

THE CHR RANKING 2016

The Commissioner for Human Rights together with the CHR Office employees developed a ranking of problems which, in 2016, posed the greatest threats from the point of view of the respect for human rights and civil rights in our country. The Commissioner also indicated issues on which clear progress has been achieved or positive changes have been announced.

Ranking: Part 1 – threats

According to the CHR, the main threats included:

- 1. THE CONSTITUTIONAL TRIBUNAL CRISIS AND ITS NEGATIVE IMPACT ON THE PROTECTION OF THE RIGHTS AND FREEDOMS OF INDIVIDUALS**
- 2. INTRODUCTION, IN PARLIAMENTARY ACTS, OF LEGISLATIVE SOLUTIONS WHICH LIMIT CIVIL RIGHTS**
- 3. LARGE-SCALE PRESENCE OF SOCIAL EXCLUSION AND HOMELESSNESS**
- 4. THE STATE'S INSUFFICIENT REACTION TO CASES OF DISCRIMINATION, AS WELL AS THE INCREASING NUMBER OF PREJUDICE-MOTIVATED OFFENCES**
- 5. INSTABILITY OF THE CRIMINAL PROCEDURE REGULATIONS, AND CITIZENS' UNDERMINED TRUST TO COURTS**
- 6. STILL UNRESOLVED PROBLEMS RELATING TO PROPERTY RESTITUTION**
- 7. INEFFECTIVE AND INEFFICIENT SYSTEM OF SUPPORT TO PERSONS WITH DISABILITIES AND TO SENIOR PERSONS**
- 8. INSUFFICIENT PROTECTION OF WOMEN'S RIGHTS AND SUPPORT TO VICTIMS OF VIOLENCE**
- 9. SITUATION OF CERTAIN GROUPS OF PERSONS DEPRIVED OF LIBERTY**
- 10. CITIZENS' PROBLEMS IN THE FINANCIAL SERVICES MARKET**

1. THE CONSTITUTIONAL TRIBUNAL CRISIS AND ITS NEGATIVE IMPACT ON THE PROTECTION OF THE RIGHTS AND FREEDOMS OF INDIVIDUALS

THE MAIN THREAT TO HUMAN RIGHTS IN POLAND IS THE UNDERMINING OF THE CONSTITUTIONAL TRIBUNAL'S INDEPENDENCE AND THE PARALYSIS OF THE TRIBUNAL'S WORK

In 2016, numerous attempts were taken to reduce the independence of the Tribunal, both at the legislative level and with regard to the Tribunal's composition.



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- The President of Poland did not accept the oath from three judges appointed by the Sejm during its previous term of office.
- Instead, three other judges were appointed despite the unconstitutionality of their appointment.
- There are serious doubts as to whether the Tribunal will be able to fulfil its basic constitutional tasks and, consequently, whether the legislator will be, in any way, limited and controlled in the case of adopting laws that limit the rights and freedoms of citizens.
- The Constitutional Tribunal plays an extremely important role with regard to protecting the citizens in their relations with the state. The Tribunal is a guardian of the Constitution, and thanks to its role people should not be afraid of the state. The paralysis of the Constitutional Tribunal and the situation within it raise concerns about the future of the numerous cases brought before the Tribunal by the Commissioner for Human Rights and by other bodies. Many of those cases have to wait for months or even for years to be examined by the Tribunal, although they relate to specific problems and cases of injustice taking place in Poland.
- Worse still, the legislator, already during the legislative process, assumes that the Tribunal's control of compliance with the Constitution will not be sufficient and that it will not take place soon. Therefore, the legislator accepts the possibility of adopting regulations which, according to many entities, experts and non-governmental organizations are inconsistent with the Constitutional standards and with international agreements relating to human rights.

LIMITATION OF THE DEBATE PROCESS IN THE PARLIAMENT, AND REPETITIVE OMISSION OF SOCIAL CONSULTATIONS

- Legislative acts are drafted hastily, without taking into account the different points of view. Most acts of the Parliament are proceeded as deputies' bills and, as a result, the stage of expert, government and public consultations is omitted. This means that citizens are no longer protected against the actions of the authorities which would like to limit the citizens' rights, and against the consequences of **mistakes and deficiencies in the legislative process**.
- No consideration is given to international bodies' subsequent recommendations regarding the solution of the current Constitutional Tribunal crisis. **In the absence of the protection by the Constitutional Tribunal, the citizens are left with common courts and administrative courts only.**
- **The CHR, for many years already, has also been pointing to the inefficiency of the judicial system.** This problem is getting more serious as many judicial positions are vacant. Moreover, the administrative supervision over the courts is exercised by the Minister of Justice who also holds the office of Public Prosecutor General. The two offices are held by an active politician and member of the government. This may limit the independence of the prosecutor's office, especially in view of



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the fact that Public Prosecutor General has been granted additional powers e.g. to make decisions in specific court cases and to disclose information related to them.

- The Commissioner's application relating to the prosecutors' offices (case no. K 19/16) is pending before the Constitutional Tribunal, similarly as 50 other applications of the Commissioner. However, due to the on-going Constitutional Tribunal crisis, it is difficult to determine how and when the cases will be examined and closed.

2. INTRODUCTION, IN PARLIAMENTARY ACTS, OF SOLUTIONS WHICH LIMIT CIVIL RIGHTS

IN PARLIAMENTARY ACTS, SOLUTIONS ARE ADOPTED WHICH MAY LEAD TO THE LIMITATION OF HUMAN RIGHTS AND CITIZENS' FREEDOMS. THOSE SOLUTIONS RELATE E.G. TO SURVEILLANCE, PERSONAL DATA PROTECTION, FREEDOM OF THE MEDIA, OWNERSHIP RIGHTS AND THE FREEDOM OF ASSEMBLY

Last year the Sejm commenced, or is commencing now, several important reforms whose compliance with the Constitution is questionable as the introduced changes may lead to the limitation of human rights and citizens' freedoms:

- **The State services received new possibilities of gathering information about citizens, including through the Internet** (as well as the right to block access to the Internet). The methods of the services' operation and of use of such information are not subject to any independent monitoring. In the previous years, the CHR repeatedly emphasized the need for such monitoring. However, the changes introduced in 2016 went in a very different direction than suggested (see e.g. the Anti-Terrorism Act).

Attention should also be paid to other unresolved problems relating to the protection of citizens' privacy in various areas, including the problem of ensuring adequate protection of personal data in the procedure of unemployed persons' profiling.

The Commissioner also submitted to the Constitutional Tribunal the application no. K9/16 for examining the consistency with the Polish Constitution and international law of the so-called Surveillance Act's provisions which regulate: persons' operational control and voice interception, and interception and storage of telecommunications, mail and internet data.

- **Limitation of freedom of the media.** The public service media play a special role in a democratic countries. They monitor the achievement of the public interest, the full access to information and the pluralism of views and ideas. However, the public sector media have implemented a process which challenges those values. This is mainly related to the public media's personnel policy, style of work, and the undermining of the constitutionally determined role of the National Broadcasting Council (this has been deemed unconstitutional by the Constitutional Tribunal in its judgment no. K13/16 of 13 December 2016). As a result, the public sector media focus on presenting the point of

view of the authorities, which constitutes a limitation of the public debate. This particularly impacts the citizens at the present time when the commercial media are also in serious crisis.

The attempts to restrict the work of journalists in the Parliament should also be noted with the most serious concern.

- **The freedom of public assembly is at stake.** Last year, the CHR considered the adoption of the new Law on Assemblies a success (the previous legislation did not ensure e.g. any effective procedure of appeal against decisions prohibiting to hold assemblies). However, the Act of December 2016 radically restricts the freedom of assembly, among others by assigning certain public areas to so-called recurring meetings, and limiting the right to hold counter-demonstrations. The President submitted the amendment to the Law on Assemblies to the Constitutional Tribunal.
- **Human rights cannot be spoken about without bearing in mind the role of non-governmental organizations.** Supporting the activities of the third sector is one of the main tasks of a state based on the rule of law, as well as of various institutions and citizens themselves. Therefore, the announced changes in the system of funding of non-governmental organizations should raise serious concern. Such organizations, as should be recalled, perform certain tasks assigned by the state and serving the citizens. Also, the presentation of non-governmental organizations in the negative light in the public sector media is an alarming situation.

3. THE PRESENCE OF SOCIAL EXCLUSION AND HOMELESSNESS ON A LARGE SCALE

THERE STILL EXIST THREATS RESULTING FROM THE FACT THAT MANY GROUPS AND COMMUNITIES SUFFER SOCIAL EXCLUSION AND LIVE IN EXTREME POVERTY; THERE IS A LACK OF COORDINATED ACTION TO COUNTERACT HOMELESSNESS

Great expectations are raised by the governmental programme called *Mieszkanie+* [*Apartment+*]. The programme objective is to support the construction of apartments for persons who have no sufficient creditworthiness and who are not able to rent an apartment on the free-market basis. The rental of such apartments is planned to be cheaper than on the free market, among others thanks to building them on public sector-owned land. There will also be the possibility to buy such a flat and become its owner in the future. According to the information on the programme, the rental fee for such an apartment will not exceed 10-20 zł per square meter. The actual implementation of the programme would certainly be a positive development, yet it is realistic not in 2016 but in the years to come.

The Commissioner appreciates the programme's importance for the society, Yet, he should also draw attention to the problem of persons who are not only unable to take a loan but cannot afford even the low rent for such apartments either - that is persons with the lowest income. Those persons need municipal and social flats.

- **Today, there are too few of such flats, as over the last years many municipally-owned buildings were returned to their former owners, and no new municipal flats were built. As a result, people have to wait for such housing for a long time (sometimes over ten years!).** The Commissioner for Human Rights has been indicating for a long time that without support from the state, municipalities by themselves will be unable to



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cope with the problem. There are not enough cheap flats, their users are already in debt, and the judgements on evictions cannot be enforced as there are no flats to which such tenants could be moved. Municipalities have no funds to build such flats.

- In this situation, persons with disabilities constitute a particularly vulnerable group. **Municipalities do not have the obligation to build municipal and social housing adjusted particularly to the needs of persons with disabilities.** Many persons complain to the CHR that the municipality offers them social flats located on high floors with no elevator, flats in other towns/villages, or flats located far from public transport facilities, healthcare facilities and schools (in the case of children with disabilities).
- The far-reaching amendment to the Act on the Protection of Tenants' Rights is already under preparation. It will introduce incentives for the construction of social housing, but its certain planned provisions raise serious objections (**e.g. the planned resignation from the prohibition of eviction to the street of persons in particularly difficult life situations**).
- The amendment to the Act on Housing Cooperatives is at the drafting stage. It will enforce three judgments of the Constitutional Tribunal (relating e.g. to the financial principles of the transfer of apartment ownership titles to the former tenants in the case of the so-called company flats which were later taken over by housing co-operatives; the principles of the financial settlement of advance payment instalments for apartments, paid to housing cooperatives; and the rules of transferring money collected under the housing cooperatives' housing stock maintenance and renovation funds). However, specific dates of the implementation of the new regulations have not yet been indicated.

4. THE STATE'S INSUFFICIENT REACTION TO CASES OF DISCRIMINATION, AS WELL AS THE INCREASING NUMBER OF PREJUDICE-MOTIVATED OFFENCES

THE NUMBER OF PREJUDICE-MOTIVATED OFFENCES INVOLVING PHYSICAL VIOLENCE, AND OF HATE SPEECH CASES, IS INCREASING. YET, THERE ARE NO EFFECTIVE MECHANISMS TO PROSECUTE THE PERPETRATORS OF HATE CRIMES AND RACISM-MOTIVATED OFFENCES

- The negative attitude to foreigners, to persons who are different and to refugees, observed since mid-2015, is increasing. There have been cases of hate speech and of the use of force and aggression towards persons with a different skin colour or complexion, who speak a different language. The situation is neglected by the authorities. Only local governments, in particular mayors of large cities, as well as representatives of certain academic communities (the Conference of Rectors of Academic Schools in Poland) have adopted a declaration against such behaviours.
- The acceptance of hate speech in public debate and of the use, by extremist groups, of hate speech in relation to certain groups (non-heterosexual persons, those fighting for women's rights and equal treatment of foreigners, and national and religious minorities) **make the issue of "hate speech" an urgent social problem and cause increasing tensions, aggression and fears. The security of individuals and groups which stand out against others is endangered.** Poland is ceasing to be a country attractive for those arriving here to study or to live, because the appropriate level of security cannot be ensured.



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- **Last year, there was a particularly worrying increase in the number of crimes targeted directly against the victim, such as the beating of a person, violation of bodily integrity or direct insult.**
- Statistical data from the Police confirm that in 2016 there was a sharp increase in the number of xenophobia-motivated incidents against Muslims and Arabs. This information leads to the conclusion that the increase in the number of such crimes is directly linked to the radicalization of people's approaches, including public personalities' critical statements relating to refugees and Muslims. There was no decrease in the number of hate speech cases either, in particular on the Internet. Despite numerous proposals and initiatives by both NGOs and the Commissioner for Human Rights, to-date no effective tools to counteract this phenomenon have been developed. Among hate speech victims are sometimes also representatives of groups engaged in the protection of human rights, the development of an open society, and measures aimed at counteracting discrimination.
- **Equal and effective protection against discrimination is not sufficiently guaranteed to everyone in Poland.** Polish regulations provide for a hierarchy of discriminatory criteria. Consequently, certain minority groups (e.g. foreigners, national and ethnic minorities, religious minorities) enjoy greater protection than others (e.g. persons with disabilities, senior persons, non-heterosexual persons).
- There is no sufficient, reliable and comprehensive education preventing discrimination, which education would be based on the principle of openness and respect for others. The research carried out by the CHR has shown that a significant percentage of Poles do not know that discrimination is prohibited in such areas as employment and the labour market (67%) and access to goods and services (75%). Over 90% of persons who have experienced discrimination in the last year did not report this fact to any public authority, which means they were left without any support from the state.

THE SITUATION OF FOREIGNERS AT THE EASTERN BORDER OF POLAND HAS BECOME AN INCREASINGLY VISIBLE PROBLEM

- Poland undertook to provide assistance to persons seeking international protection. However, our country does not meet this requirement which weakens the whole system of international protection.
- **Poland lacks effective procedures for foreigners who may have been victims of violence and victims of torture in the country from which they fled.** Those persons are not identified as such victims by the Border Guard and, as a result, do not receive appropriate medical, psychological and legal assistance. For several months, several hundred of foreigners, mainly from Chechnya and Tajikistan, have been unsuccessfully trying to enter the territory of Poland, among others in order to seek international protection (the refugee status).
- Those foreigners, while waiting for the permission to enter the territory of Poland, live in border towns and villages in Belarus and Ukraine, often in extremely difficult conditions, without support and means to live on. The Commissioner's interventions, in particular the unannounced inspections at the two border crossings in Terespol and Medyka confirmed that the current border-crossing procedures do not sufficiently ensure to foreigners the right to seek international protection in Poland. The procedures do not protect foreigners against the possible refusal, by border control services, of entry to Poland and of the acceptance of the application for the protection.



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5. INSTABILITY OF THE CRIMINAL PROCEDURE REGULATIONS, AND CITIZENS' UNDERMINED TRUST TO COURTS

THE FREQUENT CHANGES IN THE CRIMINAL LAW UNDERMINE THE CITIZENS' TRUST TO THE STATE AND TO THE LEGISLATION ADOPTED BY IT. THEY MAY ALSO HAVE A DIRECT IMPACT ON THE RIGHT TO COURT

There are situations in which, due to the changes, the **courts have to apply several versions of the Code of Criminal Procedure to one court case**. The Commissioner's application to the Minister of Justice covered, inter alia, the following issues:

- limited access to defending lawyers,
- requirements for courts to take into account evidence obtained without compliance with the law,
- limited possibilities to adjudicate compensation for incorrect operation of law enforcement authorities and courts,
- increased criminal liability for false testimony when the witness is afraid that the answer will result in criminal liability of himself/herself or his/her closest relatives

Similarly to the previous legislation, the new provisions of the criminal procedure also **make it possible to extend the pre-trial detention and do not contain mechanisms** requiring the court to take such decisions with particular diligence. This undermines the principle of legitimate expectation and the principle of sufficient specificity of legal provisions and the principles of their development. Objections as to the consistency with the Constitution are also raised by the provision allowing the use of pre-trial detention solely based on the expected penalty of long-term imprisonment, and based on a single indication of evidence, resulting from the Anti-terrorism Act. The Commissioner submitted relevant applications to the Constitutional Tribunal (case no. K3/16).

6. STILL UNRESOLVED PROBLEMS RELATING TO PROPERTY RESTITUTION

THE LACK OF LEGISLATION DEVELOPED WITH DUE DILIGENCE AND RESPECT FOR THE PRINCIPLES SET OUT IN THE CONSTITUTION RESULTS IN THE INFRINGEMENT OF THE RIGHTS OF FORMER PROPERTY OWNERS, TENANTS AND WHOLE LOCAL COMMUNITIES. IT HAMPERS TRADE IN REAL PROPERTY AS WELL AS THE DEVELOPMENT OF INVESTMENT PROJECTS, AND POSES AN UNNECESSARY BURDEN FOR THE JUDICIAL SYSTEM

- Problems relating to property restitution, indicated by the CHR several times, are growing. The lack of a stable system of regulations and non-adoption of relevant legislation for many years have resulted in problems which are now attempted to be solved in an ad hoc manner. **A striking example is the draft Act establishing the so-called verification committee** (the Act on special principles of the annulment of legal effects of decisions on restitution of real properties in Warsaw, which decisions have been issued against the law). The Constitutional Tribunal's judgment of 12 May 2015 in the case no. P46/13, concerning the



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possibility of determining the invalidity of administrative decisions taken very many years ago, has not been enforced. Such a regulation is essential for property restitution cases. **The principles of challenging decisions of the regulatory committees and the property committee before courts have not been regulated either** (for decisions concerning property restitution to churches and religious organizations).

- Unclear legal status of real properties violates the legal security of citizens whose rights and titles are confirmed by historical legal documents which, however, may still be undermined (e.g. the decree on land reform, the decree on the nationalization of forests, etc.). This applies to large areas of the country and hampers trade in real property as well as the development of investment projects and poses an unnecessarily burden for the judicial system. Special attention should also be paid to the methods of protecting tenants of buildings covered by the restitution procedure.

7. INEFFECTIVE AND INEFFICIENT SYSTEM OF SUPPORT TO PERSONS WITH DISABILITIES AND TO SENIOR PERSONS

THERE IS NO EFFECTIVE SYSTEM OF SUPERVISION AND CONTROL OVER LIVE-IN NURSING FACILITIES. THE SYSTEM OF COOPERATION BETWEEN HOSPITALS AND SOCIAL WELFARE HOMES, RELATING TO PERSONS WHO REQUIRE SPECIALIST CARE SERVICES, DOES NOT WORK. THERE IS NO PROPER SYSTEM OF SUPPORT FOR ADULTS WITH INTELLECTUAL DISABILITIES AND ADULTS WITH AUTISM. THE ACCESS TO SERVICE PROVISION BY DISABLED PERSONS' ASSISTANT IS DIFFICULT.

- **There is no 24-hour community support system for persons with disabilities and for seniors.** In 2016 in Poland, over 80 thousand people lived in social welfare homes. On average, such a home has over 100 residents. This form of care was once considered to be the best method of providing support, appropriate meals and accommodation to persons with disabilities and to the elderly. Yet, as confirmed by letters received by the Commissioner for Human Rights, this form does not take into account the individual needs of such persons, including the need for adequate support ensuring social inclusion. Compared to the number of residents of social welfare homes, the number of persons using other forms of 24-hour support is, however, very small. Particularly disturbing is the **underdevelopment of sheltered housing** which, for persons with disabilities and the elderly, should be a viable alternative to social welfare homes.
- As a result, **there is an increase in the number of commercially operating nursing facilities, other than social welfare homes, which provide live-in care for persons with disabilities, the elderly or chronically ill persons.** Some of those facilities operate without a license, do not guarantee an adequate level of service and do not meet safety standards required for disabled or chronically ill persons. There are cases of violating the dignity of those persons, and even cases of risk to their lives or health. In this situation, it is necessary to establish a system of supervision and control over live-in nursing facilities.
- This should be accompanied by the **introduction of a system of cooperation between hospitals and social welfare homes** with regard to ensuring specialist care to persons without a family after leaving the hospital.
- **There is no appropriate support system for carers of persons with disabilities.** Until recently, all carers of relatives with disabilities received a care allowance in the same amount. Currently, the allowance may be received only by the disabled person's mother or father who has given up professional work in order to care for the disabled child. The allowance is paid when the disability occurs before the disabled person was 18 (or



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25, if he/she is a student). The benefit is 1300 zł and starting from 2017 it will be subject to annual indexation.

Carers of adults with disabilities receive a much lower allowance. They receive a special care allowance in the amount of 520 zł, if they meet specific income criteria.

- Moreover, there are differences between legal situations of carers of adult family members, who seek the care allowance, depending on the time when the disability occurred. **The differences have been considered non-compliant with the Constitution by the Constitutional Tribunal in its judgment no. K38/13 of 21 October 2014.** The Tribunal found that the differences in the size of care benefit for carers of disabled persons whose disability occurred beyond the age of 18 or 25 violate the constitutional principle of equality. The judgment has not yet been enforced.

The enforcement of the Constitutional Tribunal's judgement should be a part of broader-scale action aimed at establishing a system of support for carers of persons with disabilities, which system would be consistent with the constitutionally determined principles of equality and social justice.

- Another problem is the lack of support for carers in the local community. The **network and offer of community support homes is not adjusted to the needs of disabled persons' families.** Therefore, the whole burden of the care provision stays on the families. There are not enough places at education and rehabilitation facilities, no funding to meet the needs (in the opinion of non-governmental organizations, the main problem is insufficient funding of occupational therapy workshops and community self-support homes), and limited access to disabled person's assistant service.
- **Mentally ill persons are stigmatized by the language of public debate.** Medical terminology is often used in political debates in relation to political opponents ("political schizophrenia, a festival of paranoia, political madness, eruption of political madness, a madhouse, he should be closed in a mental hospital").
- This is confirmed by a survey carried out for the CHR: the language used by eight selected newspapers and magazines was analysed from the point of view of the public debate on mentally ill persons. The language increases their stigmatization, discrimination and exclusion, although such persons constitute up to 25% of the population. Their stigmatization and poor access to health care make many of them hide the disease, feel ashamed of it, or not use any treatment, which sometimes brings disastrous effects.

8. INSUFFICIENT PROTECTION OF WOMEN'S RIGHTS AND SUPPORT TO VICTIMS OF VIOLENCE

THERE IS A LACK OF EFFECTIVE MECHANISMS TO PREVENT VIOLENCE AGAINST WOMEN AND TO PROVIDE COMPREHENSIVE SUPPORT TO THE VICTIMS, AND OF INSTRUMENTS TO ENSURE IMMEDIATE SEPARATION OF THE PERPETRATOR FROM THE VICTIM. THE NATIONAL 24-HOUR FREE-OF-CHARGE HELPLINE FOR VICTIMS OF VIOLENCE HAS NOT BEEN LAUNCHED. FUNDING FOR NON-GOVERNMENTAL ORGANIZATIONS THAT PROVIDE COMPREHENSIVE SUPPORT TO VICTIMS OF DOMESTIC VIOLENCE HAS BEEN LIMITED.

- **The rights of women in childbirth are not sufficiently guaranteed.** The main problems identified by the Commissioner include: the availability of epidural anaesthesia (there are entire regions of the country where



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such anaesthesia is simply not available); the violation of patients' right to receive information and to give informed consent for medical procedures; and the standards of perinatal care. Particularly worrying is the planned revocation of those standards, which is expected by the end of 2018.

- **There are no effective mechanisms to prevent violence against women and to provide comprehensive support to the victims.** The problem of domestic violence and violence against women is constantly present. Particularly ineffective is the protection of and support to the victims of such violence. The Polish legislative system lacks instruments ensuring the immediate separation of the perpetrator from the victim. In many provinces of the country, there are no specialist support centres for victims of violence. Not all districts of the country develop and implement corrective and educational programmes, and the number of offenders required to participate in these programs is very low. The national 24-hour free-of-charge helpline for victims of violence has not been launched. Moreover, financial support to NGOs providing comprehensive support for women who are victims of domestic violence has been significantly reduced.
- **The public statements of some members of the government about the planned denunciation of the so-called Istanbul Convention establishing international standards of preventing and combating violence against women and domestic violence also raise concern.**

9. SITUATION OF CERTAIN GROUPS OF PERSONS DEPRIVED OF LIBERTY

THERE ARE CASES OF PERSONS WITH INTELLECTUAL AND MENTAL DISABILITIES WHO ARE DETAINED IN PRISONS IN POLAND ALTHOUGH THEY SHOULD NEVER HAVE BEEN IMPRISONED. HOWEVER, THERE IS NO SYSTEM TO EFFECTIVELY PREVENT SUCH SITUATIONS. OTHER PROBLEMS INCLUDE: EXTENDED DETENTION AT PRE-TRIAL DETENTION FACILITIES; MEDICAL EXAMINATIONS OF IMPRISONED PERSONS; AND TAKING CHILDREN AWAY FROM MOTHERS AT YOUTH DETENTION CENTRES

- In some Polish prisons, among the prisoners there are persons who have been convicted but have an intellectual disability and are unable to understand their actions in the same way as healthy persons do. This is a problem of at the systemic level. **The country's system of administration of justice fails to take into account the information on intellectual disability or mental illness at the appropriate stage of the court proceeding**, and to find a solution adequate to the situation. This has been concluded by the CHR Office following the examination of court files and meetings with over 100 detained persons with intellectual disability or mental illness.

A police officer's failure to identify and properly react to a person's abnormal behaviour and to indicate it in the documentation brings consequences in the problem's omission by the prosecutor and probation officer, and the adjudication on certain cases without the presence of the person concerned. If the person cannot read and write, he/she is not aware of the content of the court's judgement and does not comply with it. Then, he/she is sometimes sentenced to an alternative penalty of imprisonment.

In prisons, there are also mentally ill people whose illness occurred during the imprisonment. The Prison Service should react to such cases and notify the penitentiary authorities of any such case.



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- **There are no mandatory medical examinations of all persons detained by the police; persons detained and brought for medical examinations are examined without due diligence.** As a result persons who, due to their health condition or a risk of suicide, should not stay at facilities for detainees, are placed there. In addition, **the police are not informed of the fact that the detained may be a person with intellectual disability or mental disorders**, although such information should be passed by the person's doctor. With this information, it would be possible to implement the relevant procedure and avoid the imprisonment of persons unable to understand the responsibility for their actions.
- **The crime of torture is not provided for by the Polish Criminal Code provisions.** The provisions which can apply to this type of crime are scattered. The word "torture" appears only in the context of prisoners of war. This is not in line with relevant international recommendations, in particular those of the UN Committee against Torture. The Committee recommends the introduction in national legislations of a provision punishing torture in the meaning defined in Article 1 of the Convention against Torture (CAT). The precise definition of torture facilitates the prevention of human rights violations. It also explains to members of relevant services which types of reaction are permitted in a specific situation, and which are not.
- **There is no coordinated system of support to pregnant minors and underage mothers with children, detained at youth detention centres.** Unlike in the case of adult women in prisons, children are taken away from minor mothers detained at youth detention centres. In many cases, only special steps taken by the heads of such facilities prevented the separation of children from their mothers. However, the problem is not regulated at the systemic level, and individual solutions depend primarily on the commitment and approach of representatives of the facilities.

10. CITIZENS' PROBLEMS IN THE FINANCIAL SERVICES MARKET

THE PROBLEM OF UNFAIR TRADE PRACTICES USED BY COMPANIES, BANKS AND SO-CALLED QUASI-BANKS IN RELATION TO ELDERLY AND INCAPABLE PERSONS IS STILL SIGNIFICANT

- The number of persons who have concluded transactions which are against their interest, as a result of the activity of salespersons or financial advisors whom they were unable to effectively refuse, is still increasing. The Commissioner for Human Rights is concerned with the lack of effective legislation and measures taken by the state to improve the protection of consumers and minimize the scale of such cases.
- There are still problems relating to loans denominated in Swiss francs. The loan agreements often contain provisions that are vague, ambiguous and not understood by customers. Some of those provisions can be undermined as illegal. This, however, requires support from lawyers who specialize in banking law. This was one of the reasons for **the Commissioner for Human Rights and the Financial Ombudsman to launch a joint information campaign entitled "Do you have a problem with a loan in Swiss francs? Find out what you can do"**.

Of course, the above list of problems is not exhaustive. It is not easy to determine which of them is most urgent to solve, either. The sequence is a result of the analysis of thousands of complaints received by the CHR Office and the assessment of the changes that take place in the country, made from the point of view of the Commissioner's



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mission. Many of the above-mentioned problems have been indicated for years already. The Commissioner for Human Rights has taken related steps, within his scope of powers. However, significant long term results can be achieved only through appropriate policies of the state, steps taken by local governments, and determination of the civil society. Therefore, this ranking, developed and published by us, may also be considered a list of challenges we are facing today.

Ranking: Part 2 – positive aspects

The CHR tries to see every effort, action and declaration which contributes to solving key problems of the citizens. Therefore, he also points to those events and areas in which positive changes can be seen or steps in the right direction are made.

According to the CHR, the following actions should be indicated:

- 1. INCREASE OF THE MINIMUM MONTHLY SALARY AND THE MINIMUM HOURLY WAGE WHICH MAY BE PROVIDED FOR IN CIVIL LAW CONTRACTS**
- 2. USE, BY THE GOVERNMENT ADMINISTRATION, OF SOCIAL CLAUSES IN PUBLIC PROCUREMENT**
- 3. THE FAMILY 500+ PROGRAMME**
- 4. COMPENSATIONS FOR VICTIMS OF THE MARTIAL LAW**
- 5. THE SUPREME COURT'S IMPORTANT RESOLUTION REGARDING DEFINITION OF THE CLOSEST PERSON**
- 6. STRENGTHENING THE RIGHTS OF INCAPACITATED PERSONS PLACED IN NURSING HOMES**
- 7. ANNOUNCED AMENDMENT OF LEGISLATION ON MINIMUM AMOUNT OF COVER UNDER THE COMPULSORY CIVIL LIABILITY INSURANCE**
- 8. GOVERNMENT AUTHORITIES' EFFORTS TOWARDS BETTER ENFORCEMENT OF ALIMONY ORDERS**

1. INCREASE OF THE MINIMUM MONTHLY SALARY AND THE MINIMUM HOURLY WAGE WHICH MAY BE PROVIDED FOR IN CIVIL LAW CONTRACTS

THE COMMISSIONER WELCOMES THE MEASURES AIMED AT INCREASING THE MINIMUM MONTHLY SALARY AND THE MINIMUM HOURLY WAGE OF PERSONS WHO WORK BASED ON SPECIFIC-WORK CONTRACTS AND SERVICE CONTRACTS, INCLUDING SELF-EMPLOYED PERSONS

- Starting from 1 January 2017, the minimum gross monthly salary will amount to 2 thousand zł, which means an increase of 8.1 percent. (150 zł) compared to 2016. The increase of the minimum salary will improve the financial situation of working persons and their families and will reduce the possibility of their exploitation. The same applies to the increase of the minimum hourly wage of persons who work under civil law contracts. Starting from 2017, the minimum hourly wage is going to be 13 zł gross.
- Moreover, the compliance with the new regulations will be supervised by the National Labour Inspectorate. This will contribute to reducing the use of civil law contracts in cases where work is performed in a system typical for full-time employment contracts.



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2. USE, BY THE GOVERNMENT ADMINISTRATION, OF SOCIAL CLAUSES IN PUBLIC PROCUREMENT

THE INTRODUCTION OF SUCH A SYSTEM WAS SOUGHT BY THE COMMISSIONERS FOR HUMAN RIGHTS DURING THE LAST TWO TERMS OF OFFICE. THE SYSTEM CREATES NEW OPPORTUNITIES E.G. FOR MANY SOCIAL COOPERATIVES

- Heads of the public administration entities are required to consider the possibility of including social clauses in all public procurement procedures. The use of such clauses is recommended also in the proceedings whose value does not require the application of the Law on Public Procurement.
- According to the analyses carried out by the Commissioner, the introduction of the recommendation has increased the number of public procurement contracts that are awarded to entities which employ their staff members on regular employment contracts, in particular in the sectors of security, cleaning and catering services. It has also contributed to the reduced use of civil law contracts in cases where work is performed in a system typical for full-time employment contracts.
- The contracting entity may also decide the award of a specific contract may be sought only by protected labour companies and other contractors who take steps to professionally and socially integrate marginalized groups, e.g. persons with disabilities or unemployed persons.
- The facilitated development of social cooperatives is a value which cannot be overestimated: such entities allow many people to return to the society after difficult situations and to become independent. They also contribute to the development of entire local communities, teach respect for human dignity and demonstrate the value of helping other people.

3. THE FAMILY 500+ PROGRAMME

THE PROGRAMME'S IMPLEMENTATION UNDOUBTEDLY CONTRIBUTES TO IMPROVING THE SITUATION OF POLISH FAMILIES, ESPECIALLY THOSE WHICH ARE IN DIFFICULT SITUATIONS. IT CREATES POSSIBILITIES TO SUPPORT CHILDREN'S EDUCATION AND TO BETTER MEET THEIR NEEDS

- The Commissioner for Human Rights saw the effects of the programme in 2016 during his visits and talks held within the CHR's regional meetings.
- The CHR receives complaints from persons not covered by the programme. It is necessary therefore to analyse its system of operation in order to make the necessary adjustments, in particular by extending the programme to children in orphanages, to improve the situation of women in the labour market and to increase their chances for adequate retirement pensions and benefits.

4. COMPENSATIONS FOR VICTIMS OF THE MARTIAL WAR

THE ADOPTION OF A DECISION IMPORTANT FOR PERSONS WHO LOST A JOB AND SOURCE OF INCOME WHILE HIDING FROM THE INTERNMENT AFTER 1981



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- According to the earlier regulations, an issued decision to intern a person, which was not followed by his/her actual internment, resulted in the person's loss of right to the compensation for suffered damages. There were some persons, however, who were not interned because they were hiding. They lost their jobs and source of income, and suffered the separation from their families. In 2016, after the CHR's application the Sejm adopted an act which grants the right to the compensation to all repressed persons in relation to whom decisions on internment were issued, regardless of whether they were actually detained at internment camps.
- The Commissioner emphasizes that although many years have passed, there are persons who suffered damages under the communist system and the damages should be repaired. This applies not only to famous cases, and therefore the state's reaction to the injustice that took place in the past should be appreciated.

5. THE SUPREME COURT'S IMPORTANT RESOLUTION REGARDING DEFINITION OF THE CLOSEST PERSON

THE SUPREME COURT DECIDED THAT "THE CLOSEST PERSON" WITHIN THE MEANING OF THE CRIMINAL LAW CAN ALSO BE A PARTNER OF THE SAME SEX

As a result, a homosexual person may refuse to testify if this would make his/her partner subject to criminal liability; may be covered by the provisions on witness protection and may visit his/her partner in a detention facility once per month.

See: the Supreme Court Resolution no. I KZP 20/15 of 25 February 2016.

6. STRENGTHENING THE RIGHTS INCAPACITATED PERSONS PLACED IN NURSING HOMES

THANKS TO THE BREAKTHROUGH JUDGMENT OF THE CONSTITUTIONAL TRIBUNAL OF 28 JUNE 2016 (FILE NO. K31/15), INCAPACITATED PERSONS WILL HAVE REAL RIGHTS IN COURT PROCEEDINGS RELATING TO SUCH PERSONS' PLACEMENT IN SOCIAL WELFARE HOMES

- The court will be required to hear the incapacitated person, and if the circumstances have changed, the person may apply to the court for a permission to leave the social welfare home.
- The Tribunal's judgement is a result of a defendant's efforts in a specific case relating to an incapacitated person who was placed in a social welfare home by his guardian and who for over ten years tried to convince people that such deprivation of liberty was not needed and had no grounds.

7. ANNOUNCED AMENDMENT OF LEGISLATION ON MINIMUM AMOUNT OF COVER UNDER THE COMPULSORY CIVIL LIABILITY INSURANCE

THE SENATE COMMISSION ON HUMAN RIGHTS, RULE OF LAW AND PETITIONS WORKS ON THE ISSUE OF CIVIL LIABILITY COVER IN THE CASE OF ROAD ACCIDENTS

- The source of the problem is the fact that the minimum cover amounts collected by insurance companies in the past are depleted. The companies stop to pay disability benefits due to persons who were victims of



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road accidents in early 1990s (in those years, the minimum amount of cover was very low). Today, such persons lose the right to disability benefit awarded to them as a result of the accident.

- Thanks to the CHR's cooperation with the Polish Senate, the Sejm is drafting a bill restoring such persons' right to disability benefit. There are several dozen such persons in Poland. Some of them are young people who suffered a road accident in their childhood and now have lost the source of income. The announced amendment will repair the damages.

8. GOVERNMENT AUTHORITIES' EFFORTS TOWARDS BETTER ENFORCEMENT OF ALIMONY ORDERS

SEVERAL HUNDRED THOUSAND CHILDREN IN POLAND ARE LEFT WITHOUT ALIMONY. ALIMONY DEBTS ARE ESTIMATED AT 10 BILLION ZŁ

- Since 2007, the income threshold for the alimony payment from the Alimony Fund has remained unchanged. The CHR points to the fact that the minimum monthly salary and minimum hourly wage are going to increase, and thus many single parents may lose their right to the alimony payment from the Fund. In 2016, The Commissioner for Human Rights and the Ombudsman for Children (following their cooperation with an expert group) proposed many solutions to improve the situation. As a result, the government adopted an act drafted by the Ministry of Justice and facilitating alimony collection from parents who evade its payment; the evasion of alimony payment will also be better prevented.
- The Commissioner for Human Rights notes the significant role of the cooperation on the issue of various state authorities, and the contribution of the knowledge and opinions of different institutions and non-governmental organizations. Such cooperation is a pre-condition for solving key social problems, and has brought important results in relation to children and the enforcement of alimony orders.

The CHR rankings have been developed since 2013. They are developed by heads of the individual thematic teams working at the CHR Office. Based on the problems identified by them, a general information report is developed on issues most important in the country from the point of view of human and civil rights.