

Brussels, 14 October 2020

**Mr. Konrad Szymański**  
**Minister for European Affairs**  
**Poland**

***RE: Questions concerning the motion to the Polish Constitutional Court concerning interim powers of the Ombudsman (Commissioner for Human Rights)***

**Dear Mr. Szymański,**

On behalf of Equinet, the European Network of Equality Bodies, we write to request your assistance in clarifying the expected and potential consequences of the Constitutional Court's ruling in case number K 20/20 scheduled to be delivered on 20 October.

We understand that on 9 September 2020, the 5-years term of the current Polish Ombudsman (Rzecznik Praw Obywatelskich, Commissioner for Human Rights), Mr. Adam Bodnar, has ended and the Parliament has not yet selected a new person for the position. Thus, following article 3.6 of the Ombudsman Law and the established practice, the previous Ombudsman stays in the office as an acting Ombudsman until the appointment of the new one.

We also understand that some Members of the Sejm lodged a motion to the Constitutional Court requesting the Court to rule on the constitutionality of Article 3.6 of the Ombudsman Law.

**While noting that the case is currently in front of the Constitutional Court and respecting the independence of the judiciary, we would be thankful for your assistance in clarifying the following questions:**

- **How does the Polish Government intend to ensure the independence of the equality body following the judgment of the Constitutional Court if Article 3.6 of the Ombudsman Law is found unconstitutional?**
- **How does the Polish Government intend to ensure the proper, effective functioning and uninterrupted operations of the Ombudsman's Office after the judgment of the Constitutional Court if Article 3.6 of the Ombudsman Law is found unconstitutional?**

Equinet is the European Network of national Equality Bodies, bringing together 49 Member institutions from across Europe. Our Network provides a European platform for cooperation, capacity building and peer support to statutory national equality bodies in the implementation of their core functions as defined in existing EU Equal Treatment Directives (2000/43/EC, 2004/113/EC, 2006/54/EC and 2010/41/EU) and seeks to contribute to the European equality and fundamental rights agenda by connecting and sharing the learnings and experience from our members. The Polish Commissioner for Human Rights, in its mandate as the national equality body, has been a committed and engaged Member

organisation of Equinet and we are concerned about the potential effects of the ruling on their operations.

**The European Union equal treatment directives (Directive 2000/43/EC; Directive 2004/113/EC, Directive 2006/54/EC and Directive 2010/41/EU) leave no doubt about the obligation of every EU Member State to designate an equality body that can effectively and independently fulfill the mandate foreseen in these directives.**

**The European Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies and the Council of Europe's European Commission against Racism and Intolerance (ECRI) revised General Policy Recommendation No.2 on Equality Bodies to combat racism and intolerance at national level set clear standards for the setting up and operations of equality bodies. These documents lay out the standards concerning inter alia the mandate, independence, effectiveness, powers and resources of equality bodies.**

The European Commission Recommendation clarifies that it was published with a view to ensuring that equality bodies can effectively perform their functions and it acknowledges that independent equality bodies play an essential role in implementing Union legislation effectively and enforcing it comprehensively and consistently. It underlines the importance of guaranteeing the independence of the equality bodies and the impact of procedures for appointment and dismissal of persons holding leadership positions in this respect.

The ECRI standards clarify that equality bodies should have both de jure and de facto independence and have the necessary competences, powers and resources to make a real impact. It is underlined that strong and stable leadership is crucial for the impact of equality bodies. It requires that the mandate, institutional architecture, functions, competences and powers, appointment and dismissal procedures, safeguards and terms of office for the leadership positions and the arrangements for the funding and accountability of equality bodies should ensure both their independence and effectiveness. Equality bodies should function without any interference from the State, political parties or other actors and should not be given any instructions by them; they should be fully independent at institutional and operational level. The ECRI standards also contain multiple provisions concerning the importance of ensuring the independence of persons holding leadership positions.

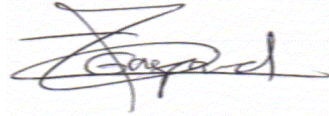
We encourage you to consider the above standards for equality bodies in your follow-up to the Constitutional Court's ruling and we would be keen to offer our support in order to ensure that the Ombudsman's Office can operate effectively and independently from all political interference as a trusted and respected institution to tackle discrimination and promote equality at national and local levels.

We remain at your disposal and look forward to hearing from you.

Yours sincerely,



Tena Šimonović Einwalter  
Chair of the Equinet Board



Anne Gaspard  
Equinet Executive Director

Cc:

- Vice-President for Values and Transparency Vera Jourová, European Commission
- Commissioner for Equality Helena Dalli, European Commission
- Director-General for Justice, European Commission
- European Commission against Racism and Intolerance (ECRI), Council of Europe