opportunities and full participation in every sphere of life to persons with disabilities has been confirmed by the Convention on the Rights of Persons with Disabilities ratified by Poland. The CHR has written to the Minister of Development and Technology on the issue. The ministry

informed that legislative work is underway on a draft regulation amending the regulations on technical conditions in buildings. The proposed amendment to the legislation will introduce a requirement for certain types of buildings to have hygiene and sanitary rooms for changing diapers for adults with special needs. The draft amendment has already been subject to public and inter-ministerial consultations. After the analysis of the draft regulation the CHR drew attention to aspects that need to be taken into account in the further works. (XI.815.26.2023)



## ■ Unequal situation of men and women blood donors

The Commissioner drew attention to the issue of unequal situation of men and women blood donors. According to the regulation of the Minister of Health, whole blood can be donated by men no more than six times a year and by women – no more than four times a year, with at least eight weeks between donations. At one time, 450 ml of whole blood may be donated. Men may therefore donate 2,700 ml of whole blood per year, and women may donate 1,800 ml. The difference may be



justified by physiological differences between the genders. However, the amount of blood donated is also used as a criterion determining certain entitlements of blood donors. This leads to a violation of the principle of equality, and to unequal treatment of women e.g. with regard to the eligibility for badges of merit or the title of *Blood Donor – Contributor to the Health of the Nation*. The Commissioner wrote to the Minister of Health that the subject requires analysis and that relevant legislation should be amended. The minister replied that the cost of new regulations on the amount of blood donated and the badges of merit would be too high for the public blood donation system. However, it is planned to introduce a new badge of merit for men who have donated 50 litres of whole blood or an equivalent amount of blood components, and for women who have donated 40 litres. (XI.815.43.2021)

### ■ Resolutions on counteracting the „LGBT ideology”

In 2023, the Commissioner continued his efforts to eliminate from the legislative system the local governments’ resolutions on counteracting or stopping the „LGBT ideology”, adopted by some local government bodies. All the nine resolutions appealed against in 2019 and 2020 were declared, by voivodeship administrative courts, as adopted without a legal basis and in violation of the law by the adopting bodies. The Supreme Administrative Court dismissed the cassation appeals filed against the judgments of the voivodeship administrative courts. Thus, the judgments became legally binding. The Supreme Administrative Court emphasised that no one may be discriminated against by public authorities on the grounds of sexual orientation or gender identity. By adopting such resolutions, the local governments called for non-compliance with generally applicable law. The Commissioner requested all local governments in areas where such discriminatory resolutions still existed to repeal them. The responses by the governments showed that some municipalities and districts had repealed the discriminatory resolutions. However, others did not share the arguments set

out in the case law and thus refused to eliminate the resolutions. In the CHR's opinion, their continued existence poses a risk of unequal treatment of citizens and undermines the possibility to receive EU funding. In response to the problem described above, the European Commission withheld EU funding for such local governments. The Commissioner requested the Minister for Development Funds and Regional Policy to take a position on the matter. The ministry explained that to ensure compliance with EU horizontal principles on the part of entities seeking EU funding the Minister for Development Funds and Regional Policy adopted guidelines on the implementation of equality principles in the use of EU funds for 2021-2027. (XI.505.1.2023)

Give the continued existence of resolutions on counteracting the „LGBT ideology” in some regions of Poland, in 2023 the Commissioner filed, with relevant voivodeship administrative courts, appeals against the resolutions adopted by: Municipal Council of Tuszów Narodowy, Municipal Council of Kock, Powiat Council of Świdnik, Municipal Council of Zakrzówek, Municipal Council of Mordy and Municipal Council of Potworów. The Voivodeship Administrative Court in Lublin declared the resolutions adopted in Kock, Zakrzówek and Świdnik as invalid. Division VIII of the Radom branch of the Voivodeship Administrative Court in Warsaw declared the resolution taken in Potworów as invalid.

## **Prohibition of torture and inhuman treatment**

### **■ The need to amend the provisions permitting the absolute life imprisonment**

On 7 July 2022 the Sejm of the Republic of Poland passed an amendment to the Criminal Code, which introduced the possibility for a court to prohibit conditional early release of a prisoner with life imprisonment sentence. In the

Commissioner's opinion, the solution is contrary to the prohibition of cruel and inhuman punishment, set out in Article 40 of the Constitution, and to the meaning of the said prohibition, determined by the jurisprudence of the European Court of Human Rights (Article 3 ECHR). The existence in the Polish legal system of the penalty of life imprisonment without the possibility of assessing the progress of the prisoner's social rehabilitation, and without the possibility of influencing the legal situation of the detainee, may constitute grounds for refusal to execute European Arrest Warrants (EAW) and extradition requests issued by Polish courts. The Commissioner requested the Minister of Justice to consider deletion of the amendment from the Code. The minister explained that the Polish law does not require the offender to serve a specific time of imprisonment. The pardon procedure does not consist only in the approval or rejection by the President of the Republic of Poland of a request for pardon filed by a prisoner, but includes also the examination of the application by other authorities, i.e. at least one court and the Prosecutor General. In the opinion of the Ministry of Justice, the current regulations meet the requirements of the ECHR case law concerning the possibility to take into account the social rehabilitation and the health condition of the prisoner. The pardon procedure regulated in the Code of Criminal Procedure is, in fact, a form of assessment, postulated by the Court, of the legitimacy of continued execution of the sentence. Therefore, the Ministry of Justice does not conduct legislative works with regard to the issue raised in the Commissioner's letter. The Commissioner will continue to work on the issue as he does not share the arguments presented by the Minister of Justice. (II.510.1043.2021)

## ■ **Conditions of detention for foreigners**

In connection with the findings of representatives of the National Mechanism for the Prevention of Torture, who visited the sole detention facility for foreigners in Poland in 2022, the Commissioner sent his comments to the Minister of the Interior and Administration regarding the identified systemic problems. The

living conditions at the facility failed to meet the international standards of protection of the rights of people placed in administrative detention. One of the identified problems was the lack of toilets in cells. The visiting team also took note of the fact that the calls were constantly monitored and that furniture items were fixed to the floor. The living conditions in the visited detention facility for foreigners showed analogies with conditions found in prisons or sometimes even wards for dangerous prisoners. There is no justification for this since the placement in administrative detention is a result of administrative proceedings. People are not placed in such detention because of committing a crime, and their isolation is not a form of penalty for a committed offence. The conditions in which migrants with unregulated status are placed should reflect the nature of their deprivation of liberty, in particular as regards restrictions imposed on them and access to various activities. The CHR called on the ministry to take legislative action to improve the living conditions and ease the regime at the detention facility for foreigners, and requested the minister to reply to his letter. The minister responded that the need to provide adequate living conditions to foreigners held in administrative facilities for migrants, including the detention facility for foreigners, was taken into account on permanent basis. Activities aimed at improving the conditions at the facility are conducted within the limits of the possibilities and funds, also from international sources, that are available to the ministry. The minister also informed that the living conditions at the detention facility were in line with the regulation of the Minister of the Interior. (KMP.572.1.2023)

### ■ **The need to publicize the report on the CPT visit to Poland in 2022**

In spring 2022, a delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) conducted its seventh periodic visit to Poland. The report on the visit was approved by CPT at

its plenary session in October 2022. Despite the passage of over a year, the report has not been made public. The waiting time for its publication has been longer than in the case of all previous reports on CPT's visits to Poland. The reports are an important preventive measure. The publication of a CPT report makes the general public aware of the Committee's comments and opinions on the situation in places where people are deprived of their liberty. This fosters public debate and provides an opportunity to develop optimal legislative solutions. The reports also play a key role in the activities of the Commissioner for Human Rights, including in the CHR's role as the National Mechanism for the Prevention of Torture (NMPT). The reports point to systemic problems and areas that require urgent improvement, facilitate the determination of priorities, make it possible to adjust conducted activities to new challenges and to revise the recommendations issued by the CPT. Therefore, the Commissioner requested the Minister of Justice to publicize the report on the CPT visit to Poland in 2022 together with the response of the Polish authorities. The Ministry of Justice replied that it would request the CPT to publish the report together with Poland's response, and that the documents would be posted on the Ministry's website together with a Polish translation. The Minister of Justice stated that he would also request the automatic publication of future reports on the Committee's visits to Poland. (KMP.571.14.2023)

### ■ **Use of coercive measures in non-psychiatric hospital departments**

The Commissioner drew attention to the application of coercive measures with regard to hospital patients of departments other than psychiatric ones, e.g. oncology patients or patients after surgery. Recommendations in this regard were proposed by members of the CHR's Expert Committee on Health and the Expert Committee on Mental Health Protection. The use of coercive measures is connected with violation of a person's bodily integrity and can be considered

strong interference with an individual's freedom. It restricts the constitutional freedoms and rights e.g. to personal integrity, personal freedom and freedom of movement. Such restrictions, according to Article 31(3) of the Constitution, may only be introduced by an act of Parliament. The Act on Mental Health Protection provides that coercive measures may only be applied with regard to persons with mental disorders. The Act may not therefore be considered as a basis for the application of coercive measures in patients of non-psychiatric wards. However, it is not always illegal to use coercion during the treatment of patients to whom the Act does not apply. For example, if coercion is applied to save a patient's life or health it is possible to refer to circumstances not provided for in the Code in order to exclude the unlawfulness of the action. However, there are no adequate regulations specifying whether and to what extent the application of coercive measures is permissible in order to save human life and health. Therefore, the Commissioner inquired the Minister of Health about his opinion on the need to regulate the issue by way of legislation. The minister provided information and emphasized that he strongly condemned any unjustified use of coercion in the healthcare system. Restraining patients should only be permitted if there is a serious risk to the patient's health. He also pointed out that, in his opinion, a person providing health care services may act against a person's right to consent to a medical procedure only if this is necessary to save the life or health of the person in a situation of health emergency. (V.7010.88.2023)

### ■ **Restriction of prisoners' right to make telephone calls**

On 17 September 2022, certain provisions of the amended Act – Executive Penal Code entered into force, which caused a sudden increase in the number of complaints received by the CHR. People deprived of liberty and their relatives complained, in particular, of the restriction on the use of payphones by prisoners. The rationale of the amended act referred to the guarantee that

prisoners have the right to make a telephone call „at least once a week”, and stated that the limit may be increased by penitentiary facilities in their internal regulations. An analysis of such regulations has shown, however, that many prison directors interpret the provisions narrowly as permitting inmates to use a payphone only once per week. The restriction should be considered unjustified. Provisions of an internal regulation may not regulate matters in a way that is less favourable than the regulations of a parliamentary act. Another issue is the powers of penitentiary facility directors to determine the specific days on which inmates may use payphones. The selection of a specific date should only be an organisational suggestion and should not restrict the use of payphones to one call per week. The introduction of the minimum frequency of calls (one per week) undermines the right to the protection of family life (Article 18 of the Constitution,) and unduly restricts children’s’ right to contacts with both parents (Article 9 of the Convention on the Rights of the Child). The Commissioner wrote to Director General of the Prison Service with regard to the issue. In the director’s opinion, the provisions of the amended Executive Penal Code have, in principle, been correctly implemented by penitentiary facilities. The newly introduced regulations ensure the possibility for people deprived of their liberty to maintain contacts with their relatives and lawyers by using payphones. (IX.517.158.2023, IX.517.156.2023)

### ■ **Provision of underwear to female prisoners**

Starting from 2019, the Commissioner expressed the opinion that women deprived of their liberty at penitentiary facilities should receive underwear, including a bra, as part of their clothing sets. In the received response the agreement with the opinion was expressed and the CHR was informed that such underwear would be provided. After 5 years, the situation of women remained unchanged and such underwear was not provided. The Commissioner repeated the request. On 19 August 2023, the regulation of the Minister of

Justice amending the regulation on the living conditions of people held in prisons and remand prisons came into effect. It changed the list of items provided to women in penitentiary facilities and the new list also includes a bra (2 items). (IX.517.2965.2018)

### ■ **The need to regulate the admission to residential medical care facilities of persons who are not incapacitated but whose health condition makes it impossible for them to conclude a contract**

For years, the Commissioner has pointed to a legislative gap consisting in the absence of a regulation setting out the rules of admission to residential medical care facilities of persons who are not incapacitated, whose health condition makes it impossible for them to conclude a contract and who have no appointed legal representatives to do this for them. There is no clear and unambiguous legal basis for placing a patient in a non-psychiatric residential medical care institution pursuant to a court decision. As a result, the situation of adult non-psychiatric patients is unclear which may result in the abuse of their personal freedom as their rights are not sufficiently protected by law. The experience gained during the visits of the National Mechanism for the Prevention of Torture (NMPT) shows that it is a common practice that applications for placement in such facilities are signed by the patient's family member or close person. Directors of the facilities, motivated by the patient's good, accept the practice, which may expose them to legal consequences. The courts issue, on regular basis, decision on people's placement in the facilities, despite the lack of a clear legal basis. It would be useful to regulate the matter in commonly applicable legislation, for example by introducing solutions analogous to the consent of a guardianship court to health care service provision or consent to placement in a psychiatric hospital. A separate regulation would make it possible to unify the practice of courts. The solutions should also regulate the issue of authorising family members of such persons or other entities (e.g. representatives of municipal social welfare centres)



to apply to a court for placement of a person in an institution. Effective judicial oversight of the placement of patients in residential medical care facilities would strengthen their status and ensure better respect for their rights and freedoms. The CHR wrote an intervention letter with regard to the issue to the Minister of Health. The Minister replied that work is underway on issues indirectly related to the matter, as part of the strategic review of the long-term care system in Poland conducted with the aim to identify priorities for the purpose of a reform. The directions of the necessary changes and related legislative work will be determined. Cooperation is also carried out within the framework of a team for developing normative solutions to replace the institution of incapacitation with a model of supported decision-making (the work is coordinated by the Ministry of Justice). (KMP.573.18.2018)

## Other important issues

### ■ Light pollution

Excessively bright lighting makes certain buildings or facilities in the vicinity of residential buildings a problem for people. It disturbs the natural rhythm of the body and the secretion of melatonin, and may, e.g., cause insomnia. Some people suffer of so called light-caused fatigue, which reduces their comfort and leads to deterioration of their health. The problem of light pollution is caused, among others, by the lack of comprehensive regulations on outdoor lighting. In this regard, in 2022 the CHR inquired the Minister of Climate and Environment about legislative measures making it possible to counteract the problem. The Minister acknowledged that the Polish legal system lacks comprehensive solutions taking account, on the one hand, people's needs for outdoor electric lighting and, on the other hand, the need to protect people's health, the environment and nature against negative effects of light pollution. Given that the subject of light pollution

is comprehensive and interdisciplinary in nature, detailed actions coordinated at the level of individual departments of the public administration would be needed but currently the Ministry of Climate and Environment does not carry out activities concerning the issue.

As a further step, the Commissioner inquired the Minister of Health and the Chief Sanitary Inspector about their position. The Chief Sanitary Inspector informed that, as part of their permanent supervision of conditions at indoor public places, the Inspection carries out e.g. monitoring and measurements of factors (including lighting) that can be harmful at work and at education institutions, which are assessed as part of their inspections. As regards the influence of artificial light in public outdoor space on the health of citizens, the inspector stated that the procedures applicable to the installation of signs or luminous advertising signs on buildings, along public roads and in adjacent areas, are beyond the scope of competence of the State Sanitary Inspection. The inspector also informed that he had requested the National Institute of Public Health (PZH) and the Institute of Occupational Medicine to provide their opinions on potential risks to health and life of people exposed to LED light emission. The opinions confirmed that such lighting can impact people's health. The Minister of Health pointed out that the ministry had not undertaken any work concerning the influence of artificial light on human health. The matter will still be analysed by the Commissioner for Human Rights. (V.7203.30.2020)

### ■ **Costs of disposal of abandoned waste**

The Commissioner receives complaints from landowners who are against the legal solution included in the Act on Waste, according to which the landowner is also the owner of waste remaining within their property, and is required to dispose of it. In many cases, the solution generates effects that are unacceptable in view of the principle of social justice. Waste dumped on properties by unknown people is a major problem. The landowner, in such cases, cannot avoid responsibility for

the waste left on his property although the costs of its removal can be very high. The problem could be solved by the provision of financial support which, however, is not available to individuals. They are treated differently than local authorities that find themselves in similar situations. There are different forms of financial support available to local authorities under a special fund. Therefore, the CHR called on the Minister of Climate and Environment to introduce solutions making it possible for individuals to receive funding for the disposal of waste that has been dumped on their land. According to the ministry's reply, financial support from public funds for individuals for the removal of waste illegally deposited on their land would not be justified. It cannot be excluded that the landowner is in fact the owner of the waste as well. The support could then turn into funding of illegal activities. In addition, such financial support could encourage people to dispose of waste illegally. (V.7203.5.2023)

### ■ **Possibility to challenge a forest management plan before a court**

On 2 March 2023, the Court of Justice of the European Union ruled that Polish legislation excluding the possibility of challenging a forest management plan before a court is against the European Union law. The CJEU ruling, in order to be implemented, requires action aimed at defining a path for judicial review of forest management plans. A draft amendment to the Act on Forests was submitted to the Speaker of the Sejm in March 2022, providing for the possibility to challenge a plan. The draft was sent to competent parliamentary committees for assessment and consultation but was not proceeded further. In view of the above, the CHR requested the Speaker of the Sejm to consider further consideration of the draft. (V.7202.5.2022)

## ■ Establishment of national parks

The classification of land as a national park by way of a relevant legislative act is the strongest and most effective method of ensuring integrity of the area's natural resources. In the era of rapid climate change such protection seems particularly important. There are currently 23 national parks in Poland which cover only about 1% of the country's area. 22 years have passed since the latest establishment of a national park. One of the reasons is the currently binding procedure of the establishment of national parks. On the one hand, it makes the determination of the boundaries of the park dependent on the positive opinion of local authorities but, on the other hand, it does not offer them any compensation for the reduction in their revenues caused by the deprivation or significant limitation of the possibility to implement investment projects in the areas concerned. Experts point out that this effectively blocks the possibility of establishing new parks. It is difficult to find a compromise that would, on the one hand, prevent the blocking of the establishment of new parks and, on the other hand, ensure that local governments suffer no budget losses as a result of their creation. The Commissioner requested the Minister of Climate and Environment whether he was planning any measures to achieve such a compromise. The ministry replied that a bill on national parks, the first ever bill dedicated exclusively to the subject, was under consideration. The works on the bill were carried out with the participation of representatives of national parks and trade unions of their employees. The bill has been a subject of extensive public consultations, also with representatives of local governments. It provides that the determination of a park's boundaries should take place with the active participation of interested parties, including representatives of local governments, by way of a public consultation procedure. According to the ministry, the new process of defining the boundaries of national parks will ensure increased participation of the society and, at the same time, will build support for the creation of such parks. The

proposal is a compromise between the need to establish national parks and the need for regional development. (V.7200.33.2023)

### ■ **Inclusion of periods of self-employment and work under civil law contracts in the total employment period**

The Commissioner received applications for assistance with regard to the inclusion of periods of self-employment and work under civil law contracts in the total employment period that is used for determining employee rights. In recent years, the Commissioner addressed the Minister of Labour and Social Policy with regard to the issue twice. The CHR also pointed to the example of the *Act on including periods of work on a farm owned by an individual in the total employment period of the individual*. In 2023, the Commissioner again requested the Minister of Family and Social Policy for information on planned actions in this area. In his response, the minister stated that, in the absence of uniform rules on determining the total period of employment, he had commissioned a relevant survey by the ministry and requested other ministries to consider legal changes within their areas of competence. The proposed changes concern the inclusion, in the total employment period, of periods of self-employment and work under a contract of mandate or other contract on regular service provision. (III.7040.65.2023)

### ■ **Fines for refusal to present an identity document**

The CHR receives complaints concerning police fines and police applications to courts for imposing a penalty for a person's refusal to comply with a police order to perform a specific action. The complaints examined by the Commissioner show that in many cases the very refusal to present an identity document, regardless of whether there was a lawful reason for requesting its presentation, is considered an act subject to penalty. This concerns, in particular, situations taking place during spontaneous assemblies that are protected under Article 57 of the Constitution. The Commissioner stated that police officers requesting

participants of a lawfully held assembly, who have not committed any offence, to present an identity document act against the constitutional freedom of assembly and the right of individual's informational autonomy (Article 51(1) and (2) of the Constitution). The Commissioner, therefore, requested Police Commander-in-Chief to take this into account in the work of the police. The Commander did not agree with the Commissioner's opinion. The right of a police officer to check the ID of a participant of a lawful assembly is not limited to cases of suspicion that a crime or an offence has been committed by the person. An ID may also be requested for purposes such as: identifying a witnesses of an act violating public safety or order, searching for missing persons or searching for persons hiding from justice. People requested to show their ID may file a complaint with the local public prosecutor about the procedure used by the police officer when requesting the document. (II.519.47.2023)

### ■ **The need to define maximum temperature at the workplace**

The Commissioner received complaints concerning the failure to ensure safe and hygienic working conditions for employees due to the fact that maximum temperature at the workplace is not determined in the legislation. Employers are under an obligation to organise work in a way preventing excessive fatigue, also during hot weather. However, the legislation does not specify a maximum permissible temperature at a workplace. Employers are only required to provide employees with beverages when the ambient temperature exceeds 25°C for work outdoors, and 28°C for work indoors. According to the CHR, clear and detailed regulations would improve the situation of employees and would facilitate supervision of employers' compliance with regulations on working conditions and their monitoring by the labour inspectorate. The Commissioner requested the Minister of Family and Social Policy to take a position on this issue but no replay has been received. (III.7050.10.2019)

## ■ Benefits for parents of stillborn children

The Commissioner has raised, for years, the issue of social security benefits for parents of stillborn children whose sex cannot be determined. The Commissioner's first intervention letter concerning the matter was written to the Minister of Family, Labour and Social Policy in 2015. The Commissioner also wrote to the Speaker of the Senate on 16 December 2019. In 2021, the Commissioner thanked the Legislative Committee of the Senate for drafting a bill on amending certain acts of Parliament e.g. by extending the list of people entitled to the funeral allowance. The bill was in line with the Commissioner's call to take into account the situation of parents not entitled to the funeral allowance, maternity allowance or shortened maternity leave after the birth of a stillborn child whose sex cannot be determined. The Senate's bill was forwarded to the Sejm but the regulation was not adopted. The Commissioner, therefore, requested the Chairmen of the Sejm Committee on Administration and Internal Affairs and of the Sejm Committee on Social Policy and the Family to provide information on the advancement of the works on the bill. The chairmen informed that the Committees had suspended the works until receiving the opinion of the government on the issue. The Minister of the Interior and Administration was asked, in this connection, whether any work was planned to draw up the opinion. The Ministry informed that no decisions were planned to change the existing legal situation. The Committee also received a similar specialist legal opinion of the Sejm's Bureau of Research. At present, no legislative work on the bill is thus conducted by the Committees. The Commissioner will continue to monitor the issue as he considers it necessary to change the current legal situation.

(VII.534.20.2015)

## ■ **Simultaneous existence of several court rulings regarding inheritance from the same person**

Following his previous intervention letters concerning the problem of simultaneous existence of several court rulings regarding inheritance from the same person, the Commissioner wrote to the Minister of Justice again with regard to the issue. Taking into account the time since the last correspondence, the scale and nature of the problem and the announcements made by the Ministry that such works would be conducted, the Commissioner inquired about the progress of the works. The minister replied that conceptual and analytical works were conducted. Due to high complexity of the situation, the existing possibilities and potential effects of the solution considered it was necessary to request an opinion by the Justice Institute, identifying the real reason for which multiple rulings may be issued regarding inheritance from the same person. No changes have yet been introduced into the system and thus the Commissioner will continue his works in this field. (IV.511.221.2020)

## ■ **Amendment to the Act on Civil Registry Records**

The Commissioner receives complaints concerning the application of the Act on Civil Registry Records in situations where the child's mother does not want fictitious data to be entered in her child's birth certificate in the box "father". According to the law, if there has been no acknowledgment of paternity by the father or by a court, the name given by the person seeking the child's birth registration is entered in the birth certificate as the father's name. If no name is indicated, the name selected by the head of the civil registry office is entered. The complainants emphasize that the system is mandatory. In the Commissioner's view, the person seeking registration of a child's birth and providing the data for the birth certificate should have the choice between entering the covering data in the certificate and not entering the father's data at all. It would be advisable to consider amending the law so that the decision on entering the father's data



in the birth certificate is left to the child's mother or even to the child when he or she reaches the legal age of majority. The Commissioner requested the Minister of the Interior and Administration to present his position on amending the law. The Minister replied that the issue had been analysed by the Ministry of the Interior and Administration. It had been concluded that making it optional to include so-called "covering data" in a child's birth certificate would be justified. The postulated amendment to the Act seems a step in the right direction. The minister informed that when legislative work is undertaken on broad-scope amendment of the Act, the matter would be taken into account. (VII.534.24.2022)

### ■ **Stalking by debt collection agencies**

The Commissioner looked into the problem of debt collection agencies' actions that have features of stalking of debtors. Such actions, although carried out persistently, are not prosecuted under criminal law because they are not covered by Article 190a of the Criminal Code. A bill drawn up in 2019 by the Ministry of Justice and amending the Criminal Code included an amendment to Article 190a. Yet, the subsequent version of the bill no longer provided for prosecuting stalking that aims to extort an amount due. The rationale for the new bill did not explain why the original version had been given up. The bill, after its adoption, was challenged by the President of the Republic of Poland before the Constitutional Tribunal. In July 2020 the Tribunal ruled that the amendment of the Criminal Code was inconsistent with the Constitution. Currently, people stalked by debt collection agencies are not properly protected by law as debtors are encountered by many different employees of such agencies. Individual persons-debt collectors cannot be jointly accused of stalking a debtor because they act in separation from each other when committing the offence. No employee of a debt collection company can be individually accused of stalking a debtor, either, as such companies contact many different debtors. Therefore, the CHR requested the Minister of Justice to inform him of the reasons for discontinuing works on the

originally proposed amendment in which the definition of stalking covered also extortion of a debt. The minister did not provide any opinion on the issue to the Commissioner. (II.501.2.2023)

## ■ VAT on notary fees

The Commissioner continued to look into the issue of value added tax on notary fees. The information gathered by the Commissioner to date shows that opinions on the matter are varied. On the one hand, the President of the Polish National Council of Notaries pointed to the established practice of adding VAT to notarial fees. On the other hand, the practice contradicts the opinion of the Ministry of Finance according to which VAT should not be added to the fee paid by the notary's client but should be included in the fee. The Commissioner finds it difficult to unanimously determine whether the regulations permit increasing the notary fees by VAT. The Ministry of Justice agreed that the regulations may raise doubts. The bill amending *the Act – Law on notaries* and certain other acts could thus be an opportunity for rethinking the issue of VAT in the context of notary fees. According to the CHR, the strictly linguistic interpretation of the Act on Public Notaries and the Regulation of the Minister of Justice on the Upper Limits of Notary Fees does not permit the increase of notary fees by VAT. A contrary view would be an unacceptable broadening of the interpretation of the provisions on notary fees. However, the doubts mentioned in the opinions of the Ministry of Finance and the Ministry of the Interior lead to the conclusion that there is a need to more clearly regulate the matter. Therefore, the CHR requested the Chairpersons of the Sejm Committee on Justice and Human Rights and the Senate Committee on Justice, Human Rights and Petitions to examine the issue. (V.511.612.2020)

## ■ Police use of non-certified speed cameras

The Commissioner received a complaint concerning the use by officers from the Road Traffic Department of the District Police Station for Warsaw West of devices that do not have current certificates of calibration. The Commissioner requested Warsaw Police Commander to examine the matter. According to the received reply, in a period of 18 months police officers carried out 75 controls with the use of laser speed cameras having no valid certificates of calibration, and issued 75 fines based on their readings. None of the fined persons challenged the fines and filed an application with a court to annul the fine. The officers of the Traffic Department who committed the offense that was not yet time-barred had to pay a cash penalty. Other officers who kept and used speed measuring equipment that requires weather-proofing and other inspection but for which no valid inspection certificates existed were given disciplinary penalties. The reaction of the superiors to the use by the officers of speed meters without valid certificates should be considered correct. The situation, however, raises concerns with regard to the persons on whom the fines for speeding were imposed. A large group of citizens was fined despite the fact that the public officer's action was conducted in violation of the applicable provisions of the law. There is no solution in the Code of Procedure in Petty Offence Cases, which makes it possible to annul a fine in such a situation or other situation in which an officer of a public uniformed service that has imposed a fine has committed another gross violation of the law, which could significantly impact the fine-related proceedings. The Commissioner requested the Minister of the Interior and Administration to provide his opinion on the issue. The minister replied that the regulations do not provide for the possibility to annul legal consequences of an imposed fine in a situation where the officers' actions violated the applicable law. This applies not only to police officers but also to officers and employees of other bodies authorised to use various types of control and measurement devices the readings of which may

be used for imposing a fine . Therefore, the amendment of the regulations, suggested by the Commissioner, should be considered by the Minister of Justice as a body competent to amend them. (II.519.725.2023)

### ■ **Protection against eviction „to the street”**

For more than five years, the judgment of the Constitutional Tribunal concerning eviction „to the street” from company flats the use of which is granted and terminated by way of an administrative decision (case file no. K 27/15) has not been implemented. The Minister of Finance is of the opinion that the implementation of the Tribunal’s judgment is a complex and interdisciplinary issue. It requires not only amendment of the Act on Administrative Enforcement Proceedings but, first and foremost, amendment of the acts governing the work of uniformed services subordinate to the Minister of the Interior and Administration. Because of this, the body competent to implement the judgment is the Minister of the Interior and Administration. The Minister responsible for internal affairs pointed out that it is beyond his competence to introduce legislative solutions changing the legal regulations on enforcing the obligation to vacate a company flat, so as to align them with the guidelines of the Constitutional Tribunal. Thus, a negative dispute between the ministers concerning their competences occurred. The implementation of the said judgment requires amending the applicable legislation. It is now the duty of the Prime Minister to resolve the dispute. Therefore, the Commissioner turned to the Prime Minister. In his regulation of 22 March 2023, the Prime Minister indicated the Minister of Finance as a body competent to undertake legislative work to implement the Constitutional Tribunal’s judgment. As a result, work has been initiated to regulate the matter and will be followed-up by the CHR. (IV.7214.40.2022)

## ■ Labour market accessibility for women

According to research, after childbirth 94% of mothers plan to return to work. In some cases, it is not welcome by their employers. Many women are also afraid that they will not be able to combine childcare and professional work in a way that is satisfactory for them. They are concerned about inadequate working hours and lack of possibilities to appropriately take care of the child. In recent years, various solutions have been implemented to create conditions to facilitate the combination of professional work and parenthood. Such solutions have been introduced e.g. by the Act on State Support for Raising Children, Act on the Family Care Capital, Act on the Care of Children up to the Age of Three, or the amendment to the regulations that implement into the Polish legal system the Directive of the European Parliament and of the Council (EU) of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU 2019/1158, known as the work-life balance directive. The regulations are an important element of making the system friendly to professionally working parents, including mothers returning to the labour market after childbirth. However, parents, especially mothers, point out that the main obstacle to combining the roles of employee and of parent is the deficit of childcare facilities. This concerns, in particular, care facilities for children up to the age of three. In the Commissioner's opinion, it is necessary to evaluate the proposed legal solutions and consider systemic measures to ensure universal and equal access to various forms of care for children up to the age of three, regardless of the place of residence of the parents. It is the role of the state to develop legal and organisational solutions that enable combining professional and family duties in a way that is advantageous for the family, e.g. in the form of institutional care of young children in the working hours of their mother (parents). Therefore, the Commissioner inquired the Minister of Family and Social Policy whether any analytical or other work was carried out to develop a legal

framework for increasing the number of women returning to the labour market.  
(III.7040.28.2023)

### ■ **Refusal to grant a housing allowance to a Ukrainian citizen**

The Commissioner joined administrative court proceedings concerning the legality of an administrative decision refusing to grant a housing allowance to a Ukrainian national. The public administration body took the view that only Polish nationals are entitled to the benefits. The Commissioner disagreed with the opinion and pointed out that the legislation did not link the right to a housing allowance to the Polish citizenship but only to the right to use the apartment. It arises from Article 37(1) of the Constitution that any person under the authority of the Republic of Poland enjoys the freedoms and rights provided for in the Constitution. Exceptions to this principle should originate from provisions of a parliamentary act. Hence, the exclusion of the right to a housing allowance could only be based on an explicit provision of a parliamentary act, and no such provision is contained in the Act on Housing Benefits.

The above argumentation was shared by the administrative court (Judgment of the Voivodeship Administrative Court in Gliwice of 7 November 2023, case file no. III SA/GI 305/23) that overturned the challenged administrative decision.  
(BPK.7213.1.2023)

# Selected cases before courts and tribunals

## The Constitutional Tribunal

- On 11 May 2023, the Tribunal ruled that the entry of a property in the municipal register of historic monuments, without ensuring the owner's protection against such a limitation of their rights is unconstitutional, as had been sought by the CHR. (case file no. P 12/18) (IV.7002.8.2018)
- On 17 May 2023, the Tribunal discontinued the proceedings started by a court's question of law that was subsequently withdrawn. The proceedings concerned a provision that required civil court judgments to be issued by single judges, without jurors, throughout the duration of the state of epidemic and six months after its cancellation. The Commissioner pointed out that it was a flagrant violation by the legislature of people's rights and freedoms, which could not be justified by the state of epidemic emergency. (case file no. P 13/21) (VII.510.109.2021)
- On 4 July 2023, the Tribunal dismissed by a majority vote the case concerning the impossibility to appeal against a second-instance civil court ruling refusing exemption from court fees on an appeal. The CHR sought the challenged Article 394[2] of the Code of Civil Procedure to be declared unconstitutional. (case file no. SK 81/22) (IV.511.437.2022)
- On 28 September 2023, the Tribunal discontinued proceedings started by the Prosecutor General's application regarding the provision on the dismissal of

bailiffs upon reaching the age of 65; the discontinuation had been sought by the Commissioner. (case file no. K 2/21) (VII.511.16.2021)

- On 4 October 2024, the Tribunal discontinued the proceedings concerning the impossibility for people on whom a financial penalty has been imposed or who have been deprived of liberty to stand for election for a position of rural municipality mayor, town mayor or city mayor (before, the provision applied only to people who had been deprived of liberty). The CHR sought the challenged provision to be declared unconstitutional. (case file no. K 10/22) (II.561.1.2022)
- On 19 October 2023, the Tribunal unanimously discontinued the proceedings started by a constitutional complaint concerning the prohibition to hold assemblies during the pandemic. The Tribunal pointed out e.g. to the inadequacy of the standard of review. The CHR argued that the Council of Ministers, when issuing the regulation that introduced the prohibition, had no statutory powers to do so. (case file no. SK 4/21) (VII.613.3.2021)
- On 19 October 2023, the Tribunal discontinued, due to formal deficiencies, the proceedings regarding a transmission line easement, which were started by a constitutional complaint. The CHR joined the proceedings in support of the citizen. (case file no. SK 86/19) (IV.7000.299.2018)
- On 15 November 2023, the Tribunal issued a ruling on the so-called “June retirement pensions”, which is in line with the CHR’s position. The Tribunal ruled that Article 17 of the Act of 24 June 2021 Amending the Act on the Social Insurance System and Certain Other Acts, in conjunction with Articles 25a(2) (2) and 25a(2)(2a) of the Act on Retirement Pensions and Disability Pensions from the Social Insurance Fund is inconsistent with Article 32(1) in conjunction with Article 67(1) of the Constitution to the extent that it omits retirement pensions awarded pursuant to applications submitted before 1 June 2021. The Sejm amended the legislation but only prospectively, while disregarding people



whose benefits had been determined in this way before. (case file no. P 7/22) (III.7060.417.2022)

- On 11 December 2023, the Tribunal discontinued the proceedings regarding the provision according to which the membership in a bar association was dependent on the place of residence or the place of exercising the profession. The mandates of the applicants had expired because of the expiry of the term of office of the Sejm. The Commissioner sought discontinuance on the grounds of impossibility to issue a judgment. (case file no. K 6/22) (VII.561.6.2022)
- On 14 December 2023, the Tribunal discontinued, by a majority vote, the proceedings regarding the refusal to resume a case concerning a loan in Swiss francs, that had ended in an order to pay several million PLN, despite the CJEU judgment on the case of Mr and Mrs Dziubak. The possibility to resume the proceedings following the CJEU judgment arises from the Constitution and EU law, the CHR emphasised. (case file no. SK 46/22) (V.511.746.2022)

## The Supreme Court

- On 31 January 2023 the Court upheld the CHR's cassation appeal concerning a football fan on whom a sanction had been imposed for unfolding and holding a large-size flag of a football club, allegedly to prevent the identification of other fans who were using flares. The fan was identified by a police officer in a video material. Yet, the law does not criminalise such acts as unfolding and holding a flag during a match. (case file no. IV KK 500/22) (II.510.694.2022)
- Pursuant to the CHR's cassation appeal of 2020, on 23 May 2023 the Supreme Court acquitted Wincenty Witos and nine politicians of the left-wing party Centrolew, who were convicted in the so-called Brest trial in the 1930s. The case is a warning against uncritically following political emotions and the excessive temptation to fight political opponents using instruments available

in the state and the law while taking action that is contrary to the law, including the Constitution, with the aim to expand one's scope of powers, wrote the Supreme Court in the rationale of the judgment. (case file no. II K 453/22) (II.510.595.2019)

- On 17 May, 24 May, 13 July and 26 July 2023, the Court upheld the CHR's cassation appeals filed in support of five people fined during a peaceful protest against tree logging in the Białowieża Forest. They were fined for violating the prohibition to enter the forest. The legislation does not provide for a possibility to prohibit entry to forests for indefinite time, as was the case. (case file nos.: IV KK 151/23, IV KK 161/23, IV KK 157/23, IV KK 176/23 and IV KK 150/23) (II.510.283.2019, II.510.279.2019, II.510.282.2019, II.510.280.2019, II.510.285.2019)
- Following the CHR's cassation appeal, on 24 August 2023 the Court acquitted a citizen reprimanded for using a vulgar phrase on a banner during a protest following the CT ruling of 22 October 2020 concerning abortion. The protection of the freedom of expression does not depend on its form. Thus, the law protects not only balanced and reasonable statements but also those that may be exaggerated, irritating or even repulsive, the Supreme Court pointed out. It also stated the committed act was not harmful for the society because it concerned an important social issue. The Court referred e.g. to the case law of the ECHR. (case file no. IV KK 37/22) (BPK.511.81.2021)
- On 24 August 2023, The Court dismissed, as manifestly unfounded, the CHR's cassation appeal regarding the death of Igor Stachowiak. The cassation appeals filed by lawyers of the two convicted police officers were also dismissed. No written statement of reasons was provided. (case file no. V KK 413/20) (II.511.71.2021)
- On 7 December 2023, the Court upheld the CHR's cassation appeal filed in support of a woman fined for driving without a licence. The court that imposed

the fine failed to take account of evidence showing that the woman had regained the license and was its holder on the date on which she was fined. (case file no. V KK 205/23) (II.511.102.2023)

- A fine of PLN 1,500 was imposed on a woman for driving without a license. On the day she was fined, she was granted a driving license by way of an administrative decision of the mayor. The CHR filed a cassation appeal because the case file showed that the woman had the driving licence. She did not have it with her, but presentation of the driver's license was no longer required. On 29 December 2023 the Supreme Court upheld the cassation appeal and referred the case back to the District Court. (case file no. I KK 275/23) (II.511.115.2023)

## **The Supreme Administrative Court and administrative courts**

- On 17 January 2023, the Voivodeship Administrative Court upheld in part the CHR's complaint regarding the limitation by Małopolskie Voivodeship Assembly of citizens' right to adopt resolutions. The court found it unacceptable to permit the collection of signatures supporting a draft resolution only starting from the notification by the committee that the formal requirements have been met (case file no. III SA/Kr 842/22) (V.604.31.2022)
- The currently inexistent provision of the Act on Covid did not apply to the beginning or suspension of the limitation period for tax liabilities, the Supreme Administrative Court ruled on 27 March 2023. The CHR took part in the proceedings and pointed out that the beginning or suspension of tax deadlines can be changed only to the benefit of taxpayers. (case file no. I FPS 2/22) (V.511.954.2022)

- On 14 April 2023, the Voivodeship Administrative Court upheld the CHR's complaint and declared the rules governing the paid parking zone in Piaseczno invalid. The city council's resolution did not give the right to reduced fees to residents using cars under a lease agreement. (case file no. VI SA/Wa 53/23) (V.565.167.2022)
- On 26 April 2023, the Voivodeship Administrative Court overturned the decision of the Mazowsze Voivode on invalidity of the decision appointing the director of Teatr Dramatyczny in Warsaw, as had been sought by the CHR. (case file no. VII Sa/Wa 325/23) (VII.715.61.2022)
- On 13 July 2023, the Voivodeship Administrative Court upheld in part the CHR's complaint concerning the Podlaskie Voivode's regulation prohibiting the handing over to others and collecting from others items across the border line. According to the CHR, the regulation was beyond the powers of the Voivode as it concerned a matter already regulated by law. The court declared the regulation invalid. (case file no. II SA/BK 365/23) (V.543.1.2023)
- A child with a disability, who is unable to move independently, should have ensured transport to a kindergarten of the parents' choice, at the cost of the municipality. On 5 September 2023 the Supreme Administrative Court dismissed the municipality's cassation appeal, which was sought by the CHR. The municipality offered to reimburse only the cost of travel by two trains and a bus. (case file no. III OSK 193/23) (XI.7036.31.2021)
- The Supreme Administrative Court upheld two voivodeship court judgments regarding the CHR's complaints against five "anti-LGBT resolutions". On 11 October 2023, the Supreme Administrative Court dismissed the cassation appeals concerning the resolutions of Lipinki municipal council (case file no. III OSK 1527/22) and Tarnów district council (case file no. III OSK 2078/22). On 12 October 2023 the Supreme Administrative Court dismissed the cassation appeals against the resolutions of Niebylec municipality (case file no. III OSK

2177/22), Lubelskie Voivodeship Assembly (case file no. III OSK 1932/22) and district of Ryki. (case file no. III OSK 2204/22) (XI.505.2.2023)

- On 30 November 2023, the Voivodeship Administrative Court, following a complaint by the CHR, overturned the decision refusing the coal allowance to a resident of a Roma settlement near Limanowa (case file no. III SA/Kr 643/23). The local authorities found that the allowance was not due to a person whose house had been built without a permit. However, the granting of the coal allowance is not dependent on whether the house has been built based on a permit. (XI.816.27.2022)

## Common courts

- On 7 February 2023, the Court of Appeal (case file no. VI ACa 385/20) issued a ruling in the most famous case relating to a loan in Swiss francs – the case of Mr and Mrs Dziubak. The CHR joined the proceedings. The court dismissed the bank's appeal and upheld the appeal of Mr and Mrs Dziubak almost in its entirety. As part of the case, the court referred a question to the Court of Justice of the EU for a preliminary ruling. The judgment of 3 October 2019 was favourable for the complaining party who had taken the loan. (V.510.239.2019)
- On 30 June 2023, the District Court in Ostróda issued a non-final judgment regarding 15 police officers who applied torture. On six of them the penalty of imprisonment was imposed. The CHR did not join the case but the National Mechanism for the Prevention of Torture issued a statement highlighting that the Polish court for the first time awarded a sentence that corresponds to the recommendations of the UN Committee Against Torture (CAT): 6 years and 6 months of unconditional imprisonment. Torture should be a separate crime subject to severe penalty. Otherwise, no prevention can be ensured by the criminal law.

- On 22 December 2023, the Court of Appeal dismissed an application concerning legal incapacitation of a woman with moderate intellectual disability, who is a mother. She had been legally incapacitated by a district court and, as a result, lost custody of her children. Intellectual disability cannot be the only basis for a person's legal incapacitation, stated the CHR in a letter to the court. (case file no. I ACa 181/23) (IV.7024.32.2022)

## International courts

### ■ Cases of Polish citizens before the European Court of Human Rights in Strasbourg

The Commissioner for Human Rights may submit written observations in proceedings before the European Court of Human Rights, subject to the approval of the President of the Court (the *amicus curiae* procedure). The Commissioner sometimes resorts to this power because of his constitutional mandate to safeguard human and civil rights. The competence is important because ECHR judgments, apart from their individual dimension, provide the Convention's interpretation binding on national authorities, which means that they also have a general dimension that potentially affects more people within the jurisdiction of the Polish state. The CHR submitted his observations e.g. in the following proceedings before the ECHR:

- *Beluch v. Poland*, application no. 4065/21. Case concerning the right to contact one's child.
- *Tomkiewicz v. Poland*, application no. 46855/20. Case concerning the right to contact one's child.
- *Romanowski v. Poland*, application no. 55297/16. Case concerning the protection of individual's rights.

- *Sypioła and Others v. Poland*, application no. 783/16. Case concerning invalidation of results of a written matriculation examination because of not writing it independently. (VII.7031.3.2018)
- *Tuleya v. Poland*, application no. 21181/19. Case concerning the use of the disciplinary liability system to influence judges and undermine their credibility.
- *Wałęsa v. Poland*, application no. 50849/21. Case concerning the overturning of a final judgment issued by the Chamber of Extraordinary Control and Public Affairs of the Supreme Court. (VII.510.77.2022)
- *P.W. v. Poland*, application no. 78366/17. Case concerning preventive detention in the National Centre for the Prevention of Dissocial Behaviour (KOZZD). (IX.517.1545.2023)
- *M.M. and Others v. Poland*, application no. 2509/22, *N.H. v. Poland*, application no. 10271/22 and *A.R. v. Poland*, application no. 10273/22. Case concerning pushback of a group of migrants to Poland-Belarus border line, and their subsequent placement in a guarded centre for migrants. (XI.543.198.2023)
- *Przybyszewska and Others v. Poland* (application no. 11454/17) and 9 others. Case concerning the institutionalisation of same-sex unions. (XI.501.11.2020)

# Special duties of the Commissioner for Human Rights

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

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

The CHR has the duty to analyse, monitor and promote equal treatment of all persons, to conduct independent research on discrimination and to develop and issue independent reports and recommendations on problems related to discrimination. In 2023, the provisions of the directive on work-life balance for parents and carers were implemented into the Polish legal system. As a result, the CHR's tasks include also the promotion of equal treatment.

The Commissioner for Human Rights also performs the function of an independent mechanism **monitoring the implementation of the Convention on the Rights of Persons with disabilities**. The main challenges in this area include deinstitutionalisation of the support system, also in the context of



providing a system of personal assistance to people with disabilities; abolishing the system of legal incapacitation and replacing it with a system of supported decision-making; and ensuring high quality, accessible and inclusive education. One of the main areas of the Commissioner's work in 2023 was to ensure the accessibility of the elections to people with disabilities through education and promotion campaigns and dialogue with the bodies responsible for the organisation of the elections as well as the publication of adjusted election-related material on the media.

The Commissioner for Human Rights carries out the duties of the **National Mechanism for the Prevention of Torture (NMPT)** established pursuant to the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The Commissioner is, therefore, an independent body that visits places where people are deprived of their liberty. The National Mechanism for the Prevention of Torture operates as one of the departments of the Office of the Commissioner for Human Rights.

In 2023, representatives of the NMPT employees carried out a total of 76 preventive visits. The Commissioner, in his role of the NMPT, drew up 6 general intervention letters and provided comments on 3 draft pieces of legislation. The NMPT employees continued their training activities within the social campaign "State without Torture". In 2023 they trained over 300 police officers. They also provided training to staff of social welfare homes and 24-hour care facilities. In 2023 the Mechanism launched a series of training courses for secondary school and university students who, in their future professional work, may come into contact with persons deprived of their liberty.

The structure of the CHR Office comprises a **Department for Soldiers and other Uniformed Service Officers**. In 2023, employees of the department carried out numerous visits to military units. The conclusions of the visits, concerning the conditions of service and training of soldiers, the costs of commuting the and

problems with the determination and payment of remuneration for reserve soldiers, were presented by the Commissioner in his intervention letters to the relevant state authorities. As regards the protection of the rights of officers of the individual uniformed services, the Commissioner raised e.g. the issue of the funeral allowance, recruitment proceedings, unequal treatment of officers of different uniformed services and the pension systems of the uniformed services. As regards the rights of police officers, the Commissioner raised e.g. the issue of the recruitment rules, working conditions and work-life balance, disciplinary proceedings and the police chase tactics. The Commissioner addressed the problem of the impossibility of Prison Service officers to be transferred to other services and the performance of physician's activities by nurses – Prison Service officers. The Commissioner also pointed to problems with the rules of recruitment to the master's course for firefighters.

# Organisation system of Commissioner for Human Rights' activities

## CHR regional offices and citizen reception points

Pursuant to Article 22 of the Act on the Commissioner for Human Rights, the Commissioner, with the consent of the Sejm, appoints the Commissioner's regional representatives in Gdańsk, Katowice and Wrocław. They act for and on behalf of the Commissioner and are required to follow the rules governing the exercise of the Commissioner's duties. The Commissioner for Human Rights' Regional Representative Offices deal with all issues that fall within the Commissioner's remit, except for matters requiring the personal involvement of the Commissioner or his Deputies. The regional offices constitute an effective and important tool for citizens in the assertion of their rights. This is confirmed by the number of received in-person visits as well as incoming telephone calls and letters received by the regional offices.

**Map 1. Territorial competence the CHR Regional Representative Offices and citizen reception points**

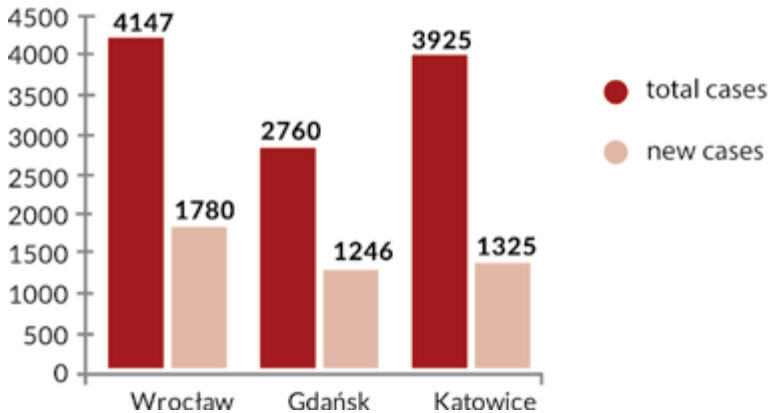


In addition to the Offices of the Regional Representatives, in 2023 there were also citizen reception points in Kraków, Koszalin, Bydgoszcz, Lublin, Szczecin and Wałbrzych. At these points, information was provided and citizen's applications were accepted by employees of the Commissioner's regional offices and of the Office of the Commissioner in Warsaw.

The activities of the Commissioner for Human Rights' Regional Representative Offices in 2023 focused on two main areas: the ongoing processing of applications and assessment of the legality of the activities of local public authorities, and the representation of the Commissioner for Human Rights in external relations. In

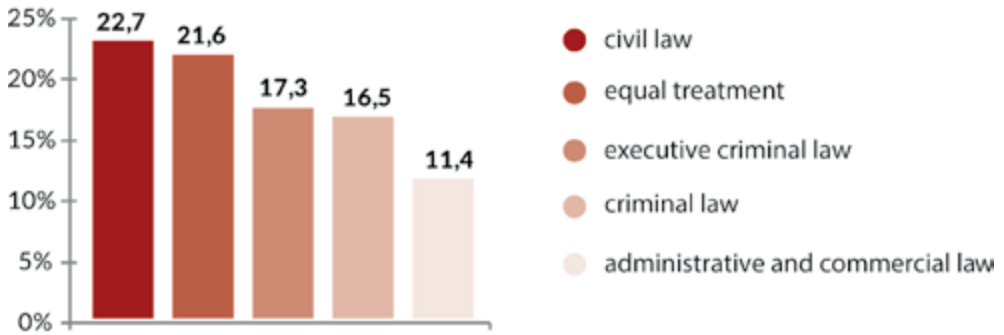
2023, a total of 10,832 applications were received by the Regional Representative Offices, of which 4,351 concerned newly registered cases.

**Figure 5. Inflow of cases to Regional Representative Offices in 2023** (the data is also presented in table 6 in the section “Tables”)



The Regional Representative Office in Wrocław received 4174 applications of which 1780 concerned new cases. The office also received 432 citizens seeking help in-person and answered 1105 telephone calls. The CHR Regional Representative Office in Gdańsk and the citizen reception points in Koszalin and Bydgoszcz received a total of 327 persons and answered 1210 telephone calls providing explanations and advice. The office in Gdańsk received 2760 applications of which 1246 concerned new cases. The Gdańsk office, in 2023, operated two citizen reception points: in Bydgoszcz and in Koszalin. The CHR Regional Representative Office in Katowice received 310 persons and answered 1676 telephone calls providing explanations and advice. The office in Katowice received 3925 applications of which 1325 concerned new cases.

**Figure 6. Main problem areas of new cases dealt with by the Regional Representative Offices** (the data is also presented in table 7 in the section “Tables”)



New cases accepted for further proceedings by the CHR Regional Representative Offices related mainly to the area of civil law (986 cases), equal treatment (939), executive criminal law (752), criminal law (718) and administrative and commercial law (498).

After a two-year suspension period, the Regional Representative Offices resumed on-site meetings, among others with young people at schools, and took part in numerous conferences, seminars and training courses. The Regional Representative Office in Katowice co-organised a national expert seminar focused on conducting police actions concerning people under the influence of psychoactive substances and people with mental disorders and on methods of dealing with such persons. All the regional offices continued their cooperation with community organisations in the area of legal advice provision. The employees of the offices cooperated with specialists from the National Preventive Mechanism department in the conduct of visits to places of detention located within their respective areas. In connection with the 2023 elections, inspections were conducted at randomly selected polling stations classified as adapted to the needs of persons with disabilities. The aim of was to identify shortcomings in and around the polling stations and to make them more accessible to all citizens.

## CHR activities in the field of social communication

The Commissioner for Human Rights, as part of his statutory duties, carries out information and education activities aimed at disseminating knowledge about the observance of human rights and freedoms. These tasks include the provision of information on the state of compliance with the principle of equal treatment and the respect for the rights of persons deprived of their liberty.

The main source providing information about the Commissioner's work is the Public Information Bulletin of the Office ([bip.brpo.gov.pl](http://bip.brpo.gov.pl)). In 2023, it published 1379 posts about the Commissioner's activities. The website registered over 2,2 million entries. After the lifting of the COVID-19 pandemic restrictions, a decline in the number of entries was noticed.

In 2023 the CHR website, next to certain information items, published also short videos with statements of the Commissioner, Deputy Commissioners and CHR Office Staff members. Starting from May 2022, 23 videos were published. 38 videos were published, including the Commissioner's meeting with the Government Plenipotentiary for people with disabilities, videos made as part of the campaign #PowiedzNiePrzemocy (Say no to violence) and a documentary on the 35th anniversary of the CHR Office.

The CHR Office continued its presence on social media (Facebook, Twitter, Instagram and LinkedIn). The total reach i.e. the number of people who saw the materials on the CHR Office profiles or the information on them was 3 074 047.

25 November 2023 was the International Day for the Elimination of Violence Against Women. On that occasion, the CHR Office launched a campaign against discrimination, scheduled to end on the Zero Discrimination Day (March 1). The campaign conducted on social media and the Commissioner's website included videos showing stories of people who have experienced violence, as well as

educational materials explaining what forms violence can take. Commissioner for Human Rights Marcin Wiącek and people cooperating with the CHR Office, who agreed to share their images for the purposes of the project, also took part in the campaign.

In 2023, the CHR Office issued 18 publications in the printed form, in the overall number of 10700 copies. The materials published on the website of the CHR Office, [bip.brpo.gov.pl](http://bip.brpo.gov.pl), met the WCAG 2.1 (Web Content Accessibility Guidelines) standard. The individual titles were promoted on the CHR website and social media and were presented during conferences and meetings at the CHR Office.

The Commissioner for Human Rights awards people and organisations working in the field of human rights. The Paweł Włodkowic award is granted to people demonstrating an uncompromising attitude towards fundamental values and truths. Dr Maciej Lis award is granted in appreciation of special achievements in protecting the rights and interests of people with disabilities. Since 2009, the CHR has also presented the CHR's Medal of Honour "For achievements in the field of human rights protection".

In 2023, the Commissioner for Human Rights' Paweł Włodkowic award was granted to Polskie Forum Osób z Niepełnosprawnościami (the Polish Forum of People with Disabilities), an umbrella organisation of associations and unions of people with disabilities in Poland. Dr Maciej Lis Award was granted to Alicja Szatkowska, President of Milicz Association of Friends of Children and Disabled Persons. The CHR's Medal of Honour "For achievements in the field of human rights protection" was awarded to: Association for Children and Adults with Cerebral Palsy "Żurawinka", and Prof. Henryk Skarżyński, an otolaryngologist, surgeon, founder, organizer and director of the Institute of Hearing Physiology and Pathology in Warsaw and of the World Hearing Centre. The medal was also awarded posthumously to Jan Arczewski, an outstanding activist, initiator and leader of Poland's first Helpline for Persons with Disabilities.







„Żurawinka” Association for Children and Adults with Cerebral Palsy was awarded CHR’s Medal of Honour “For achievements in the field of human rights protection”



CHR’s Medal of Honour “For achievements in the field of human rights protection” was awarded posthumously to Jan Arczewski

## Human rights education

The Office of the Commissioner for Human Rights carries out education projects disseminating knowledge about human and civil rights and freedoms enshrined in the Constitution as well as the principles of equal treatment and non-discrimination. The effect is the shaping of people's attitudes towards groups at risk of discrimination and exclusion, in particular seniors, people with disabilities, people who have experienced a mental crisis, migrants and national, ethnic and religious minorities.

In 2023 educational workshops for young people, students, seniors and people with disabilities were continued. The focused on discussing topics such as hate speech, discrimination, prejudice and stereotypes. The rights of foreigners and refugees were also addressed.

During the Pol'and'Rock Festival, for the fourteenth time already representatives of the CHR Office spoke to young people at a special stand called the "Human rights tent". It offered workshops, debates and educational meetings. The leading subject was broadly understood equality: equal treatment, gender balance, work-life balance, inclusive communication, as well as accessibility of public life, including election campaigns and elections, to all citizens. The debate "When Freedom of Speech Becomes Toxic. Hate Speech in Public Space" focused on the limits of the freedom of expression in public space and methods of properly reacting to hate speech. The debate on "Cyberviolence" presented the regulations for countering the phenomenon, and identified particularly vulnerable groups. A discussion was also held on women's participation in public life, their position in political discourse, current changes as well as challenges faced by women. The "work-life balance" workshop focused on gender equality in the context of domestic, caregiving and parental duties. The rights of migrants and war refugees from Ukraine was also discussed.





"Human rights tent" was a part of Pol'and'Rock Festival for the fourteenth time

The CHR Office co-organised a debate “Elections accessible to all?”, which focused on the accessibility of the electoral process. One of the debate’s outcomes was a Call for Accessible Elections, drafted jointly with civil society organisations. After the ceremony of signing the call by the Commissioner and representatives of the organisations, the call was posted on the CHR Office website where it could be signed in support of the action. On the website [bip.brpo.gov.pl](http://bip.brpo.gov.pl), under the tab “Accessible Elections” latest information was posted on the CHR Office’s activities in this field, and a polling station accessibility assessment form. The materials were available also in the Polish Sign Language.

Work was continued on the Coalition of Helplines. Helpline staff participated in 6 training courses on topics such as client service standards, social and psychological aspects of people’s disappearance, and the CHR’s competences.

The Commissioner for Human Rights also monitors the implementation of the UN Convention on the Rights of Persons with Disabilities. He takes steps to directly engage people with disabilities in the process of monitoring compliance with the Convention. As part of the process, meetings with self-advocacy groups are held. They highlight the importance of people with disabilities speaking about their problems themselves. In 2023, the CHR Office organised meetings and workshops focused on listening to the opinions of self-advocacy groups of people with intellectual disabilities, operating at M. Grzegorzewska Academy of Special Pedagogy and at “Theatre 21” in Warsaw. They bringing together people with Down syndrome and the autism spectrum. Employees of the CHR Office took part in events focused on the subject of self-advocacy. To strengthen the voice of self-advocacy groups, workshops were held on writing applications for assistance to the CHR Office. A meeting with self-advocacy groups of people with the autism spectrum focused on the problem of violence against this group. The “Autism-friendly school” campaign was summarised during a special closing meeting.



Deputy CHR Valery Vachev in a meeting with self-advocacy groups

Employees of the CHR Office participated in meetings of Warsaw TROP Support Group for People with Experience of Mental Crisis. The meetings aimed to discuss problems and needs of people with experience of mental crisis. A presentation for CHR Office personnel was conducted on de-stigmatisation of people in mental crisis. A workshop for such persons on writing applications for assistance to the CHR was also organised.

The Centre for Social Projects, in cooperation with the CHR's Plenipotentiary for the Rights of Persons with Disabilities developed a plan of local meetings on the prevention of violence against persons with disabilities.

The CHR Office employees working in the field of communication and development of educational materials took part in a workshop on creating ETR texts accessible to people with intellectual disabilities.

## Expert Committees

In 2023, work was continued by Expert Committees that support the Office of the Commissioner for Human Rights and are composed of representatives of various social and professional groups, specialists in practice and theory. The Committees provide support to the Commissioner in the implementation of his statutory tasks and in identifying key problems in the area of competence of a given committee. They are also a link between the Commissioner and citizens' groups and organisations active in various areas.

### **Expert Committee for Counteracting Homelessness**

One of the topics addressed by Committee in 2023 was the problem of „wild evictions“ i.e. actions taken by unauthorised people, without legal grounds, with the aim to force a tenant or another person to leave a flat in which they live. The Committee members also analysed the effects of the implementation of the “Housing First” programme, and drew attention to the need to increase the amount allocated in the annual budget to the programme of the Minister of Family and Social Policy entitled “Overcoming Homelessness. Programme of assistance for homeless people”.

The activities of the Expert Committee for Counteracting Homelessness inspired the Commissioner to take action to change the legislation so that it more effectively supports prevention of and exit from homelessness and provides comprehensive assistance to people in homelessness crisis. The Commissioner wrote an intervention letter to the Minister of Labour and Social Policy, reiterating the need to conduct a national-level survey to determine the number of homeless people. He requested the Prime Minister to resolve the negative competence dispute concerning the identification of the minister competent to take legislative action to implement the Constitutional Tribunal's judgment of 18 October 2017. In the judgment, the Tribunal declared unconstitutional the regulations on eviction

„to the street“ from company flats the use of which is granted and terminated by way of an administrative decision. In an intervention letter to the Ministry of Digitalisation, the CHR raised again the issue of exercise of the voting rights of people in homelessness crisis. He pointed out that the Electoral Code explicitly provides that people without a permanent place of residence have the right to be entered in the voters register. In an intervention letter to the Minister of Family and Social Policy, the Commissioner raised the issue of government funding for assistance to homeless people. The Commissioner, inspired by the Expert Committee, looked into numerous cases of individuals, also at local level.

### **Expert Committee on Mental Health**

The works and meetings of the Expert Committee on Mental Health in 2023 were focused e.g. on the draft amendment to the Act on Mental Health Protection and the procedure and reasons for admission to psychiatric hospitals according to the provisions of the Act. The experts summed up the implementation of the pilot edition of the National Programme for Mental Health Protection. They concluded that the programme had ceased to be an initiative developed by the stakeholders i.e. patients and psychiatrists, and had turned into an administrative programme planned by public officials. It was also pointed out that organisation standards and diagnostics and therapy standards for mental health centres had not yet been sufficiently developed.

The Committee experts addressed the topic of community care in Poland. They agreed that joint work should be continued to improve access to community-based psychiatric care based on the system of mental health centres. They pointed out that in the contemporary world the model is considered as the best solution for providing patients with optimal conditions for recovery and returning to life in the society, while minimising the effects of stigmatisation connected with a mental health crisis.



## **Expert Committee on Healthcare**

One of the topics addressed by the experts at the Committee meetings was the issue of geriatric care, in particular in view of the new challenges following the COVID-19 pandemic and the omissions caused by it. The experts pointed out that in areas remote from large cities a large number of older people may find it difficult to access healthcare facilities. They also agreed that the problems of older people would build up over time, and that measures taken with regard to this group should be consistent, coherent and linked to demographic factors.

Other issues addressed by the experts included somatic health of psychiatric hospital patients, application of coercion with regard to people in non-psychiatric healthcare facilities, and difficulties faced by people in the autism spectrum.

Cooperation with the Commission resulted in the CHR's intervention letters to the Minister of Health regarding the amendment to the Act on Mental Health Protection and an intervention letter concerning application of coercion with regard to patients of non-psychiatric healthcare facilities, in the absence of legal regulations in this area.

## **Expert Committee on Climate and Spatial Planning**

In 2023, experts from the Expert Committee on Climate and Spatial Planning focused primarily on the development of materials required for determining the objectives of the Act on Spatial Planning and Development and the statement of reasons for it. They developed proposed measures for increasing public participation in the spatial planning process and ensuring transparency of actions of public authorities and other entities taking part in the adoption of local-level regulations.

## **Expert Committee on Older People**

The main topics addressed by the Committee experts in 2023 included: digital exclusion, system of support provision at the place of living, employment of

people aged 50+, health condition of older people according to the PoISenior2 survey, system of long-term care of terminally ill people and their home carers in rural areas, access to palliative care, home care in rural areas, availability of social services for older people living in rural communities, the phenomenon of violence against older people, and measures for supporting people with dementia.

The Committee drew up and provided to the Commissioner an opinion statement concerning digital exclusion of older people. The experts drew attention to the requirement for NGOs and other legal entities to draw up, sign and send their financial statements only in the electronic form. According to the experts, such requirements make older people, who are often digitally excluded, give up the performance of management functions in social organisations and, consequently, cause discrimination of older people. The requirements are inconsistent with the provisions of the Act on Digital Accessibility of Websites and Mobile Applications of Public Bodies and the Act on Ensuring Accessibility for People with Special Needs. The acts stipulate that alternative means of access to public services, apart from electronic ones, have to be ensured.

The issue of employment of older persons was addressed during a conference „*Work Congress. Jobs for seniors? The situation of older people in the Polish labour market*“. The participants analysed the country's labour market from the point of view of the situation of older people and proposed directions for change.

The CHR Office hosted the seventh edition of the conference on the situation of people with dementia, their families and caregivers. This year's event focused on the subject "Disappearances of people with dementia – how to ensure their safety?". Leaflets on the subject were printed: "Disappearances of people with memory or orientation disorders" and "Information useful in searching people, that should be provided to the police", which were translated into Ukrainian.

## **Expert Committee on Deaf People**

In 2023, the experts worked on the issue of access of deaf people to mental health care and education. Attention was also devoted to the issue of the accessibility of elections and election campaigns. In this regard, experts noted that spots of election committees were not translated to the Polish Sign Language and that there was no translation to the language during the announcement of the election results by the Polish Electoral Commission. Legislative changes were postulated to make accessibility an obligation rather than just an expression of good will. The experts supported the CHR's request contained in his intervention letter to the Ministry of Education and Science to ensure bilingual education of deaf people and to increase the accessibility of the education system for students with hearing disabilities. The Committee drew attention to the difficulty for a deaf person to report an emergency via the 112 helpline and to the lack of other adequate procedures for reporting emergencies. Much attention was paid to the inadequate accessibility of healthcare facilities for deaf persons.

## **International-level activities**

### **■ Cooperation with international organisations**

The CHR Office carries out cooperation with the European Union institutions in different areas. In 2023, the CHR closely cooperated with the Fundamental Rights Agency under a joint project on the EU Charter of Fundamental Rights. The meetings concerned e.g. the situation of migrants in the context of the Polish-Belarusian border crisis, and the issue of war refugees from Ukraine.

The CHR is a member of the European Network of Ombudsmen and takes part in periodic meetings of the Ombudsmen's representatives. One of the topics of the meeting of Deputy CHR Wojciech Brzozowski with *European Ombudsperson* Emily O'Reilly was the humanitarian crisis on the eastern border of Poland. Attention

was also paid to cases proceeded by the European Ombudsperson pursuant to complaints filed by Polish citizens. Forms of inter-institutional cooperation were discussed as well.

The Commissioner's activities in the field of human rights protection are also taken on regular basis within the Council of Europe system based on the European Convention for the Protection of Human Rights and Fundamental Freedoms. In 2023 the cooperation focused e.g. on the reforms of the system of justice, independence of the judiciary, enforcement of ECHR judgments and freedom of the media.

An important partner for the CHR at the international level is the OSCE Office for Democratic Institutions and Human Rights (ODIHR). It plays an important advisory role to national human rights institutions, providing them with substantive support. In 2023 the cooperation concerned the subject of respecting the principle of equality and other civil rights in the context of the parliamentary elections in Poland.

The Commissioner for Human Rights maintains regular contacts with UN bodies. He provides technical support to them by replying to invitations to contribute to reports developed by entities operating within the UN structure. The CHR remains in contact with UN agencies also by taking part in the activities undertaken by GANHRI which closely cooperates with the UN. In 2023, the cooperation focused on the following topics: legal protection against violence experienced, in particular, by women and girls, anti-discrimination education, and the problems of women from vulnerable groups.

## ■ Associations of human rights bodies and ombudsmen

The Commissioner took part in the activities in support of older persons, carried out in cooperation with the Global Alliance of National Human Rights Institutions (GANHRI), a UN partner organisation gathering national institutions for the

protection and promotion of human rights. The Commissioner's representative attended the 13th annual session of the UN Working Group on Ageing, held in New York. During the event, a decision was taken to create space for drawing up a formal document identifying gaps in international law in the protection of the rights of older persons.

The Commissioner and his Deputy took part in a ceremony celebrating the 10th anniversary of the European Network of National Human Rights Institutions (ENNHRI), which gathers 47 human rights institutions from across Europe. The conference accompanying the celebrations focused e.g. on future challenges in the protection and promotion of human rights, democracy and the rule of law in Europe. During the second ENNHRI General Assembly attended by the CHR a decision was taken to convene an Extraordinary General Assembly of ENNHRI. It passed a resolution excluding the Russian Federation's Commissioner for Human Rights from the organisation due to his violation of membership obligations and the ENNHRI statute. CHR Office employees regularly participate in meetings of thematic working groups coordinated by ENNHRI.

Commissioner Marcin Wiącek and Deputy CHR Wojciech Brzozowski took part in the annual conference organised under the auspices of the European Commissioner for Human Rights by the European Network of Ombudsmen (ENO). The leading theme of the event was contemporary challenges in the field of human rights protection, relating to artificial intelligence and to migration. Participants discussed the implications of the European Union's migration policy, the benefits and risks of the use of artificial intelligence-based tools by public administration as well as ethical standards in public administration.

A representative of the Commissioner attended a meeting of the Independent Police Complaints Authorities' Network (IPCAN) devoted to issues relating to the unauthorised use of force by the police. IPCAN is an informal platform for exchange and cooperation between independent authorities, mainly from EU countries.

The annual International Conference of Ombudsman Institutions for Armed Forces (ICOAF), attended by the CHR, addressed the effects of climate change in the context of the functioning of armed forces.

### ■ **Direct contacts with other countries' human rights institutions, ombudsmen and other organisations**

Among visits and contacts with the ombudsmen from other countries, particular attention should be paid to the cooperation with the Ombudsmen of the *Visegrad Group* states. In 2023, the Polish Commissioner for Human Rights organised the Visegrad Group Ombudsmen Summit. At the invitation of Commissioner Marcin Wiącek, the Ombudsmen of Hungary and Slovakia and Deputy Ombudsman of the Czech Republic, together with their delegations, visited Wrocław and Świdnica. During the discussions, particular attention was paid to the functioning of the judiciary and to the exercise by the Commissioners of the role of national preventive mechanisms and national equality bodies. At the summit, the Ombudsmen of the Czech Republic, Slovakia, Hungary and Poland signed a joint declaration in which they reaffirmed their commitment to the protection of human and civil rights and freedoms in accordance with the national constitutions and legislation as well as international and European Union law. The Commissioner also developed bilateral cooperation with the Visegrad Group Ombudsmen. A delegation of the Hungarian Office of the Commissioner for Fundamental Rights carried out a study visit to Warsaw. The event included working sessions focused e.g. on the statutory powers and organisational structure of the Polish Office of the Commissioner for Human Rights, activities initiated by the Commissioner with regard to refugees from Ukraine coming to Poland, the situation on the Polish-Belarusian border and the CHR's experience as an independent equality body. The delegation of the Public Defender of Rights from Slovakia, during their visit, was interested in practical aspects of the activities of the National Mechanism for the Prevention of Torture.



Visegrad Group Ombudsmen Summit in Wrocław

In 2023, at the international level a lot of attention was paid to the protection of the rights of migrants, which was the leading topic of the annual conference of European Network of Ombudsmen. In many international level meetings attended by the Commissioner or his representatives, the situation on the Polish-Belarusian border and war refugees from Ukraine were discussed.

### ■ **Diplomatic representations and other bodies of foreign countries**

The Commissioner maintains contact with representatives of diplomatic missions accredited in Poland. In 2023, CHR Marcin Wiącek and Deputy CHR Wojciech Brzozowski took part in events organised by diplomatic missions of the following countries: Belgium, Finland, Spain, Germany, Norway, New Zealand, Slovakia, the United States, Switzerland, Hungary and the United Kingdom. The Commissioner was also the guest of honour at the meeting of the Club of Polish-Speaking Ambassadors.

The Commissioner also hosted two German delegations of the Bundestag Committees: the Committee on Human Rights and Humanitarian Aid and the Committee on Petitions.

## ■ International projects

In 2023, the Commissioner took part in two international projects. The first of them was entitled „Supporting National Human Rights Institutions in monitoring fundamental rights and the fundamental rights aspects of the rule of law“, funded under the EEA and Norway Grants Fund for Regional Cooperation. The project is led by the EU Agency for Fundamental Rights. Its participants, apart from the CHR Office, include national human rights institutions from Bulgaria, Croatia, Cyprus, Portugal, Slovakia and Slovenia, as well as ENNHRI as an expert partner.

The main objective of the project is to strengthen the role of national human rights institutions in promoting and protecting fundamental rights and the rule of law by providing them with advice and institutional support and enhancing their capacity in the field of EU law, with specific emphasis on the EU Charter of Fundamental Rights. The main outcome of the project at national level is expected to be the development of a checklist of compliance with the EU CFR, to be used by public administration bodies involved in the implementation of EU-funded projects.

The second project in which the Commissioner used the support of an international entity was the ENNHRI small grant for the development of an e-learning platform for young people. The works on the platform ended in December 2023. The main source of funding for the project was the EU programme *Citizens, Equality, Rights and Values* (CERV). The platform contains training sessions highlighting fundamental human rights issues. The materials, prepared by experts from the CHR Office, discuss universal human rights and freedoms.



# Main changes in the law postulated in the CHR intervention letters

The list below contains the main legislative changes postulated by the Commissioner in his intervention letters in 2023. Their more detailed descriptions can be found in the Report on the Activities of the Commissioner for Human Rights and on the State of Observance of Human and Civil Rights and Freedoms in 2023.

- Amendment of the Act on Social Assistance, aimed at simplifying the rules of eligibility for the Senior+ Clubs for people taking part in activities of a self-assistance club.
- Amendment of the Act on Public Notaries, required by the different situation of candidates who take the public notary examination after completing the traineeship, and candidates who take the examination without completing the traineeship.
- Amendment of the Act – Education Law, within the scope of school meal costs depending on whether meals are cooked in a school canteen or delivered by an external catering company.
- Comments on the draft amendment to the Act on Sport, regarding the need to prevent and combat violence and discrimination in the field of physical culture and sport. Adoption of an open list of legally protected characteristics and areas covered by the prohibition of discrimination, as set out in the Equal Treatment Act, or, at least, the inclusion of sport in the material scope of application of the Act. Adoption of a single list of legally protected

characteristics, applicable to all areas to which equal treatment and non-discrimination principles apply.

- Amendment of the regulations on the social security system in the context of digital exclusion of seniors. The mandatory replacement of the paper reporting system with the digital system, without transitional regulations and exemptions due to specific circumstances, raises concerns as to the compliance with the constitutional principle of non-discrimination.
- Development of a comprehensive multiannual strategy for counteracting gender-based violence, to address all manifestations of violence in the public and private life (the Act on Counteracting Domestic Violence, and other Acts).
- Introduction of the possibility for a father to postpone the bar examination because of the birth or expected birth of his child. The legislator has disregarded the rights of fathers in the relevant legislation (Act – Law on the Bar, Act on Attorneys-At-Law).
- The need to ensure equal situation of women and men to the title of Blood Donor – Contributor to the Health of the Nation and the related benefits. Adoption of new criteria concerning such amounts of blood donated by women and by men, which remain in proportion to the difference in the frequency of blood donation by women and men. This would ensure for women the same donation periods to acquire the rights and benefits of blood donors.
- Restoring the number of hours of teaching languages of national and ethnic minorities and the regional language.
- The need to take a legislative initiative to ensure effective implementation of the programme of asbestos removal; it should start with accurate inventory-taking and should end with well-planned successive removal and disposal of products containing asbestos.

- Removal from the legal system of the provision based on which a court may adjudicate a life imprisonment sentence without the possibility for the prisoner to apply for release on parole. This should be done by deleting Article 1 (25) (b) of the Act amending the Act – Criminal Code and Certain Other Acts, that added, since 1 October 2023, Article 77(3) and (4) to the Criminal Code.
- Taking legislative action to improve living conditions that do not meet international standards for the protection of the rights of people held in administrative detention, and easing the regime in detention facilities for migrants.
- Consideration of the need for adopting regulations on the use of coercive measures with regard to patients of non-psychiatric hospital departments.
- Amendment of the regulation on living conditions of people held in prisons and remand prisons, so that women prisoners or detainees receive a bra as part of their clothing set, if they do not have one or if it is unfit for use.
- Considering the amendment of internal regulations of penitentiary facilities so that they do not raise doubts as to the compliance with the constitutional right of defence with regard to the possibility to make telephone calls.
- Removal of a legislative gap by providing access to the case file for an apprehended person who has no status of a party to pre-trial proceedings, and the right to file a complaint against the refusal of access to the file.
- In compensation-related proceedings under Chapter 58 of the Code of Criminal Procedure, the State Treasury, as a party to the proceedings, should be represented by the Office of the Prosecutor General of the Republic of Poland.
- Increasing the calculation ratios for remuneration of experts in civil proceedings and criminal proceedings, set in the Regulations of the Minister of Justice of 24 April 2013 determining the ratios.

- Increasing the scope of possible charges raised in an appeal to the Supreme Court against a judgment of a court of appeal, overturning a judgment of the court of first instance and referring the case back to the court to examine the charges of violation of Article 41 and Article 4 of the Code of Criminal Procedure.
- Introducing regulations on financial compensation for certified translators for excessively long waiting time for remuneration payment for work performed.
- Repealing Article 15zzr(1) of the Act on Special Solutions for Preventing and Combating COVID-19, Other Infectious Diseases and Crisis Situations Caused by Them, which suspended the limitation periods for prosecuting crimes and tax offences – the provision has been repealed.
- Implementation of the Constitutional Tribunal's judgment of 22 June 2022 (case file no. SK 3/20) by amending the provisions on the parent's contacts with their child.
- Replacement of the requirement to present a medical certificate with the requirement to provide information about breastfeeding, if a woman taking a bar examination intends to take a breastfeeding break (amendment of the regulations of the Minister of Justice).
- Amendment of the Act on *Prevention of Money Laundering and Financing of Terrorism within the scope of* the rules of processing personal data of real beneficiaries after the CJEU judgment of 22 November 2022 in cases C-37/20 and C-601/20. The need for comprehensive and systemic changes in the rules on the accessibility of public registers in which personal data of citizens are stored.
- Amendment of the provisions determining the competences of public special services to conduct operational and investigative activities, the rules of such activities and the rights of people subjected to such activities. Taking other measures in order to ensure respect for human rights in this area.

- Analysis and adjustment of Polish legislation on public special services' covert operations influencing people's right to privacy, including their freedom of communication, to the latest ECHR and CJEU jurisprudence and European and constitutional standards.
- Amendment of Article 42 of the Act on Guarantees of Freedom of Conscience and Religion so as to broaden the rights of employees who intend to take time off work to celebrate religious holidays.
- The need to repeal the provisions of Article 3(2a) and (2b) of the *Regulation of the Minister of the Interior and Administration on temporary suspension or restriction of border traffic at specific border crossing points* (pursuant to which foreign citizens who cross the Polish border in violation of the law are turned back to the country's border line), and the need to repeal or amend Article 303b of the Act on Foreigners.
- Amendment of the Act on Associations in order to remove the restrictions on holding elections of members of association bodies because of the state of epidemic emergency caused by COVID-19.
- Opinion on the Amendment of the Act on the Civil Service and Certain Other Acts: unconstitutional termination of employment contracts with the Civil Service or public administration bodies, on the grounds of work for the special services of People's Republic of Poland.
- Amendment of the Regulation of the Minister of Justice on competitive procedures of access to additional public prosecutor traineeship, so that access to such traineeship is equal to access enjoyed by candidates for other types of traineeship at the National School of Judges and Public Prosecutors.
- Amendment of Article 230(2) of the Electoral Code to remove the time limit for counting votes at polling stations abroad.

- Ensuring a sufficient number of polling stations abroad and their proper distribution (in the regulation of the Ministry of Foreign Affairs on the establishment of polling stations outside Poland).
- Regulation, in the Electoral Code, the issue of the requirement for election-related protests to be filed by an attorney-at-law.
- Determination of qualification requirements for people licensed to determine soil quality category – in accordance with the results of the audit conducted by the Supreme Audit Office in March 2023.
- Amendment of Article 64a of the Act on Assistance to Citizens of Ukraine in Connection with the Armed Conflict on its Territory, to extend the entitlement of psychologists from Ukraine to provide psychological aid.
- The need to implement Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU – issuing an opinion on the draft implementing Act.
- Introduction of provisions on maximum permissible temperatures at workplace.
- Adoption of provisions allowing periods of non-agricultural economic activity and periods of work other than under an employment contract to be included in the total employment period.
- Taking legislative action to set, in the Act on Medical Activities, the maximum working time for medical personnel in order to eliminate excessively long working time of doctors providing healthcare services under civil law contracts. The time limitation has been recommended by the Supreme Audit Office.
- Adoption of legislative solutions setting a mandatory amount of resting time per day for people who work under civil law contracts.
- Ensure that people seeking the award of a retirement pension have access to relevant documents, in accordance with the regulations in force concerning

temporary storage of personal and payroll records made by employers, e.g. the Regulation of 11 October 2011 on the procedure of granting retirement pensions and disability pensions.

- Amendment of the Act on Social Insurance of Farmers with regard to suspending disability pension of farmers from farm-running married couples, one of whom receives an old-age pension for farmers, and the other receives a disability pension for farmers.
- Further legislative work on the Senate bill on retirement pensions and disability pensions from the Social Insurance Fund, so that the effects of the Constitutional Tribunal's judgment of 6 March 2019. (case file no. P 20/16) apply to old-age pensioners born in years other than 1953.
- Taking measures to implement the judgment of the Constitutional Tribunal of 15 November 2023 (case file no. P 7/22) on the so-called „June retirement pensions“.
- The need to regulate the admission to residential medical care facilities of persons who are not incapacitated but whose health condition makes it impossible for them to conclude a contract.
- Taking legislative action to counteract light pollution i.e. excessive emission of artificial light in public space.
- Taking a legislative initiative to give the State Sanitary Inspection the powers to identify non-compliance with hygiene and health requirements in the field of permissible concentrations and intensities of factors harmful to health and emitted by building materials, equipment and infrastructure in buildings occupied by people.
- Amendment of the Act on Counteracting Domestic Violence in connection with the expiry of disability certificates extended by the Act on Covid.

- Amendment of the regulations setting out operating procedures for schools of which all students use the home education system.
- Introduction of legal solutions to eliminate differences in the matriculation examination difficulty levels at the stage of recruitment to universities.
- Taking legislative action to grant the aggrieved person the status of a party to disciplinary proceedings in cases of students, doctoral students or university teachers.
- Amendment of the regulations on eligibility for the travel voucher so that it may be used by children's guardians who became eligible for parental benefit after 31 December 2021.
- Taking legislative action to ensure that in the years in which the minimum salary amount is increased twice, the nursing benefit is also indexed twice.
- Amendment of the regulations on the funeral allowance for parents a stillborn child whose sex cannot be determined.
- Adjustment of the regulations on the income criteria and benefits for people most in need, to take into account factors that have a real influence on the financial condition of individuals and families, such as inflation rate or increase in electricity and heating prices.
- Taking systemic action to ensure universal and equal access to various forms of care for children up to the age of 3, regardless of the place of residence of the parents, to achieve an effective increase in the number of women returning to the labour market after childbirth.
- The need to implement the judgment of the Constitutional Tribunal of 22 June 2022 (case file no. SK 3/20) by regulating the issue of a child's contacts with the parents in a situation when the parents do not live together.
- Undertaking legislative work to provide the possibility to access archival materials referred to in Article 16b of the Act on National Archive Resources



and Archives, for scientific purposes, in a manner that enables their maintenance and that ensures the need to respect the right to privacy.

- Improvement of provisions on the establishment of national parks.
- Amendment of the regulations preventing the possibility of judicial review of forest management plans; the CJEU has considered the regulations to be inconsistent with EU law.
- Amendment of the national regulations on renewable energy sources, on costs of power generated by them and the system of public support for household photovoltaic installations, in order to promote the development of prosumer photovoltaic systems.
- Development of legal regulations to give housing cooperatives the possibility to regulate the status of land on which their residential buildings are built.
- Adjustment of provisions of the Act on Administrative Enforcement Proceedings to the guidelines contained in the judgment of the Constitutional Tribunal of 18 October 2017. (case file no. K 27/15), so that persons evicted pursuant to an administrative decision are protected against homelessness to a degree higher than the minimum one.
- Amendment of the legislation so as to ensure to residents of multi-apartment buildings with municipal heating systems the same protection in terms of gas prices as enjoyed by owners of houses using protected tariffs.
- Amendment of the Act on Sport within the scope of enforcing disciplinary responsibility as well as special position of sports federations.
- Amendment of the Act on Inheritance and of procedural law in order to eliminate the situations of simultaneous existence of several court rulings regarding inheritance from the same person.
- Reform of the system of taxes paid by municipalities, and implementation of guidelines contained in the jurisprudence of the Constitutional Tribunal (the whistleblowing decision of 26 February 2013, case file no. S 1/13).

- Adoption of a regulation on driving speed measurement errors (e.g. made by speed cameras) interpreted to the advantage of the driver and on a change of fine amounts.
- Amendment of the provisions on the use, in civil court proceedings and administrative court proceedings, of evidence containing classified information.
- Improvement of the system of regulations pursuant to which people expropriated under different special Acts that prevail over the Act on Real Property Management may recover their properties.
- Proceeding of the bills providing for the possibility to claim compensation and damages for wrongful accusations or charges; rationalisation of the amount due for losing income because of mandatory appearance in a court.
- Amendment of the Act on Civil Registry Records with regard to the obligation to include so-called “covering data” (fictitious father’s data) in the child’s birth certificate. The decision on whether to enter the father’s data should be left to the child’s mother or to the child after reaching the age of majority.
- Introduction of effective legal remedies applicable to excessively lengthy explanatory and disciplinary proceedings regarding teachers and school principals.
- Removal of the inconsistency between Article 17(1) of the Act amending the Road Traffic Act and Certain Other Acts of 2 December 2021 (Journal of Laws, item 2328 as amended), Article 98 of the Act on Vehicle Drivers of 5 January 2011 (Journal of Laws of 2023, item 622) and Article 3 of the Regulation of the Minister of the Interior and Administration of 15 September 2022 on the registry of vehicle drivers who have violated road traffic regulations (Journal of Laws of 2022, item 1951) with regard to the number of penalty points for several simultaneous violations of the regulations.

- Undertaking legislative work to implement the judgment of the Constitutional Tribunal, which declared unconstitutionality of the provision permitting legal abortion in a case where prenatal tests or other medical examinations show a high probability of a severe and irreversible foetal damage or an incurable life-threatening disease of the foetus.
- Consideration of a legislative initiative to ensure sufficient protection of debtors against stalking and harassment by debt collection agencies.
- Elimination of the inconsistency and imprecision of the regulations on legal remedies available when a bank account has been blocked by a prosecutor.
- Amendment of the Code of Procedure in Petty Offence Cases within the scope of the provisions making it impossible to annul a fine imposed by an officer who has acted in gross violation of the law.
- Setting out the rules of suspending the operation of residential care facilities and transferring their residents to other places.
- Need to bring the current regulations into conformity with the Constitutional Tribunal's jurisprudence regarding the functioning of public broadcasters (appointment of members of public radio and television company bodies).
- Introduction of instruments to protect taxpayers against double taxation on items inherited or received as a gift in other countries.
- More precise regulations on taxes due from board members of non-profit organisations.
- More precise regulations on the activities of public notaries and their remuneration with regard to the issue of VAT on notary fees.

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

## 1. General principles

### Article 30 – Dignity of the person

- Rules of the operation of Senior+ Clubs (XI.811.1.2023).
- Remuneration for family members – carers of people who are legally incapacitated in full (IV.7024.1.2022).

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

In numerous intervention letters, described in the 2023 Report, the Commissioner reminded of the principle of proportionality to be followed by the legislator in restricting the freedoms and rights of individuals, which is often done excessively and without a real need. Article 31(3) of the Constitution is among the constitutional patterns most frequently referred to by the Commissioner.

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

- Amendment of the Act – Law on Public Notaries (VII.561.15.2023).
- Availability of hot meals at schools (VII.7037.37.2023).
- Unequal treatment of officers of individual uniformed services (WZF.7043.191.2023).

### Article 32(2) – Principle of non-discrimination

- Resolutions on counteracting the „LGBT ideology” (e.g. XI.505.10.2020, XI.505.1.2023; and subsequently: XI.505.2.2023, XI.505.5.2023).

- Protection against discrimination in sport (XI.518.33.2019, XI.071.4.2022).
- Situation of Roma people in penitentiary facilities (IX.517.1179.2023).
- Rights of older persons (XI.503.1.2023).
- Requirement to submit document forms to ZUS in an electronic form (VII.801.2.2022).
- Rules of recruitment for master-degree programmes for firefighters currently serving as trainees (WZF.7032.1.2023).

### **Article 33 – Equal treatment of women and men**

- Act on Counteracting Domestic Violence (XI.518.1.2019).
- Postponement of the bar examination due to the birth of a child (VII.561.20.2022).
- Unequal situation of men and women who are blood donors (XI.815.43.2021).

### **Article 34 – Right to Polish citizenship**

- Annulment of the birth certificate of a minor person (XI.534.1.2019).

### **Article 35 – Rights of national and ethnic minorities**

- Exercise of the German minority's right to be taught their language and to study in their language and funding of its teaching (XI.813.18.2021).
- Living conditions in Roma settlements (XI.816.27.2023).

### **Article 36 – Right to diplomatic and consular protection**

- Impossibility to be received in person in a consulate (VII.534.41.2023).
- Assistance to Poles abroad (VII.531.105.2023).

### **Article 37 – Jurisdiction of the Polish state**

- Refusal to grant a housing allowance to a Ukrainian national (BPK.7213.1.2023).

## 2. Personal freedoms and rights

### Article 38 – Right to life

- Regulation of the brain death diagnosis procedure (V.7018.2.2014).
- Removal and disposal of products containing asbestos (IV.7006.12.2022).

### Article 39 – Prohibition of scientific experiments

In 2023, the Commissioner received no complaints regarding non-compliance with the prohibition under Article 39 of the Polish Constitution.

### Article 40 – Prohibition of torture and inhuman or degrading treatment

- Need to amend the provisions permitting so-called absolute life imprisonment (II.510.1043.2021).
- Need to publicize the CPT report on the visit to Poland in 2022 (KMP.571.14.2023).
- Conditions in the detention facility for foreigners (KMP.572.1.2023).

### Article 41(1) – Personal inviolability and liberty

- Use of coercive measures in non-psychiatric hospital departments (V.7010.88.2023).

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

- Lack of access to the case file by detainees not granted the status of a party to pre-trial proceedings (II.511.437.2019).

### Article 41(4) – Right to humane treatment

- Requirement for prisoners to use clothing provided by the prison (IX.517.839.2022).
- Confirming the receipt of a prisoner's official correspondence sent to the prison director (IX.517.1950.2022).
- Restrictions on prisoners' right to telephone calls (IX.517.158.2023).

- Provision of underwear to female prisoners (IX.517.2965.2018).
- Installation of monitoring systems in penitentiary facilities (IX.517.437.2023).
- Improvement of living conditions in prisons and remand prisons (IX.517.1494.2015).

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

In 2023, the Commissioner did not take general-level activities concerning the exercise of the right to compensation for unlawful deprivation of liberty. He took action in individual cases of detention by police officers, in which the courts found the detention to have been unfounded, unreasonable and, in some cases, unlawful. As a result, the detained persons sought compensation before courts.

As regards the application of coercive measures by the police with regard to a Member of Parliament, the police stated that the MP had not been detained. The Commissioner, in a letter to Warsaw Police Commander, pointed out that the prohibition of detaining MPs covers all forms of deprivation or restriction of the person's freedoms by the authorities. The use of coercive measures is a form of restricting one's personal liberty as it serves the purpose of making the person to act in a certain way (II.519.1051.2023).

### **Article 42(1) – Nullum crimen sine lege**

- Rules of cumulative punishment (II.510.831.2021).

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

- Restrictions on the right to telephone contacts with a lawyer at penitentiary facilities (IX.517.156.2023).
- Lack of access to the case file by detainees not granted the status of a party to pre-trial proceedings (II.511.437.2019).

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

- Act on the State Commission for the Investigation of Russian Influence (II.510.1126.2022).

## **Article 43 – Prohibition of statutes of limitation**

The Commissioner for Human Rights did not receive any complaints in 2023 regarding the matter covered by Article 43 of the Polish Constitution.

As regards the subject of statutes of limitation in criminal law, the Commissioner called on the Minister of Justice to initiate legislative work with a view to repealing Article 15zrz<sup>1</sup> of the so-called special Act on Covid, which suspended the limitation periods for prosecuting crimes during the state of epidemic emergency, state of epidemic and 6 months following their revocation. The Commissioner also joined the proceedings before the Constitutional Tribunal seeking the declaration of unconstitutionality of Article 15zrz(6) of the Act on Covid which transferred the powers to suspend the limitation periods for prosecuting crimes and enforcing penalties for them to the executive authorities.

## **Article 44 – Suspension of the limitation period**

The Commissioner for Human Rights did not receive any complaints in 2022 regarding the application of Article 44 of the Constitution.

## **Article 45 – Right to a court**

- Status of judiciary independence:
  - Time limit for a judge/trainee judge to file an application for a transfer (VII.510.75.2022).
  - Rules of remuneration of judges in 2023 (III.7042.2.2023).
  - Right to have a case decided by an independent and impartial court (II.510.972.2021).
  - Possibility for a resolution of the Supreme Court to be granted the force of a principle of law (VII.510.71.2023).
- Reforms to the justice system:
  - Act amending the Act on the Supreme Court and certain other acts (VII.510.5.2023).



- Remuneration of court experts (II.7002.2.2022).
- Delivery of court letters (VII.501.36.2022).
- Absence or limitation of the possibility to take a case to a court:
  - No possibility to challenge a judgment rejecting the request for drawing up a statement of reasons for the first judgment of the court of second instance (IV.511.44.2023).
  - No possibility to raise charges of violation of procedural law, under Articles 41 and 4 of the Code of Criminal Procedure, in a complaint to the Supreme Court (II.510.1076.2022).
  - No appeal against the rejection of a complaint concerning actions of a bailiff (V.510.28.2023).
  - Deadline for discontinuance of suspended civil proceedings (IV.511.194.2023; IV.511.429.2023).
- Free legal aid: role of attorneys, costs:
  - Payment by the State Treasury of the costs of legal aid provided by an ex officio attorneys (II.510.258.2023).
- Lengthiness of proceedings:
  - No possibility to file a complaint about the lengthiness of enforcement proceedings (IX.517.1422.2023).
  - Procedure of remuneration payment to certified translators (VII.510.76.2022).
- Right to a fair trial:
  - Need to repeal Article 15zrz<sup>1</sup> of the Act on Covid (II.510.735.2021).
  - Need to repeal Article 15zrz of the Act on Covid (II.510.1008.2023).

## **Article 46 – Forfeiture of objects**

- Forfeiture of a vehicle or equivalent amount (II.510.619.2023).

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

- Contacts between parents and their minor children (IV.071.5.2022).
- Possibility to use a breastfeeding break during a bar examination (VII.501.33.2023).
- Wiretapping in pharmacies (VII.501.175.2023).
- Publicly accessible register of contracts concluded by public finance sector entities (VII.520.14.2021).
- Implementation of B3 online monitoring systems in schools (VII.501.72.2023).
- Processing of personal data by Statistics Poland (VII.501.34.2023).
- Open access to personal data contained in the Central Register of Real Beneficiaries (VII.501.58.2020).
- Leakage of personal data of soldiers of the Territorial Defence Forces (VII.501.142.2022).
- Protection against cyberattack of citizens' data contained in government systems (VII.501.165.2023).
- Disclosure of creditors' personal data included in the National Register of Debtors (VII.520.13.2023).
- Rules of operation of the "Sports talents" register (VII.501.151.2023).

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

- School's right to determine students' appearance (VII.7031.4.2022).

## **Article 49 – Freedom of communication**

- Legality of the use of *Pegasus* spyware during operational control (VII.501.306.2021).
- Handling of correspondence sent to people deprived of their liberty (IX.517.587.2023).

## **Article 50 – Right of inviolability of the home**

In 2023, no systemic issues concerning the guarantees provided under Article 50 of the Constitution were addressed. In individual cases, the Commissioner examined whether the searches to which the complaints related were conducted in line with the standards arising from the legislation.

The Commissioner undertook the case of a woman who took an abortion pill and who was approached by police officers in a gynaecology department of a hospital in Kraków. The police wanted to conduct a search of the woman and of her apartment. According to the investigation report, the police secured her mobile phone and laptop. The search of the apartment was aimed at finding the box or packaging of the tablets. The case is monitored by the CHR Office (II.519.799.2023).

## **Article 51 – Right to information autonomy**

- Fines for refusal to present an identity card (II.519.47.2023).
- Security of personal data the foster care data register (III.554.2.2023).

## **Article 52 – Freedom of movement within the territory of Poland**

- Crossing the border by people with two citizenships (VII.531.58.2023).

## **Article 53 – Freedom of conscience and religion**

- Rules of work religious holidays that are public holidays (VII.5601.2.2022).
- The Reformed Catholic Church's deletion from the register of churches and religious associations (VII.5600.4159.2020).

## **Article 54 – Freedom of speech**

- Bill on introducing the Act – Electronic communications law (VII.564.2.2023).

## **Article 55 – Prohibition of extradition of Polish citizens**

In 2023, no problems related to the extradition of Polish citizens were reported. However, the Commissioner filed cassation appeals to the Supreme Court regarding individual cases concerning extradition.

## **Article 56 – Right to asylum and refugee status**

- Effects of the loss of the “UKR” status by refugees (XI.541.139.2022).
- Suspension of child benefits for Ukrainian citizens (III.7064.741.2023).
- Situation of older people from Ukraine (III.7065.119.2023).
- Difficult living situation of vulnerable persons (III.7065.150.2023).
- Lengthy proceedings on foreigner’s stay legalisation at voivodeship offices (XI.541.31.2021).
- Turning migrants back to the country’s border line (XI.543.10.2022).
- Use of pushbacks by the Border Guard (XI.543.249.2021).
- Need for Border Guard’s changed reaction to requests to initiate administrative proceedings (XI.543.75.2023).

## **3. Political freedoms and rights**

### **Article 57 – Freedom of peaceful assembly**

- Holding of counter-manifestations during cyclical assemblies (VII.613.3.2023).

### **Article 58 – Freedom of association**

- Restrictions on conducting elections of the Polish Tourism and Sightseeing Society bodies (VII.612.2.2022).

### **Article 59 – Freedoms of trade unions**

- Adoption of codes of ethics by companies (III.7044.61.2022).

### **Article 60 – Right of equal access to public services**

- Act amending the Act on the Civil Service and Certain Other Acts (III.7041.3.2023).
- Entrance examination for the additional public prosecutor traineeship (VII.561.2.2023).
- Necessity to adjust the rules of recruitment to the Internal Security Agency, Foreign Intelligence Agency, Central Anticorruption Bureau, Military Coun-

terintelligence Service and Military Intelligence Service to the constitutional standards (WZF.7043.160.2023).

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

- Ensuring access to public information for people deprived of liberty (IX.517.1041.2020).
- Access to judges' personal data included in the statements of support for members of the National Council of the Judiciary (VII.6060.35.2019, VII.6060.43.2019).
- Information on salaries of the president, vice-president and chief accountant of the Voivodeship Board of Appeal (VII.6060.46.2021).

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

In 2023, only individual cases were examined concerning the exercise of the right of access to documents and meetings of collective bodies of public authorities elected by universal suffrage.

### **Article 62 – Electoral rights**

- Amendment of the Electoral Code (VII.602.1.2023).
- Limited time of counting votes in polling stations abroad (VII.602.6.2023).
- Need to ensure a sufficient number of polling stations abroad and their appropriate distribution (VII.602.10.2023).
- Ensuring the secrecy of voting to citizens (VII.602.11.2023).
- Accessibility of elections for persons with disabilities (XI.602.1.2023).
- Inspection of polling stations with the status of stations adapted to the needs of persons with disabilities.
- Abolishing the requirement for election-related protests to be filed by an attorney-at-law (VII.510.75.2023).

## **Article 63 – Right to file petitions, requests and complaints**

The Commissioner took action with regard to the need for public authorities to reply to petitions sent to them. The replies of the Chancellery of the President of Poland and the Minister of the Interior and Administration stated that the authorities correctly fulfilled their response obligation under the Act on Petitions (VII.604.18.2022).

## **4. Economic, social and cultural freedoms and rights**

### **Article 64 – Right to property**

- Entry of a real property in the municipal register of historic monuments, and the rights of the owner (IV.7002.4.2023).
- Restriction of the rights of property owners by way of property's entry in the municipal register of historic monuments (IV.7002.8.2018).
- Remuneration of a guardian representing the child (IV.7000.157.2023).
- Remuneration of a guardian of a person whose place of residence is unknown (IV.7000.89.2023).
- Lower remuneration for ex officio lawyers (II.510.795.2023).
- Taking adverse possession of easement of land that is identical with the easement of transmission (IV.7000.299.2018).
- Entitlements of purchasers of claims made "under the Warsaw decree" (IV.7004.5.2023).

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

- Withdrawal of a licence to conduct technical inspection of vehicles (V.511.96.2023).
- Problem with lack of medical physicists and long queues to receive radiotherapy (V.7010.64.2023).

- No qualification requirements for persons seeking the license to determine soil quality category (IV.7007.50.2014).
- Extension of the right of Ukrainian psychologists to provide psychological support (VII.7014.12.2023).

### **Article 65(2-5) – Employee rights**

- Implementation of the work-life balance directive for parents and carers (XI.022.1.2022).
- Problems of civilian employees of the police (WZF.7043.119.2022).
- Ensuring safe and hygienic working conditions for employees, the need to set a limit of maximum temperature at workplace (III.7050.10.2019).
- Professional situation of nurses and midwives (V.7014.17.2023).
- Inclusion of periods of self-employment and work under civil law contracts in the total employment period (III.7040.65.2023).

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

- Too long working hours of doctors providing healthcare services under civil law contracts (III.7044.36.2023).
- No regulations setting the minimum resting time for people employed under civil law contracts (III.7041.9.2022).

### **Article 67 – Right to social security**

- Infringement of older person’s right of access to payroll records (VII.6060.75.2021).
- Rules of suspending farmer’s disability pension (III.7060.36.2023).
- Need to undertake further legislative work on the bill on retirement pensions and disability pensions from the Social Insurance Fund (III.7060.147.2023).
- Need to change the so-called “retirement pension calculator” (III.7060.648.2023).
- “Retirement pensions due for June” (III.7060.417.2022).

### **Article 68(1) – Right to health protection**

- No psychological support for paramedics (BPK.7014.1.2023).
- Emergency medical service system and medical transport system (V.7011.6.2023).
- Shortages of medicines in pharmacies (V.7013.4.2023).
- Risk to mental health as a reason for abortion (VII.5001.6.2023).

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

- Refusal of legitimate termination of pregnancy (VII.5001.1.2023).
- Establishment of the Infertility Treatment Council (VII.5002.6.2015).
- Legal basis for the limits on e-prescriptions (V.7013.59.2023).
- Need to regulate the admission to residential medical care facilities of persons who are not incapacitated but whose health condition makes it impossible for them to conclude a contract (KMP.573.18.2018).
- Rights of patients deprived of their liberty (IX.517.166.2023).

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

- Access to anaesthesia during childbirth (V.7010.100.2023).
- Gynaecological and obstetrics care for women with disabilities (XI.815.64.2022).

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

- Light pollution (V.7203.30.2020).
- Permissible concentrations and intensities of factors harmful to health and emitted by building materials, equipment and infrastructure in buildings occupied by people (IV.7000.44.2015).

### **Article 68(5) – Development of physical culture**

In 2023, the Commissioner did not receive any complaints about failure to implement the constitutional directive to support physical culture development.



## **Article 69 – Support for people with disabilities**

- Loss of validity of disability certificates extended by the Act on Covid (III.7064.30.2023).
- Need to reduce the waiting time for a disability certificate (III.7064.1246.2023).
- Modification of the programme on cars (XI.7061.8.2023).
- Works on the regulation implementing the Act on the Support Benefit (III.7064.1073.2023).
- Remuneration for carers of people who are legally incapacitated in full (IV.7024.1.2022).
- Accessibility of the education system for students with hearing disabilities (XI.7036.79.2022).
- Accessibility of elections for persons with disabilities (XI.602.1.2023).

## **Article 70(1) – Right to education**

- New rules of conducting the matriculation examination (VII.7031.30.2023).
- Teaching of children from Ukraine (VII.7030.14.2022).

## **Article 70(2) – Free learning**

- Costs of doctoral degree award procedure (VII.7034.3.2023).

## **Article 70(3) – Right to operate private schools**

- School's deletion from the Register of Non-Public Schools and Institutions (VII.7037.79.2022).

## **Article 70(4) – Equal access to education**

- Accessibility of the education system for students with hearing disabilities (XI.7036.79.2022).
- Recruitment to universities in light of the change of the core curriculum required in the matriculation examination (VII.7033.2.2023).

## **Article 70(5) – Autonomy of universities**

- Recruitment to universities in light of the change of the core curriculum required in the matriculation examination (VII.7033.2.2023).

- Mandatory discontinuance of doctoral studies and title award procedures (VII.7033.113.2022).
- Need to grant the aggrieved person the status of a party to disciplinary proceedings in cases of students, doctoral students or university teachers (VII.7033.115.2022).
- Reduced requirements concerning the quality of medical education (VII.7033.73.2023).

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

- Travel vouchers (V.7108.94.2022).
- Indexation of the nursing benefit (III.7064.81.2023).
- Benefits for parents of stillborn children (VII.534.20.2015).
- Insufficient benefits for people most in need (III.7065.165.2022).
- Grandchild’s eligibility for a nursing benefit for a person with a disability (III.7064.224.2023).

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

- Labour market accessibility for women (III.7040.28.2023).

### **Article 72 – Children’s rights**

- Parents’ contacts with their minor children (IV.071.5.2022).

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

- Archives accessibility (VII.713.1.2023).

### **Article 74 – Environmental safety and environmental protection**

- Rules for the establishment of national parks (V.7200.33.2023).
- Costs of disposal of abandoned waste (V.7203.5.2023).
- Possibility to challenge a forest management plan before a court (V.7202.5.2022).
- Development of solar power generation by prosumers (V.7200.66.2022).
- Light pollution (V.7203.30.2020).

## **Article 75 – Housing policy and protection of tenants’ rights**

- Problems with property rental in the open market (IV.7210.24.2022).
- Housing cooperatives’ lack of legal title to land under their buildings (IV.7211.250.2021).
- Protection against eviction “to the street” (IV.7214.40.2022).
- Increase in heating prices (IV.7215.108.2022).

## **Article 76 – Protection of consumer rights**

- Problems of creditors of a bank that has declared bankruptcy (V.510.119.2023).

# **5. Means of protection of rights and freedoms**

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

- Application to the Constitutional Tribunal by persons repressed for activities aimed at regaining Poland’s independence (II.513.1.2023).

## **Article 77(2) – Right to a court**

- No right to reopen additional proceedings after the Constitutional Tribunal’s judgment (II.511.440.2023).
- Disciplinary sanctions imposed by sports federations (VII.715.31.2023).

## **Article 78 – Right to two-instance proceedings**

- No possibility to appeal against a ruling of a court of appeal or the Supreme Court, which refuses reopening of proceedings or leaves it without consideration (II.511.719.2023).
- No possibility to appeal against a second instance court’s decision refusing exemption from court fees on appeal (IV.511.437.2022).

## **Article 79(1) – Right to a constitutional appeal**

In 2023, the Commissioner for Human Rights jointed 15 proceedings initiated by constitutional complaints to the Constitutional Tribunal. The Commissioner’s

participation aims at supporting the arguments put forward by the complainants. However, the Commissioner may not point to other constitutional models as reference for the constitutional review than those pointed to by the complainants.

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

- Access of the National Mechanism for the Prevention of Torture to medical records of detainees (KMP.571.1.2023).

## **6. Other normative standards**

### **Article 2 – Rule of law**

- Problem of simultaneous existence of several court rulings regarding inheritance from the same person (IV.511.221.2020).
- Reform of the system of taxes paid by municipalities (V.600.6.2022).
- Register of vehicle drivers who have violated road traffic regulations (II.565.3.2022).
- Use of classified materials as evidence in court proceedings (WZF.511.1.2022).
- Restitution of real properties expropriated under special Acts (IV.7003.41.2019).
- Change of boundaries of areas administered by local governments (V.600.1.2023).
- Sejm's refusal to proceed with certain bills (II.513.4.2022).
- Amendment of the Act on Civil Registry Records (VII.534.24.2022).
- Competence dispute between the President of Poland and the Supreme Administrative Court (VII.603.1.2023).
- Conduct of explanatory and disciplinary proceedings by the Ministry of Education and Science (VII.7037.68.2021).
- Explanatory and disciplinary proceedings conducted by the Ministry of Education and Science (VII.7037.30.2023).
- Register of penalty points for vehicle drivers (II.510.247.2023).

- Amendment of the Act on the State Commission for Investigation of Russian Influences (II.510.533.2023).
- Need for legislative work on access to abortion (VII.5001.11.2021).
- Bill on preventing minors' access to inappropriate online content (VII.550.1.2023).
- Stalking of debtors by debt collection agencies (II.501.2.2023).
- Amendment of the provisions concerning espionage (II.510.565.2023).
- Blocking of money in a bank account (II.510.170.2023).
- Use of non-certified speed cameras (II.519.725.2023).
- Compensation for legal entities for non-material damage (VII.501.85.2023).
- Suspension of the tax limitation period in a discontinued case (II.510.662.2023).
- Annulment of a driving test (V.511.911.2022).
- Problems with suspension of work by residential care facilities (KMP.573.12.2023).

### **Article 14 – Freedom of the press and other means of social communication**

- Appointment of bodies of public broadcasting companies (VII.603.1.2016).

### **Article 22 – Freedom of establishment**

- Situation of companies operating in the Polish-Belarusian border zone (V.7100.8.2023).

### **Article 24 – Labour protection**

- Amendment to the Act on the Civil Service and Certain O Acts (III.7041.3.2023).
- Termination of employment contracts of Foreign Service employees. Proceedings joined by the Commissioner, concerning the termination – by operation of law – of employment contracts of Foreign Service employees are still pending before the courts. As a result of a resolution of the Supreme Court, taken in the proceedings joined by the Commissioner, courts hearing the case and having no possibility (because the normative act ceased to be

effective) to forward a question of law to the Constitutional Tribunal may disregard a provision of the law if they consider it to be inconsistent with the Constitution.

### **Article 217 – Rules for the levying of taxes**

- Impact of lockdown on tax deadlines (V.511.954.2022).
- No tax deductibility of health insurance contributions (V.7011.26.2022).
- Double taxation on items inherited or received as a gift in other countries (V.511.183.2023).
- Rules of tax accountability of board members of non-governmental organisations (V.511.881.2022).
- VAT on notary fees (V.511.612.2020).

# Tables

**Table 1. Inflow of applications to the CHR Office in the last ten years (2014–2023)**  
(see Figure 1).

Year	New cases	Total cases
2014	26 470	57 127
2015	27 376	57 627
2016	24 360	52 551
2017	22 800	52 836
2018	25 266	57 546
2019	27 113	59 524
2020	31 100	72 428
2021	25 379	74 279
2022	24 418	75 239
2023	25 212	79 698

**Table 2. Main addressees of the Commissioner’s general intervention letters and case-specific legal remedies** (see Figure 2).

Addressee	Number
Supreme Court	144
Supreme Administrative Court	59
Administrative Courts	49
Ministry of Justice	26
Constitutional Tribunal	25
Ministry of the Interior	22

**Table 3. CHR's intervention letters in 2023.**

The Commissioner for Human Rights sent:	Number
problem-specific intervention letters	117
problem-specific intervention letters calling for taking legislative initiative	89
applications to the Constitutional Tribunal to declare laws and regulations inconsistent with higher-level legislation	3
notifications to the Constitutional Tribunal about joining proceedings initiated by a constitutional appeal	15
notifications to the Constitutional Tribunal about joining proceedings initiated by a question of law	1
notifications to the Constitutional Tribunal about joining proceedings initiated by a motion	6
questions of law to the Supreme Court	1
notifications to the Supreme Court about joining proceedings initiated by a question of law	1
extraordinary complaints to the Supreme Court	48
cassation appeals in criminal cases	89
cassation appeals to the Supreme Court in civil cases	3
cassation appeals to the Supreme Court in labour law cases	1
cassation appeals to the Supreme Administrative Court	54
applications to the Supreme Administrative Court for interpretation of law	2
complaints to Voivodeship Administrative Courts	18
court proceedings joined	46
administrative proceedings joined	3
joined proceedings before international courts	2
motions to commence preparatory proceedings	1
motions to commence administrative proceedings	12
motions to commence civil proceedings	7
<b>Total</b>	<b>519</b>



**Table 4. CHR's 519 general intervention letters and case-specific legal remedies by problem area in 2023** (see Figure 3).

CHR's general intervention letters by problem area	Number	%
Administrative and commercial law	142	27,4
Criminal law	116	22,3
Constitutional, international and European law	82	15,8
Equal treatment	57	11,0
Civil law	57	11,0
Protection of rights of soldiers and other uniformed service officers	26	5,0
Labour and social security law	25	4,8
Others	14	2,7

**Table 5. Applications examined by the Constitutional Tribunal: to find laws and regulations inconsistent with the Constitution; constitutional appeals; motions and questions of law to the Tribunal, joined by the CHR in 2014–2023** (see Figure 4).

Year	Applications			
	accepted	rejected	discontinued	pending
2014	15	8	8	1
2015	18	6	18	0
2016	12	9	28	6
2017	8	4	9	3
2018	2	3	3	5
2019	3	3	7	6
2020	1	4	4	18
2021	1	3	2	20
2022	1	0	2	21
2023	1	0	0	24

**Table 6. Inflow of cases to Regional Representative Offices in 2023** (see Figure 5).

Regional Offices	Total cases	New cases
Wrocław	4147	1780
Gdańsk	2760	1246
Katowice	3925	1325

**Table 7. Main problem areas dealt with by Regional Representative Offices in 2023** (see Figure 6).

Problem area – new cases	Number	%
Civil law	986	22,7
Equal treatment	939	21,6
Criminal executive law	752	17,3
Criminal law	718	16,5
Administrative and commercial law	498	11,4
Labour and social security law	315	7,2
Constitutional, international and European law	107	2,5
Protection of rights of soldiers and other uniformed service officers	4	0,1
National Preventive Mechanism	3	0,1
Others	28	0,6
<b>Total</b>	<b>4350</b>	<b>100</b>

**Table 8. Cases examined by CHR Regional Representative Offices in 2023.**

Cases examined	Number	%
Cases accepted for further proceeding	1837	40,8
Provision of information, indication of measures the complainant may take	2292	50,9
Complaint referred to a competent authority	33	0,7
Complaint returned to the complainant for adding necessary information	204	4,5
Rejected	136	3,1
<b>Total</b>	<b>4502</b>	<b>100</b>

**Table 9. Outcome of case examination by CHR Regional Representative Offices in 2023.**

Outcome of case examination	Number	%
<b>Outcome expected by the applicant achieved – total</b>	<b>472</b>	<b>33,0</b>
Applicant's allegations confirmed	436	30,5
General intervention letter of the CHR taken into account	36	2,5
<b>Proceedings discontinued – total</b>	<b>66</b>	<b>4,6</b>
Proceedings discontinued while pending (procedure not completed)	18	1,3
Discontinuation by the CHR (for objective reasons)	<b>48</b>	<b>3,3</b>
<b>Outcome expected by the applicant not achieved – total</b>	<b>893</b>	<b>62,4</b>
Applicant's allegations not confirmed	865	60,5
General intervention letter of the CHR not taken into account	8	0,6
Exhausted possibilities of action by the CHR	20	1,3
<b>Total</b>	<b>1431</b>	<b>100</b>

The summary is based on the „Report on the activities of the Commissioner for Human Rights and on the state of observance of human and civil rights and freedoms in 2023“. It contains a description of the most important problems in the area of protection of civil rights and freedoms, actions taken by the Commissioner, and a list of the most important postulates for legislative changes formulated in the statements of the Commissioner for Human Rights.

In the fight for human and civil rights, trust is of greatest importance. In 2023, the number of applications for assistance submitted to the Commissioner for Human Rights (79 698) was the largest in history, which we noted with great satisfaction. For the CHR Office, it is an important confirmation that our relations with citizens are heading in the right direction and achieve increasingly better assessment.

A larger number of cases referred to the CHR Office also means a larger number of problems experienced by citizens, which raises our obvious concern. I strongly encourage you to read the report, as is not merely a map of important problems, supported by numbers and specific data. It also contains many suggestions as to what should be done and in what sequence to make life in Poland better year by year so that it becomes a source of satisfaction and pride for the citizens.

Marcin Wiącek  
Commissioner for Human Rights



**COMMISSIONER  
FOR HUMAN RIGHTS**

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