HUMAN RIGHTS IN POLAND IN 2018

summary of the Ombudsman's report

RZECZNIK PRAW OBYWATELSKICH

State of observance of human and civil rights and freedoms in Poland in 2018

– Summary of the Report of Activity of the Commissioner of Human Rights

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Introduction

Dear Readers,

This report aims to provide a brief overview of the role and activities of the Commissioner for Human rights in Poland, as well as a diagnosis of the situation in the country in the field protecting and respecting the constitutional rights of citizens.

In our opinion, in 2018 the problems regarding the crisis of the rule of law as well as non-compliance with the constitutional order grew. The implemented changes in the operation of common courts, the Supreme Court and the National Council of the Judiciary increased the influence of political factors on the work of the system of justice, thus creating new threats for the entire system of protection and exercise of the rights of individuals.

Problems known for years, including failure to respect many rights of persons with disabilities, deficiencies in the healthcare system, numerous issues related to the right to social security, or the problem of homelessness remain unsolved. New phenomena have also appeared, such as increasing environmental pollution, development of construction projects onerous for people in their vicinity, or growing transport exclusion of small town inhabitants, which are partly related to civilization changes.

In 2018, the programme of the CHR's regional meetings was continued, which gave citizens the opportunity to directly report their problems, regarding both individuals and entire local communities, to the Commissioner. This valuable experience makes it possible to find out about people's problems in more detail, looking from a perspective different than that of the capital city. The particular importance of those meetings is also related to the fact that many communities in the

country perceive a deficit of dialogue, understanding and openness to other people.

Looking back at the last years it should also be noted that in 2018, the rights of Polish citizens were of special interest for European institutions and the EU justice system, and were subject to review by them. The process of the rule of law started to be assessed, which - regardless of the final result - gives a very important message to all citizens: it tells them they are members of a community for which democratic values and the rule of law are of utmost significance.

Adam Bodnar, Ph.D.
Commissioner for Human Rights

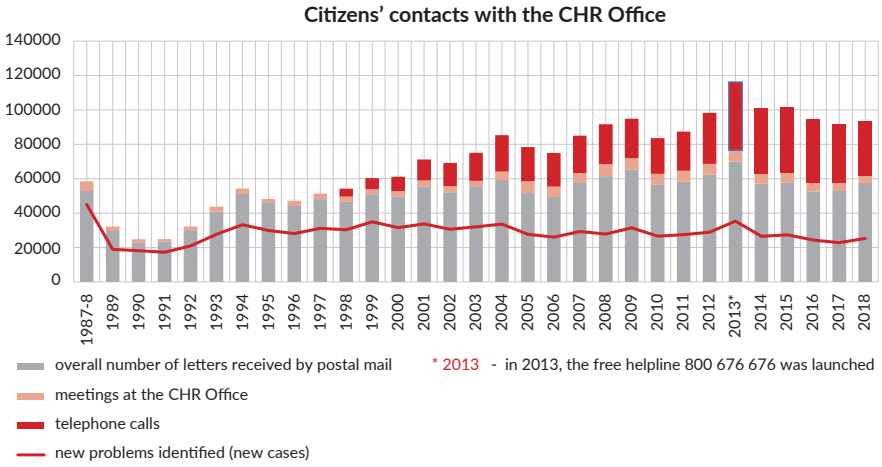
Tasks and competencies of the Commissioner for Human Rights

The Commissioner for Human Rights (CHR) in Poland is appointed by the Sejm and approved by the Senate (the upper house of the Parliament) for a five-year term of office. The Commissioner may not be recalled from his/her position and is required to submit to the Parliament the CHR's annual reports on the observance of human and civil rights and freedoms and on the conducted activities. Cases may be reported to the Commissioner by everyone who believes that their rights have been violated by the state institutions or authorities.

The Commissioner for Human Rights in Poland also holds the roles of the country's National Mechanism for the Prevention of Torture and of the Equality Body.

Since 9 September 2015, the position of CHR has been held by Adam Bodnar. The current term is the seventh term of office since its establishment in 1987.

In 2018, people turned to the Commissioner for Human Rights 57 thousand times i.e. by about 5 thousand times more than a year before. Almost a half (i.e. 25 thousand) of the incoming requests related to new cases and problems. The other reported matters related to problems which the CHR had already identified before and was already working on. The number of new cases increased by nearly 2500 compared to the previous year.



The Commissioner sent 12 thousand replies. The CHR Office employees held 4356 meetings with citizens, and provided explanations and advice in 32 thousand cases (the free-of-charge helpline is the fastest and often the first-choice method of citizens' contact with the Commissioner's Office). The Office employs approximately 300 persons but since 2016 it has experienced serious budgetary constraints.

What problems are reported by people to the CHR?

Ms Katarzyna has a retirement pension that is several hundred zlotys lower than that of her friend who is older by one month. The time worked by the two women, as well as their earnings, were exactly the same. This is not the only story like this. If a person in Poland files a retirement application in June, his/her pension is lower due to the contribution adjustment method used by the ZUS Social Insurance Institution.

Mr Henryk received an order for payment of tens of thousands zlotys of overdue tax because, according to the revenue office, he failed to complete the formalities required to be eligible for

a reduced tax rate on income from the sale of his apartment where he had lived for years.

Ms Hanna may not get the 500+ child benefit for her children because their father, who has abandoned the family, is legally employed in Germany. Consequently, according to the system, the children should be supported by the German children's allowance which is more beneficial for them. Yet, it takes time to prove that the allowance is not actually received by the children.

Problems with exercising his rights were faced by Mr Zbigniew, a voter with a disability who could not access a polling station. The one prepared by the local municipality did not meet the requirement of being adapted to such persons' needs. As a result, he was not able to vote by himself.

Ms Małgorzata knows that a large company is extending the nearby chicken farms and that in practice, nothing can be done about it by herself, her neighbours or the municipality. They have no possibility to defend themselves against odours, insects and rodents that will appear in the vicinity.

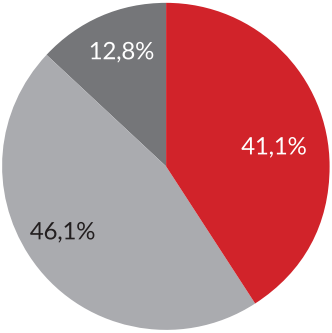
Another problem is faced by Mr Klaudiusz and about a million members of the apartment saving scheme that existed in the communist era. They cannot recover even a small part of their savings, the so-called guaranteed amount, deposited in the scheme in those years.

These are just examples of cases dealt with by the Commissioner for Human Rights in 2018 and, unfortunately, only the tip of the iceberg of omissions and deficiencies in the fulfillment of the rights of Polish citizens.

Employees of the Office of the Commissioner for Human Rights in front of the CHR Office

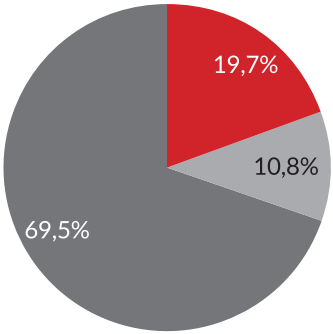
June 2018

Method of examination of cases in 2018



- cases accepted for further proceeding
- provision of information, indication of measures the complainant may take
- other

Completion of cases considered in 2018



- outcome expected by the applicant achieved
- proceedings discontinued
- outcome expected by the applicant not achieved

The Commissioner for Human Rights may intervene in individual cases and seek information on them from the authorities. The Commissioner may also request state institutions to look into such cases and inform stakeholders of steps they may take in the light of law.

In civil or administrative law cases the CHR may join the court proceedings to support the citizen's side, and may file a cassation appeal with the Supreme Court or the Supreme Administrative Court.

In criminal law cases, the Commissioner may file a cassation appeal with the Supreme Court. Except of Public Prosecutor General, the CHR is the only authority entitled to file a cassation appeal if a penalty other

Commissioner for Human Rights Adam Bodnar in Lublin, shortly after the announcement of the judgment permitting the equality parade holding in the city

October 2018

than imprisonment, e.g. a fine, has been adjudicated. As regards offences subject to ex-officio prosecution, the Commissioner may request prosecutors to initiate pre-trial proceedings with regard to offences that are subject to ex-officio prosecution.

Since 2018, the Commissioner has had the power to file, with the Supreme Court, extraordinary complaints regarding cases considered by courts in the last 20 years. Such complaints are considered by a new Chamber of the Supreme Court - the Chamber for Extraordinary Audits and Public Affairs that has been established by the new National Council of the Judiciary whose members have been appointed by politicians.

The CHR may appeal to the Supreme Court for case law harmonization if there exist clear discrepancies between court judgments.

The Commissioner for Human Rights may notify the authorities of systemic problems identified based on the examined cases. The problems may relate to faults in legislation, to its non-adjustment to changing social and economic conditions, or to solutions proposed by the authorities. The CHR's letters by way of which such problems are notified are called general letters of intervention. They are based on in-depth legal analyses that contain references to constitutional and international norms.

Representatives of the authorities are required to reply to such general letters of intervention but do not have to seek the implementation of the Ombudsman's postulates.

The Commissioner for Human Rights may submit motions to the Constitutional Tribunal with the aim to join citizen's constitutional complaints proceeded before it (i.e. complaints regarding non-compliance, with the Constitution, of provisions pursuant to which final court judgments have been issued), or to request assessment of the constitutionality of provisions not yet relating to a specific person's case (the so-called abstract motions). **Until the end of 2016 this was one of the key powers of the Commissioner, yet its importance has decreased after the change of the method in which the Tribunal operates in Poland.**

Main systemic problems regarding civil rights in Poland

In 2018, many previously identified risks regarding the respect for and protection of human and civil freedoms and rights in Poland increased. Certain new phenomena appeared too. First of all, however, there was an escalation of systemic problems that existed in the preceding years and were related to the crisis of the rule of law as well as non-compliance with the constitutional order.

- There was a continuation of the process of changes that caused imbalance between the branches of power, discredited the role of the judiciary and, consequently, limited the citizens' possibility to exercise the right to an independent and impartial court.
- An individual's position in his/her relations with the state and public institutions further weakened. Threats to the rights to privacy and the freedom of assembly grew. Social organizations and citizens had less impact on the drafting of new laws. Difficulties in access to healthcare continued. The system of support provision to people with disabilities and seniors was not sufficiently effective.
- In many areas of life, transgressions of the rights of persons who had experienced discrimination and violence were noted. Of concern was also the continuing inefficiency of mechanisms aimed at preventing torture and degrading treatment. The system of support and compensation for victims of crime did not work well either.

We are becoming a society that is increasingly divided, conflicted, and accepts extreme feelings expressed in speech and emotions

There are probably many reasons for the existing divisions and negative emotions. However, concern is raised by the fact that they are visible across the whole society. Among their main causes, as people often emphasize in meetings, are citizens' relations with the authorities, both at the local and central levels.

It should be noted that according to the preamble to the Polish Constitution it has been adopted *"as the basic law for the State, based on respect for freedom and justice, cooperation between the public powers, social dialogue as well as on the principle of subsidiarity in the strengthening the powers of citizens and their communities"*. The principle of social dialogue and cooperation between the powers assumes that laws should be adopted after the consideration of all opinions, also those of the parliamentary opposition, representatives of the civil society and entities which, by virtue of the law, have the right to express their opinions on the planned regulations. Only in this way it is possible to build trust in the law. In particular, the principle of separation and balance of the powers requires the legislative and executive branches to enter into a dialogue with the judicial power on issues concerning the system of justice. Balance, as a feature of a system of state, assumes a dialogue between the branches rather than domination of one power over the others. However, such a dialogue is not conducted.

Courts and the rule of law

The dispute over the changes in courts constitutes a focal point of the public debate in Poland. The changes introduced by the government clearly impact the rights of individuals.

The Commissioner for Human Rights reiterates that reform of the system of justice in Poland is necessary. The increasing number of cases pending in courts, poor communication between courts and parties to the proceedings, and problems with the system of court experts result

Paweł Włodkowic award granted by the Commissioner for Human Rights Award to professor Adam Strzembosz, the first president (1990-1998) of the Supreme Court in independent post-war Poland

Paweł Włodkowic was a 15th-century lawyer who opposed Christianization that involved war and violence.

February 2018

in the lengthiness of the proceedings that are of great importance for citizens, as well as in faulty judgments on seemingly simple cases.

The changes that have been introduced in the system of justice since 2016 have solved these problems to a small degree. Instead, as a result of the modifications introduced in 2017, they have increased executive power's control over courts. In 2018, the system of justice already operated according to the new regulations.

- **The Minister of Justice got control over common courts. 130 presidents and vice presidents of courts were replaced under the new regulations that provided for such replacement during term of office, without consulting the professional community. Proceedings are also conducted, by heads of courts' disciplinary committees, against judges whose public activity raises objections of the executive power.**
- **The Constitutional Tribunal is now subordinated to the government authorities and still includes persons appointed without compliance with Constitution (the so-called doubled judges).**
- **The National Council of the Judiciary in its new composition started to work. Despite doubts as to the constitutionality of its decisions, it commenced the procedure of nominating Supreme Court judges as well as common court judges.**
- **The opinions of the Venice Commission regarding the rule of law in Poland were ignored by the government.**

It should be noted, however, that not all governmental plans have succeeded. As a result of citizens' resistance and proceedings initiated before the Court of Justice of the EU, some changes in the Supreme Court were stopped, including the attempt to terminate the term of office of some judges, including the first president of the Supreme Court (in 2018, the Sejm restored the status from before the introduction of the 2017 amendment).

In 2018 the European Union, of which Poland is a member, analysed whether the rights of Polish citizens and other EU citizens were not put at risk as a result of the changes introduced in the Polish system of justice. In December 2017, the European Commission submitted a request to initiate proceedings against the Polish government pursuant to Article 7 of the Treaty on the European Union (*a risk of a serious breach by a Member State of the values of the European Union*). The Court of Justice of the

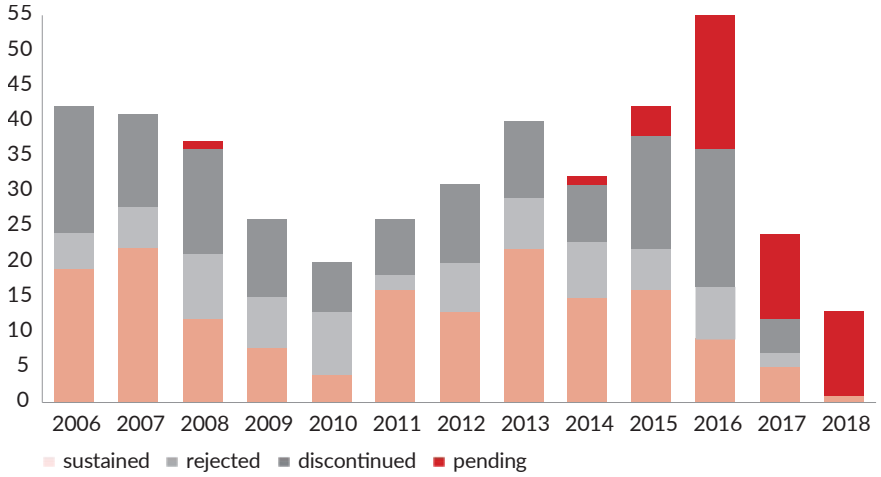
European Union considered questions for a preliminary ruling, submitted by the Polish Supreme Court which, in order to examine one of the cases, needed to find out whether the EU law allows for the application of Polish regulations regarding judges. In September 2018, the Commission also filed with the CJEU a separate case against Poland relating to the violation of the EU rule of law by adopting the Act on the Supreme Court.

Effects of the changes in the work of the Constitutional Tribunal

The changes in the work of the Constitutional Tribunal that have taken place since the beginning of 2017 have significantly altered the method of the Tribunal's work. Persons appointed by the Sejm to already filled positions started to be included in the adjudicating panels because the President of Poland did not accept the oath from the previously appointed judges. The Commissioner continues to submit, to the Tribunal, applications regarding cases on which definite verdicts are necessary so as not to leave citizens in legal uncertainty. However, he is of the opinion that the Tribunal is no longer able to decide on matters of law which has broadened the powers of the authorities at the expense of individuals. A new practice of the president of the Constitutional Tribunal is the manipulation of the composition of adjudicating panels, which is against the Constitution. Therefore, the Commissioner not only stopped to file new applications in such cases, but in 2018 withdrew formerly filed applications on: the Act on surveillance; the use of "the fruit of the poisonous tree" by courts; the Act against terrorism, which gave the security services the possibility to collect, without any real supervision, data on citizens' activities on the internet and on their telephone billings; and the regulations on subsequent consent to wiretapping evidence in court proceedings.

As regards matters of key importance for the government authorities, the Constitutional Tribunal ceased to play the key role of safeguarding individuals' rights. The number of cases considered by the Tribunal has decreased. The ones inconvenient for the authorities are postponed, or adjudication panels are composed so as to increase the probability of judgments favourable for the ruling bodies.

Changes in the CT's activity: numbers of applications for determining regulations' inconsistence with the Constitution; constitutional complaints, applications and questions of law joined by the CHR



As a consequence, numerous legal solutions are implemented by the ruling authorities without concern about the possibility of their questioning by the Tribunal. This weakens the intention to apply democratic mechanisms of supervision over legislative processes for example by way of inter-ministerial consultations (numerous key changes are introduced pursuant to deputies' bills and are thus not subject to the requirements applicable to administrative entities' bills), or by way of social consultations.

The lack of the effectively operating Tribunal has made it possible for the ruling coalition that has no constitutional majority in the Parliament to go around the Constitution and change the law by way of ordinary acts of the Parliament.

Surveillance and the right to privacy

New regulations that pose a significant threat to the protection of people's right to privacy have been implemented and are applied. They give the police and other security services far-reaching powers regarding the use of operational control and the collection of telecommunications data.

Objections are raised by the scope of data on individuals that is sought during covert operations, and by the lack of effective external supervision over the process of seeking such data. This is particularly important as the Polish constitution clearly narrows the scope of collecting and processing data on citizens.

Freedom of assembly

The freedom of assembly is one of the main freedoms that was sought by democratic opposition and the Solidarity trade union in the years of the communist totalitarian oppression. Today nobody can say that the Polish state has an equally oppressive system. However, the freedom of assembly is undermined by certain regulations (that relate to proceedings concerning periodic assemblies) and the practice of their application.

The provisions of the relevant Act preferentially treat the so-called periodic assemblies, which is against the Constitution's approach according to which the freedom of assembly should be ensured to everyone.

Since the entry into force of the regulations on periodic assemblies, the rights of assemblies' participants were violated a number of times: the participants of counter-demonstrations held in a distance of over 100 m, in line with the provisions, had their identities checked and were accused of disrupting legally held assemblies. Participants of assemblies held in accordance with the law were also moved in order to ensure space for a periodic assembly scheduled for the following day.

The situation of employees of public institutions

Many acts of the Parliament fail to take into account the principles that work is protected by the Republic of Poland and that citizens have equal constitutional right of access to public services. In certain acts that regulate the functioning of the public sector, the legislator included regulations that provide for termination of employment relationship (with uniformed services) if the public-sector employer has not proposed new terms of employment (service) to the employees.

Problems regarding trade in agricultural land

The changed regulations on trade in agricultural land have introduced significant restrictions in its trading, which is perceived as violation of constitutional standards of the protection of ownership rights.

Education and changes in its system

An example of regulations adopted hastily and without paying attention to citizens' critical voices was the education system reform. Its purpose was to restore the system comprising eight-

grade primary schools and four-grade secondary schools (instead of the system which included six-grade primary schools, three-year junior high schools and three-year secondary schools). The reform was implemented hastily and in a radical way. This led to cases of overcrowding of schools, lessons held even in the late afternoon or in temporary buildings, and pupils' overloading with studying.

Situation of the public media

The changes introduced in the operation of the public radio and television resulted in subjecting them to political control. The competences of the National Broadcasting Council which is a constitutional authority established to safeguard the freedom of speech and the right to information were limited by the National Media Council which has not been appointed directly under the Constitution. This violated the constitutional guarantee of the freedom of public media, the freedoms of opinion, expression and of seeking and disseminating information. The Constitutional Tribunal's last judgment from before the 2017 changes has not been enforced.

The growing importance of European courts

As a consequence of the changes in the system of human rights protection in Poland, the role of the Court of Justice of the European Union as a body that plays an increasingly important role in monitoring Polish law's compliance with European law increased.

Following the reform of the system of justice, Polish courts submitted numerous questions for preliminary ruling, concerning e.g. the status of the Supreme Court judges, the conducted disciplinary proceedings, the National Council of the Judiciary, as well as a number of issues relating to the EU Charter of Fundamental Rights.

In 2018, two important issues were decided upon:

- **Vice-President of the EU Court of Justice issued a temporary decision on 19 October 2018 that required Poland to immediately suspend the application of its regulations that retroactively lowered the retirement age of Supreme Court judges.**
  The decision was confirmed by the CJEU judgment of 17 December 2018.
- **The Court of Justice of the European Union ruled that the Republic of Poland had failed to take into account a number of EU legal regulations (the directive on habitats, the directive on birds) when adopting documents that permitted large-scale felling of trees in the Białowieża forest. Prior to that, Polish courts considered it was not their role to adjudicate on the case (the application for assessing the legal grounds of the decision on tree felling in the forest was filed by the Ombudsman).**

Prosecutor offices; the right to a defender; the police

The system of prosecutor offices was reorganized in 2016 and the effects can be seen now. Extensive powers were assigned to the Minister of Justice who also holds the office of Prosecutor General. He may directly influence the proceedings on specific cases, and take decisions on people's detention or place searching. decide on detention or search. He may report such measures to the media and provide information on investigation proceedings to persons who do not hold any public functions.

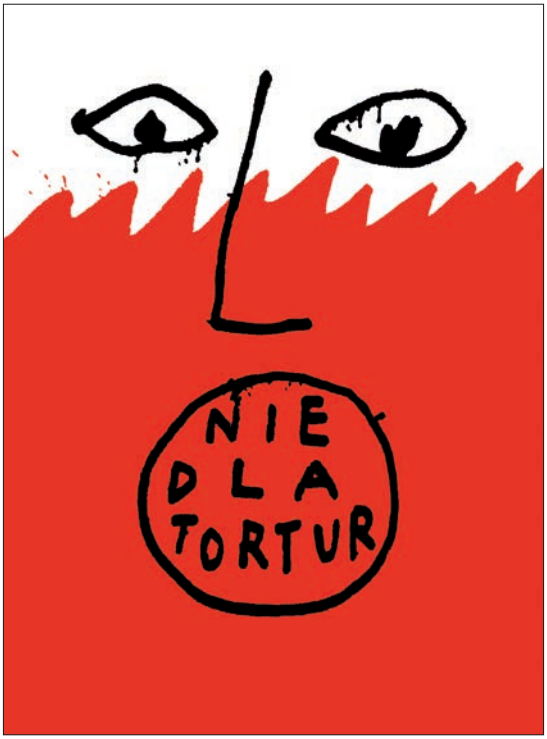
The Commissioner for Human Rights challenged those regulations before the Constitutional Tribunal. However, in 2018 he was forced to withdraw his application (because the adjudicating panel assigned to the case included a lower number of judges, for which there was no legal basis).

At the same time, the Ombudsman reminded of the permanent systemic problem consisting in the failure to ensure to all people the right to a defender in Poland. Directive 2013/48/EU of the European Parliament and of the Council has not been successfully implemented into the Polish legislative system. Access to a lawyer immediately after arrest is possible, in reality, for persons who are well-off or have high-level connections. However, the contact with a lawyer is also one of the most effective mechanisms to prevent torture and cruel or inhuman treatment.

The National Mechanism for the Prevention of Torture with the poster "STOP TORTURE" designed by Luka Rayski

Torture and inhuman treatment

The problem of the use of torture in Poland has been present for years as confirmed by the eleven-year experience of the National Mechanism for the Prevention of Torture (NMPT). Most often, victims of torture are people with low social awareness, frequently minors or people with disabilities. According to an analysis of court files, in 2008-2016 in Poland 43 police officers were convicted for using torture. The latest case was identified by the NMPT during its preventive visit to the police station in Ryki (in the Lubelskie Voivodeship). It was a case of a man beaten up by police officers (against whom charges were brought before a court).



Problems known but unsolved for years

The improvement of Poland's economic situation, the country' social policy and the decrease in unemployment have contributed to reducing poverty and increasing the quality of life of citizens. However, effective regulations and activities of public administration entities, taken with regard to still existing cases of social exclusion or homelessness, continue to be lacking.

Rights of persons with disabilities

In almost every meeting in the country, regardless of the location and size of the place, the CHR meets people who struggle with problems caused by their disabilities and by the ineffectiveness of the state support system. There exist huge inefficiencies in view of which it is difficult to conclude that the authorities properly fulfil their obligations under the Constitution and the applicable international standards. There are many examples of people in truly bad situations, but there are also many heroes in everyday life. We get a picture of our country as one that focuses on development in many fields, but at the same time often forgets about those who are the weakest and find it difficult to live without support. Most of these people do not hope for any preferential treatment but simply seek respect for the rights granted to them under the Constitution.

The protest of parents of persons with disabilities that took place in the Sejm in spring 2008 made people (who previously could not name their problem or identify its causes) start speaking about violation of their rights. This was a significant change as compared to the previous years.

Complaints sent to the CHR Office concerned very poor work of the system of issuing disability certificates, the conditions offered to people

with mobility disabilities during long-distance railway travel, or the refusal to apply concessions for such people.

Problems faced by carers of persons with disabilities

Among the clearest examples in this area is the Constitutional Tribunal's judgment of 2014 which concerns the situation of carers of people with disabilities and which has not yet been enforced. The size of financial support for the carers is dependent on whether the disability of the person they care for was diagnosed in his/her childhood or adulthood. The system is contrary to the constitutional principle of equal treatment but so

Occupational therapy workshop for persons with disabilities in Wieruszów (Łódzkie Voivodeship) – an example of an excellent project under the Generous Poland initiative

March 2018

far the regulations have not been changed. This forces the carers to launch lengthy proceedings before public administration bodies and administrative courts, with the aim to obtain state support in the same amount as paid to carers of persons whose disabilities were diagnosed in their childhood or at birth. The proceedings do not always bring success.

Ineffective systems of care, including health care

Problems with access to physicians are very frequently reported to the Commissioner. To a large extent, they are caused by the facts that the number of doctors and nurses is too low and that health care is underfunded.

Among problems that are increasingly visible are the lack of equal access to health care across different parts of the country, the ineffectiveness of the health care system, and its non-adjustment to the needs of the different groups of patients.

Many modern medicines are still not reimbursed.

The exercise of the right to health care by vulnerable groups (children, women and seniors) does not seem successful (examples include insufficient perinatal care, lack of access to childbirth anaesthesia and lack of access to legal abortion).

The situation in the field of child psychiatry is extremely bad. There are provinces (voivodeships) in Poland which do not have even a single hospital for mentally ill children.

The system of healthcare services financed from the public funds is perceived by citizens as one that is excessively bureaucratic, inefficient and not friendly for patients.

The aging of the population also causes problems: there are more and more people who are dependent on others and are in need of care which, however, is not provided properly. In 2018, the Commissioner for Human Rights conducted preventive visits to nursing homes, including those run

by private entities. This was done within the CHR's mandate under the National Mechanism for the Prevention of Torture. The Commissioner believes that such visits may contribute to effectively building a culture of opposition to degrading, cruel or inhuman treatment or even torture against people who require round-the-clock support.

Too low retirement pensions and disability pensions

Despite the social programmes implemented by the state, in 2018 there were still numerous complaints sent to the CHR with regard to retirement pensions and disability pensions. In general, they were filed by people who found themselves in particularly difficult situations in which the standard support from the state is not sufficient.

Retirement pensions for women born in 1953

Many complaints concerned retirement pensions for women born in 1953. If such women ever receive the so-called early-age retirement pension, their regular pension is then of different size. Already in 2019 the Constitutional Tribunal considered the regulations inconsistent with the Constitution but without changing the law the situation of the interested persons will not improve.

Retirement pensions claimed in June

If a retirement pension is claimed in June, the assigned pension amount is lower than if the pension is claimed in May. This results from the internal regulations of the ZUS Social Insurance Institution, according to which retirement pension contributions for the year preceding the pension claim are valorised quarterly, but not in June. Many people are not aware of this fact, and there are

those who have no possibility to freely chose the time when the pension is claimed.

Benefits for families with one of the parents working in another EU country

A serious problem is posed by the lengthiness of proceedings carried out to determine parents' rights to family benefits and parental benefit that are subject to the social security systems' coordination. This relates to the benefits' payment in a situation when one of the parents works in another EU country.

There were also complaints regarding the lack of retirement benefits for artists, and the availability of in-kind benefits in the form of heating coal deliveries to retired former employees.

The problem of reduced retirement pensions of members of communist-era security services subordinated to the Ministry of the Interior

The problems relating to the so-called "act on repressions" of 16 December 2016 were still visible and caused protests. The said act lowered retirement pensions of members of state security services that were subordinated to the Ministry of the Interior before 1990.

Most people affected by the regulation adopted in 2016 served in the communist state's services only for a short time, and then underwent the so-called verification procedure that checked whether they could work for the services of democratic Poland.

Gostynin. The National Centre for the Prevention of Dissocial Behaviours

There is a need to amend the Act of 2013 on the Gostynin facility where people found to pose a threat to the society are placed. The system of the centre's operation must be verified too. The Act on dealing with people with mental disorders who pose a threat to the lives, health or sexual freedom of other people has been in operation for 5 years already and it is clear that it requires amendment. The system of operation of the National Centre for the Prevention of Dissocial Behaviours in Gostynin and needs to be reconsidered. The CHR reiterates that solutions should be adopted to guarantee the respect for the centre patients' rights. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has recommended serious reconsideration by Poland of the system and objectives of treatment in the facility.

The centre has the status of a medical facility subordinated to the Minister of Health. The first patient was placed there at the beginning of 2014. Currently, the number of patients has exceeded the maximum capacity (60 people) but new ones are still admitted.

Homelessness

In Poland, there are thousands of people in the crisis of homelessness but the state does not effectively help them to overcome this crisis. Support in the field of social assistance is needed (normally, such assistance is provided by the municipality where the person in question lives, but homeless people do not have a single place of residence). Those people should also be supported in seeking and maintaining employment, in access to health care, and finally in finding a place to live. In 2018, there was a progress in terms of respecting the voting rights of homeless people (instead of an address of residence, a contact address was required to be

entered on the list of voters). An important process that begun in Poland on the initiative of the Ombudsman is a debate with local environments on the implementation of the Homeless Charter of Rights - a programme carried out by urban municipalities whose city councils commit to respect the basic rights of people affected by homelessness. The charter has been drawn up by Housing Rights Watch and the European Federation of National Organisations Working with the Homeless (FEANTSA).

Property restitution

A major and still unresolved issue is the extent to which the Republic of Poland, defined in the Constitution as the common good of all citizens, should compensate people for the transgressions of law and property losses suffered as a result of war damages, requisitions and post-war nationalization.

Property restitution processes are taking place cross the country, sometimes according to unclear and unjust rules. There is still no parliamentary act that would solve the issue comprehensively. The lack of the act means that individual groups of citizens are treated unjustly (only some of them may recover their property, or be compensated for it to various degrees). There is thus space for abuse of law, tenants of buildings subject to restitution claims are not sufficiently protected, and the responsibility for solving the complex problems is shifted onto entities that apply the law: public administration bodies and the system of justice. Jurisprudence is not harmonized either, which poses a risk to the legislative security of citizens. The existing discrepancies are removed by judgments of the Supreme Court or the Supreme Administrative Court after many years, and only with regard to individual aspects.

According to the CHR, the minimum solution required is to develop a legislative mechanism that would be equal, clear and predictable for everyone, and under which citizens would be able to seek enforcement of their rights: to adopt a parliamentary act on property restitution.

Equal treatment, discrimination and hate speech

Equality, together with dignity and freedom, constitutes a basic foundation of the system of state of the Republic of Poland. In 2018, the CHR Office received 626 complaints regarding broadly understood problems concerning equal treatment. In the Commissioner's opinion, however, the number is not proportionate to the actual scale of discrimination in Poland.

The CHR Office's Equal Treatment Team was granted the Golden Fan award of the International Organization for Migration (IOM - UN International Agency for Migration) for consistent activities to support the rights of migrants

December 2018

Research conducted at the request of the Commissioner shows that 84% of people who have experienced or witnessed discrimination have not reported it to any public institution. At the same time, over 44% of respondents claim that reporting discrimination would not bring the expected change. This may suggest that social acceptance for discriminatory behaviours is high while the effectiveness of legislative and practical mechanisms supporting the principle of equal treatment is low.

There is also low awareness of what discrimination is. In 2018, only three persons per hundred in Poland declared they had ever experienced discrimination. Two persons in a hundred declared they personally knew a person like this. However, every fifth Pole would not classify as discrimination a request for a breastfeeding mother to leave a restaurant or stop breastfeeding. Every third person would perceive as discrimination the refusal to grant the parental leave to a young father. These are the results of a survey conducted in 2018 for the Commissioner for Human Rights by the Kantar Public research company.

The problem of lack of anti-discrimination education

Schools should teach what discrimination is and how it can harm people. Unfortunately, such education is not carried out. In 2018, students' grassroots level initiatives in the field of promoting equality and non-discrimination faced criticism of the education sector authorities.

Unfortunately, there are still many cases of hate speech in the public space, and of crimes motivated by prejudice against various minority groups. This is another area that requires a firm reaction of the state. Online hate speech affects, in particular, young people who spend most of their time in the web and are thus constantly exposed to hate or verbal violence (hence the Ombudsman's activity concerning pathostreaming

which consists in earning money on promoting pathological behaviours on the internet).

Women's rights in Poland

In 2018, a hundred years passed since women got voting rights. However, it still happens they encounter problems if they want to participate in the public life on equal terms with men. The state does not react properly to problems faced by women in the areas of health care or the protection of life.

New problems relating to human rights and caused by civilization changes

The problem of environmental pollution

Poland's economic development entails also environmental pollution in the form of smog, odours or noise. People increasingly often report such problems to the Commissioner. Notably, the problems affect not only large cities but also small towns and villages.

The CHR's meeting on the problem of smog. Rybnik, Śląskie Voivodeship

November 2018

In 2018, problems were also reported regarding wind farms or onerous construction projects such as animal breeding farms, slaughterhouses or waste landfills. The subsequent Ombudsmen have been seeking the adoption of a anti-odour law for the last ten years. Other raised problems concerned the construction of high-voltage power lines, roads, noise absorbing panels, and the lack of safe crossings on roads with heavy traffic.

One of the hot topics reported in 2018 was the felling of trees in the Białowieża forest, which was eventually stopped by the CJEU. Citizens held demonstrations to defend the forest but faced consequences as the authorities considered their actions to have no legal grounds.

Problems of families, including families in crisis

Families in Poland are currently facing challenges that were not known to older generations. The parents' roles are changing, fathers want to be more active in raising their children, mothers want to work professionally, the level of education is increasing, there are more and more cross-border interpersonal relationships as well as employment possibilities in other countries. All this brings new opportunities but also generates new tensions.

Many problems reported in 2018 with regard to families concerned: former partners' disputes about the right of custody and about maintaining contacts with children; domestic violence; payment of child maintenance; divorce as well as family courts' judgments concerning child care.

Transport exclusion

The problem of transport exclusion was mentioned more and more frequently. There are places, in particular small towns, that have no public transport connections. As a result, people who do not drive a car have difficulties with getting to a doctor, to a public administration office or

even to school (the choice of school, therefore, often depends mainly on transport options). The awareness of the problem is slowly increasing in Poland, and in 2018 the Commissioner for Human Rights was the entity that introduced the subject into the public debate.

Problems of customers

Problems in the field of consumer rights were reported increasingly frequently. Particular emphasis was placed on unfair practices consisting in contract conclusion with individuals during special organized meetings, or remotely by telephone. Senior persons are a group that is still insufficiently protected against such practices.

The Commissioner also started to receive applications for filing extraordinary complaints with courts with regard to individuals' bank loans denominated or indexed in foreign currencies.

Mechanisms and methods of work of the Commissioner for Human Rights

In his work, the CHR is supported by three deputies: Stanisław Trociuk, Hanna Machińska, Ph.D. and Sylwia Spurek, Ph.D. (in 2019 replaced by Maciej Taborowski, Ph.D.), as well as by CHR Office Director General Katarzyna Jakimowicz and the Office's 16 organizational units.

Channels for reporting problems to the CHR

Applications may be sent to the CHR by postal mail, by electronic mail or through the website www.rpo.gov.pl. It is also possible to contact the CHR Office in person or by telephone. During the CHR regional meetings, it is possible to talk to the Commissioner and report a matter to his employees.

The CHR Office lawyers meet with citizens about their matters every day: in the Warsaw office, in three regional offices (in Gdańsk, Katowice and Wrocław), during advice sessions regularly held in eleven cities (Bydgoszcz, Częstochowa, Kielce, Koszalin, Kraków, Lublin, Łódź, Poznań, Słupsk, Szczecin and Wałbrzych) and during all regional meetings with the CHR (in 2018, 46 cities and towns were visited).

It is worth remembering that the Commissioner for Human Rights is a part of the system of support provision to citizens who encounter problems. The CHR closely cooperates with the Ombudsman for Children, the Financial Ombudsman, the Office for Competition and Consumer Protection and the Personal Data Protection Office to share expert knowledge about problems with practical application of law and about people's problems. Through the CHR website **www.rpo.gov.pl** the Commissioner also disseminates information on the activities of these

institutions and on other available forms of assistance, such as free of charge legal aid and telephone helplines.

The Commissioner - a partner to citizens

Cooperation with local communities, active citizens and social organizations is of great importance for the Commissioner for Human Rights. It is a way to better understanding problems that occur in the country and important cases resolved by courts, as well as finding out about good practices and promoting methods that make problem solving possible and easier.

- An innovative project launched in the current term of office is the programme of CHR's regional meetings. The Commissioner regularly travels across the country to listen to people, learn about their problems, suggest how they can be solved and what he can do about them.
- The original idea was to hold meetings throughout the country (180 have been held since the beginning of this term of office, and 46 were held in 2018). This gave rise to the next project which consists in organizing thematic conferences and meetings that gather experts and practitioners and provide space for discussing main problems reported to the CHR by citizens.
- In his substantive work the Commissioner is supported by expert committees which gather outstanding specialist in their areas. Their knowledge and experience makes it possible to propose solutions the Commissioner may then recommend to the authorities.
- In 2018, the role of the CHR's Social Councils whose members maintain contacts with representatives of public authorities and social organizations changed. Their composition (in Warsaw, Gdańsk, Katowice and Wrocław) was extended to include outstanding representatives of many local government organizations and local communities. In their periodic meetings with the

Commissioner, members of the Social Councils highlight issues important for the society both at the local and national levels, which can be addressed by the CHR.

- The close working relations between the Commissioner and citizens, that were of bilateral rather than hierarchical nature, drew the CHR's attention to new communication challenges, to the need to learn together about the Constitution and what it really is, and to speak about law more effectively, also in courts. As a result, numerous educational projects were launched: from meetings at schools, through music and youth festivals, to communication training courses for lawyers.
- The Commissioner's regional representatives in Gdańsk, Katowice and Wrocław not only accept complaints and applications from citizens, but also take part in many events and meetings with

Meeting with Wieluń high school students who protect the memory of the town's pre-war history and -Jewish inhabitants

Wieluń was the first Polish town bombed by Germans on 1 September 1939

The meeting in Wieluń was held as part of the series of regional meetings.

representatives of non-governmental and social organizations, representatives of local governments, universities and the system of justice.

Regional meetings

The meetings made it possible to identify problems that were new or previously unnoticed in the public debate, such as transport exclusion, lack of equal access to health care, or environmental pollution. They also provide an opportunity to report problems related to the poor operation of the social security system. Those problems often cannot be solved but at least relevant ministries are informed of them and the society understands better that they are also encountered by other citizens in various regions of the country.

Local problems reported to the Commissioner during regional consultations

Many problems reported to the Commissioner are of local nature but they are equally important to those on other levels. They reflect the state authorities' inefficiencies in dealing with specific matters which pose serious difficulties to citizens. The CHR is aware that for many persons it would be difficult to seek help in Warsaw and thus he travels across the country, meets with people and listens to their stories.

In Gołdap, residents complained about the method of conducting local public consultations.

In Ostrołęka, a story of a group of about 300 people was described. They are owners of employee shares in the power plant in Ostrołęka, formerly owned by the city, but they have not received their dividend for six years.

In Skarżysko Kamienna, problems with building a street were reported.

In Wałcz, people spoke about the impossibility to use the SMS technology to call emergency services; as a result, deaf people are unable to contact such services by themselves to seek help.

In Szczytno, people mentioned difficulties in job finding by persons after a mental crisis.

In Giżycko, local residents spoke about legal representation of adult persons with disabilities. The parents do not want to legally incapacitate their disabled children despite the fact that public officials and doctors encourage and sometimes even press them to do so as "it would simplify life".

In Radzyń Podlaski, attention was drawn to the lack of compensations for compulsory slaughter of pigs due to African swine fever – ASF.

In Hajnówka, the community connected with the Orthodox church reported problems with getting a day off work on their religious holiday, according to their liturgical calendar.

In Szczecinek, the problem with transporting children with disabilities to schools was raised.

In Ełk, citizens complained that the city authorities and the police fail to take any steps in relation to cyclists who do not use bicycle paths although they are required to do so.

Problems reported locally are considered by the Commissioner at the local and central levels. Thanks to the CHR's personal meetings with local communities their problems can be identified faster and solutions can be proposed to competent authorities. Also, the society may be made aware of the importance of those problems.

Generous Poland

The Commissioner also regularly visits important institutions which, in many cases, are run by social organizations or local governments in cooperation with citizens. They defend citizens' key rights by providing support to people in need: those with disabilities, in the crisis of homelessness, mentally ill, at risk of becoming unemployed, or seniors. These entities, called entities of Generous Poland, build the foundations of the social economy and support civic education.

The Commissioner visits places established by various associations to inquire about problems they face and to disseminate good practices, to promote positive examples and show other regions of Poland how to change the realities independently. If people in one part of the country get contact data of people from another part of Poland, who have encountered a similar problem before, it is sometimes enough to work out the solution faster. This programme is called Generous Poland.

Civic education

The picture of the situation that is painted by the complaints and applications sent to the CHR and, at the same time, by the present report, is also a result of legal awareness of citizens and of their ability to identify and name violations and problems they encounter. There are also many people who seek assistance of the Commissioner as a public authority, without even knowing what measures he may take. It also happens that complaints are sent to the CHR Office too late, when the time limit for any action has already expired. Therefore, one has to conclude that if the state were more engaged in education about people's rights and possibilities of taking action, some persons would not be in such a difficult situation.

The CHR's meeting with young people at the Pol'and'Rock festival in Kostrzyn nad Odrą

August 2018

Educational projects carried out by the Commissioner for Human Rights seek the broadest possible dissemination of knowledge about people's rights and freedoms provided for in the Constitution, about how the Commissioner can help, and the significance of the principles of equal treatment, non-discrimination, and protection of the rights of seniors, persons with disabilities, persons with a mental illness, persons from other countries, national, ethnic and religious minorities and other social groups.

The Commissioner regularly meets with upper secondary school students and conducts civic education lessons for them. He explains the concept of human rights and how they are rooted in the Polish Constitution. He also presents examples of the CHR's activities that may be interesting for young people. The students may ask anonymous questions on pieces of paper. This way the Commissioner can find out how human rights are viewed by young people: those who spend a lot of time on the Internet where they come across hate and violence, those who experience typical problems of young age (what may I do independently, and what are the things I am still not allowed to do myself?), and those who experience family problems (e.g. concerning child maintenance).

The CHR Office representatives have taken part in the subsequent editions of the Pol'and'Rock music festival in Kostrzyn nad Odrą since the times of CHR Janusz Kochanowski who initiated this cooperation. It was continued also in 2018. The festival is organized by the Great Orchestra for Christmas Charity. Apart from concerts there are also debates, meetings and workshops for young people. They are often the only source of civic knowledge for the young people. Every year, the Commissioner and his representatives visit several events of this type.

CHR's activities in the field of social communication

The Commissioner's contacts with the media are not limited to traditional national media. In 2018, as in the previous years, targeted communication was also carried out with different other media, mainly local

ones but also web portals, including industry sector portals, with participants of various meetings, conferences, and with online opinion leaders.

Legal issues, sometimes very specific ones require accuracy and specialist knowledge. However, this knowledge will be of no use if it cannot be communicated to citizens in a way that is understandable for them. Changes in the language not only make it possible to use information better, but also to actively engage people in the public debate and to propose solutions that could probably not be developed without large-scale open exchange of ideas.

Opening of the 2nd Congress on Human Rights in Warsaw,
POLIN Museum of the History of Polish Jews,

December 2018

In the lobby during the 2nd Congress on Human Rights

In view of the above, in 2018 the Commissioner for Human Rights thoroughly changed the rpo.gov.pl web service. The existing content was organized according to issues important for citizens. Everyone can find and read about problems worked upon by the Commissioner – the problems are grouped according to the order in which they are included in the Constitution (the so-called live annual information).Content can also be searched by types of the CHR's activities (this function has been introduced for people who are interested in specific legal issues). The website's visit statistics confirm that the direction of the changes was good.

Civic Congresses

2nd National Congress on Human Rights, 14-15 December 2018

An initiative that was born as a result of the CHR's regional meetings and the experiences of Generous Poland is the Congress on Human

Rights. It is a large-scale meeting of citizens, whose second edition was held on 14-15 December 2018 in Warsaw.

The event was attended by over 1700 guests from all over the country and from abroad. They jointly took part in 43 discussion panels held in cooperation with leading non-governmental organizations. The floor was taken by 200 panellists and many members of the audience.

The Congress debates focused on four thematic blocks:

A. The crisis of the rule of law Poland;

B. Equality - a lesson of history;

C. "Taking the law seriously";

D. Efficiency of the justice system.

Congress on Parental Rights, 25-25 June 2018

The Congress on Parental Rights also has its roots in the CHR's regional meetings in which numerous problems were reported concerning court cases considered by family courts, children with one of the parents living abroad, cross-border families, and finally the increasingly broadly discussed problems experienced by fathers in Poland.

As a consequence, jointly with Maria Grzegorzewska Academy of Special Education we decided to hold meetings with parents, educators, lawyers and psychologists to look for solutions to the main problems. The 14 panels of the Congress made it possible to focus on specific issues, and the recommendations were presented in its concluding part.

CHR's international activities

In 2018, we celebrated anniversaries of the adoption of two international legislative instruments that are of major importance for the system of protecting human rights and fundamental freedoms: the 70th anniversary of the Universal Declaration of Human Rights proclaimed by the UN General Assembly, and the 65th anniversary of the entry into force of the Convention for the Protection of Human Rights and Fundamental

Freedoms. We also celebrated the 30th anniversary of the office of Commissioner for Human Rights in Poland – this was of particular interest for representatives of human rights institutions and organizations from other countries.

At the CHR Office, numerous meetings were held with representatives of foreign entities interested in the Commissioner's work. Among the most important ones was the CHR's meeting with the European Commission delegation headed by first Vice-President of the European Commission Frans Timmermans. His visit to Poland aimed to assess the

Adam Bodnar receiving the RAFTO award for his Office in Bergen, Norway, November 2018

compliance with the rule of law in the country, in particular in view of the package of the new laws reforming the Polish system of justice.

As regards cooperation between Ombudsmen at the regional level, the main event in 2018 was the annual meeting of the Visegrad Group (V4) Ombudsmen, held in Gdańsk.

The CHR's bilateral contacts with Ombudsman institutions from other countries have, for many years, been an important platform of international cooperation. An important field of CHR's activity is also cooperation with the European Ombudsman.

RAFTO Award for the Polish Commissioner for Human Rights and his Office

In 2018, Polish Commissioner for Human Rights Adam Bodnar and his Office were granted the Norwegian Rafto Award to the world's human rights defenders.

The award is an expression of appreciation for the work of the Commissioner and his Office, but also of support for the Polish civil society, judges, academics and lawyers who fight for the respect for the law, independence of judges, pluralism and respect for minority rights.

Adam Bodnar, as a civil servant, transferred the money received a part of the award to the Civic Fund which, in 2019, allocated the funds by way of a competition to projects carried out by NGOs from small towns in Poland.

Appendix: problems from the point of view of the Polish Constitution

Since 2018, the Commissioner for Human Rights has changed the formula in which the report on CHR's activities and on the observance of civil rights and freedoms in the country is presented to the Parliament. Problems that have been reported by people are now organized according to the articles of the Polish Constitution, rather than by specific fields of the law, as before.

According to the Preamble to the Constitution, it has been adopted "to guarantee the rights of the citizens for all time, and to ensure diligence and efficiency in the work of public bodies".

Therefore, taking account of its provisions, the Commissioner takes steps to demonstrate to citizens how the Constitution impacts different aspects of their everyday lives. The annual report also proposes changes whose implementation, in the Commissioner's opinion, would strengthen the fulfilment of the guarantees contained in the Constitution.

Moreover, issues important from the point of view of the observance of people's rights and freedoms are described by the Commissioner using language that is understandable for citizens. The CHR presents people's problems because of which his actions are taken, encourages people to explore those issues in more detail and to find out about relevant legal arguments.

Below the reader will find a list of key problems observed in Poland in the context of individual articles of the Constitution.

1. *General principles laid down in the Constitution*

Article 30 of the Constitution – Dignity of the person

- Legal incapacitation - the Polish legislation still provides for the solution which deprives people of their rights instead of supporting them in decision-making processes

- Problems in access to public health care for people who have no sources of income or are in the crisis of homelessness
- The right to dignified burial of homeless persons has been undermined
- Undignified treatment of certain passengers in public transport vehicles
- The possibility to leave a sole trader without any income (the problem caused by the parliamentary Act "*The Constitution for Business*")

Article 31 of the Constitution – People's freedom and its permissible limitations; the principle of proportionality

- Lack of freedom of residents of social care homes
- How to admit a person, who has full rights but is unable to sign documents, to a nursing home?
- Who, and on what grounds, should decide who may enter a sports stadium?

Article 32(1) of the Constitution - Equality before the law and equal treatment

- Infringed rights of carers of adult persons with disabilities
- Expired right to disability pension awarded as a result of a serious accident - because the treatment was expensive and the guaranteed pension amount has been used in full
- Unequal treatment of senior persons
- Unfair treatment of mentally incapacitated persons in criminal proceedings
- Problems with the rules on adjudicating aggregate penalties
- Citizens may not challenge the state authorities' decisions issued 40 years ago pursuant to the so-called enfranchisement Act of 1971
- Unequal treatment in awarding parking permits for paid parking zones

Article 32(2) of the Constitution - Prohibition of discrimination.

- Poles are not aware of discrimination
- Lack of anti-discrimination education – we are not taught how to defend ourselves and how not to hurt others

- The growing problem of hate speech on the Internet
- Discrimination in access to services - problems
- Discrimination on the grounds of age - problems
- Discrimination on the grounds of disability - problems
- Discrimination on the grounds of nationality - problems
- Discrimination on the grounds of religion - problems

Article 33 of the Constitution - Equal treatment of men and women

- Unequal participation of women and men in public life
- Ineffective prevention of domestic violence
- Limitations in access to services - on the grounds
- Cases of harassment and sexual violence

Article 34 of the Constitution – Acquisition of Polish citizenship

- Problems with confirming Polish children's citizenship
- No compensation for loss of citizenship

Article 35 of the Constitution - Rights of national and ethnic minorities

- Difficulties in obtaining school certificates issued in minority languages
- Problems of the Ukrainian minority and migrants in Poland

Article 36 of the Constitution – Right to diplomatic and consular protection

- Problems with the Polish National's Card
- Problems of Poles who live abroad

Article 37 of the Constitution – Jurisdiction of the Polish state

- No possibility to appeal against Polish visa refusal

2. *Personal freedoms and rights*

Article 38 of the Constitution – Legal protection of life

- A person's death at a police station (a young man arrested by the police died due to a shock from a stun gun)
- Unclear regulations on smooth-bore weapons with rubber bullets and on such weapons' use by the police
- Dangerous Polish roads

- Lack of regulations on genetic research and patient's lack of possibility to consent to such future procedures

Article 39 of the Constitution – Prohibition of scientific experimentation (no problems reported in this area)

Article 40 of the Constitution – Prohibition of torture and inhuman or degrading treatment

- Torture in Poland – sad realities
- The Polish law lacks provisions that directly penalize torture
- A defending lawyer for everyone – a key mechanism to prevent torture and degrading treatment
- No protection of whistle-blowers who report cases of torture
- Cases of degrading treatment in social care homes

Article 41(1) of the Constitution – Personal inviolability and security

- Illusory effectiveness of appeal against pre-trial detention
- No penalties for forest rangers who were against demonstrators in the Białowieża forest
- Problems with compensation for apartment or body search without legal grounds
- Rights of persons who are placed in the National Center for the Prevention of Dissocial Behaviours in Gostynin after serving sentences for sexual crimes; those people, according to courts, may still pose a threat to other persons
- Other problems regarding personal freedoms

Article 41(2) and (3) of the Constitution – Rights of detainees

- Detentions during assemblies
- The right to a lawyer's aid and advice since the time of arrest
- Complaints against ungrounded arrest

Article 41(4) of the Constitution – Right to humanitarian treatment

- Prison cells with over ten beds
- Treatment of prisoners with hepatitis C
- Operation of the National Centre for the Prevention of Dissocial Behaviours in Gostynin

- Problems of prisoners / detainees who are mentally ill or disabled
- Procedures applicable to persons deprived of liberty
- Prisoners' weddings, contacts with children and other close relatives, and rehabilitation in the society

Article 41(5) of the Constitution – Compensation for unfounded deprivation of liberty

- How to compensate a child for his/her unfounded placement in a juvenile shelter
- Method of calculating interest on compensations for people who have been wrongfully sentenced, arrested or detained

Article 42(1) of the Constitution – Only acts prohibited by law at the time of committing them may be penalized

- Imprecise regulations on the protection of the good name of the Polish Nation and of the Republic of Poland
- Arbitrary regulations on imposing penalties on people at airports

Article 42(2) of the Constitution – Right to defense in criminal proceedings

- Problems with ensuring European standards of access to defending lawyers
- Violations of the right to defence of people with intellectual or mental disabilities
- The practice of a suspect hearing in the role of a witnesses violates the right of defence
- Too short time limit for filing an appeal in a criminal proceeding
- Differences in the right to reimbursement of the costs of the lawyer after sustaining the appeal
- Courts' lack of control over decisions of prosecutors

Article 42(3) of the Constitution – Presumption of innocence

- Not implemented European standards regarding the presumption of innocence

Article 43 of the Constitution – No statute of limitation

Article 44 of the Constitution – Prolongation of the period of limitation

Article 45 of the Constitution – Right to court

- Problems of Polish courts – currently faced
- The status of independent courts - consequences of the amendments adopted since 2017
- The status of prosecutor offices. The CHR's withdrawal of the application to the Constitutional Tribunal
- The effects of changes in the operation of the Constitutional Tribunal
- Attempts to improve the effectiveness of the system of justice
- Problems with limiting the right to sue
- Problems with free legal aid and court fees
- The status of victims of crimes
- Lengthiness of court proceedings and administrative proceedings
- Problems with taking part in hearings
- Problems with the right to court

Article 46 of the Constitution – Property forfeiture

- May penalties imposed on companies result in property forfeiture? The CHR criticizes the bill on criminal liability e.g. of companies

Article 47 of the Constitution – Right to the protection of person's private life, family life, honour and good reputation

- Problems regarding family life
- Problems regarding private life
- Problems regarding good name and reputation

Article 48 of the Constitution – Right to raise children in accordance with one's convictions

- May a religion teacher be a tutor of a class of pupils?

Article 49 of the Constitution – Freedom of communication

- Powers of special services to control communication between citizens
- Threats to professional secrecy of lawyers, journalists and doctors

Article 50 of the Constitution – Inviolability of the home

- Improved standards of real property search

Article 51 of the Constitution – Right to autonomy in the field of information

- Personal data protection; commencement of the application of the EU Regulation (GDPR)
- Protection of personal data processed in connection with preventing and combating crime
- Access by the state security services to data contained in civil registers
- Rules regarding deletion, from church registers, of data of persons who ceased to be members of the church
- Disclosure of sensitive data contained in published judgments of the Constitutional Tribunal
- Threats to the privacy of citizens – the bill on the transparency of public life
- May there be cameras in polling stations?
- Amendment of the act on property restitution vs. personal data protection
- Method of describing unemployed peoples' profiles
- Protection of biometric data provided when receiving a shipment
- Data protection of patients who have not collected their money from a deposit
- Problems in the exercise of the right to copy files by parties to the proceedings
- Certified auditor candidates may not make copies of their examination papers

Article 52 of the Constitution – Freedom of movement within the territory of Poland

- Limitations in entry to state forests
- Transport exclusion – no public transport connections to get to a doctor, state administration office, school or cultural institution

Article 53 of the Constitution – Freedom of conscience and religion

- May a religion teacher be a tutor of a class of pupils?
- Doctors' conscience clause and its impact on the rights of patients

Article 54 of the Constitution – Freedom of speech

- The Constitutional Tribunal's not implemented judgment regarding the method of appointing public media's managing bodies
- Press publications of local authorities
- Blocking or deleting social network user accounts
- The problem of pathostreaming on the internet
- Restricted journalists' access to information in court buildings

Article 55 of the Constitution – Prohibition of extradition of Polish citizens

Article 56 of the Constitution – Right to asylum and the refugee status

- The manner of treating foreign citizens at the border crossing in Terespol
- European standards regarding international l protection

3. Political rights and freedoms

Article 57 of the Constitution – Freedom of peaceful assembly

- Problems regarding the act on assemblies, that is of key importance for this freedom. The CHR's report
- The problem of "periodic assemblies"
- Lack of effective mechanisms to react to racist and fascist content and symbols in public assemblies

Article 58 of the Constitution – Freedom of association

- Rules of public money collection
- Amendments in the act on women's rural associations

Article 59 of the Constitution – Freedom of association in trade unions

- The right to trade union membership of persons not employed under employment contracts

Article 60 of the Constitution - Right of equal access to public services

- Termination of employment contracts with public administration employees in periods of organizational transformation
- Problems regarding recruitment to the State Protection Service in the period following its establishment and closure of the Government Protection Bureau
- Transfer of officers of other uniformed services to the Prison Service with their rank maintained
- The procedure of appointing prosecutors
- The Minister of Justice's objections to candidates for the position of teacher at the National School of the Judiciary

Article 61 of the Constitution – Right of access to public information, documents and meetings of collegial public bodies

- Problems regarding access to public information at the local level
- Problems regarding processed information
- Other obstacles citizens and the media have in access information

Article 62 of the Constitution - Electoral rights

- Procedures for appointing polling station officials
- Rules of the so-called pre-election campaigns
- Entry into the register of voters through the ePUAP online system
- Entries into the register of voters of people affected by the homelessness crisis
- Adaptation of polling stations to the needs of voters with disabilities

Article 63 of the Constitution – Right to file petitions, motions and complaints

4. Economic, social and cultural freedoms and rights

Article 64 of the Constitution – Ownership right

- The lack of an act on property restitution
- The problem regarding annulment of administrative decisions issued in the communist era

- The deadline for seeking compensation by property owners due to deteriorated terms of use of the property
- The need to better protect the interests of weaker parties in proceedings carried out by public notaries
- Time limit to recover receivables secured by mortgage
- Buyers of properties from the Employees Holiday Fund lost the properties
- The procedure of entering a building on the municipal list of historical buildings
- Problems with appealing against decisions taken under the Enfranchisement Act of 1971
- Restrictions in the disposal of property, arising from the Act on Agricultural Land of 2016
- Power systems: land prescription to the benefit of transmission system operators or the State Treasury
- Power systems: new rights of power-sector companies to enter land where transmission system devices are located
- Doubts regarding the wording of the uniform text of the Act on the State Treasury agricultural land management
- Sanctions for copyright infringement
- Rules of remunerating and documenting expenses incurred by court experts
- Rules of returning cars towed from public roads

Article 65(1) of the Constitution – Freedom to choose and pursue an occupation

- Limited scope of civil engineer licenses
- No specification of qualifications of soil classification experts

Article 65(2–5) of the Constitution – Employee rights

- Situation of teachers during the education system reform
- Rights of community nurses who care for mentally ill people
- Professional situation and salaries of nurses
- Ineffective anti-mobbing activities in hospitals

- The situation of airline pilots and flight attendants
- Lack of minimum pay rate for seasonal workers employed in crop harvesting
- Delays in registering foreign workers' statements regarding seasonal work
- No possibility to reduce the working time of judges with disabilities

Article 66 of the Constitution – Right to safe and hygienic conditions of work and to holiday leave

- No rest breaks for city bus drivers
- (Un)safe work of crane operators
- Too long years of work of police officers
- Dangers caused by outdated and poorly serviced military equipment

Article 67of the Constitution – Right to social security

- Retirement pensions of women born in 1953
- The pension size depends on the month in which the pension was claimed (problems with June claims)
- The problem of a retirement pension system for creators and artists
- Problems with retirement and disability pensions of people who have announced bankruptcy as consumers
- Municipal security services are not entitled to the bridging allowance
- Customs officers whose contracts have expired are not entitled to the sickness benefit
- Regulations reducing retirement and disability pensions of officers of state security services operating in the communist era
- Children are required to pay for a social care home for their parents, even if they neglected their parental duties
- Irregularities in residential care homes
- Social assistance benefits for people in the homelessness crisis
- Problems with family benefits coordinated within the European Union

Article 68(1) of the Constitution – Right to health care

- Shortages of doctors and nurses
- Problems with medical service provision when the physician invokes the conscience clause
- Problems with access to gynaecologist's advice and perinatal anaesthesia
- The problem of actual access to medical cannabis
- Soldiers' problems of with access to medical care

Article 68(2) of the Constitution – Problems with equal access to healthcare procedures

- Public healthcare for people in the crisis of homelessness and without income
- Referrals to health resort treatment
- Emergency access to high-technology medicines
- Support for young people with mental problems after turning 18 years of age
- Quality of food served in hospitals

Article 68(3) of the Constitution – Vulnerable groups' right to special health care

- Problems regarding health care for children
- Problems regarding reproductive health
- The Committee of Ministers of the Council of Europe referred to the lack of access to legal abortion in Poland
- Problems concerning health of senior persons

Article 68(4) of the Constitution – Prevention of epidemic diseases and of degradation of the environment

- Risk of measles epidemic
- The quality of drinking water in buildings' water systems is not monitored

Article 69 of the Constitution – Assistance for people with disabilities

- Rights of persons with disabilities - outside the mainstream public debate. What does CHR hear far away from Warsaw?

- The protest of adults with disabilities and their carers in the Sejm
- Main systemic problems identified in Poland's periodic report to the UN Committee

Article 70(1) of the Constitution – Right to education

- Negative effects of the education system reform
- The issue of persons over 18 years of age in youth correctional facilities
- Lack of anti-discrimination education

Article 70(2) of the Constitution – Free of charge education

- Costs of children's travel and transport to schools

Article 70(3) of the Constitution – Right to private-sector education

Article 70(4) of the Constitution – Equal access to education

- Transport of pupils with disabilities to schools
- Organization of individual teaching
- Access to speech therapists and psychologists in private schools

Article 70(5) of the Constitution – Autonomy of universities

- Guaranteed lifelong employment, by universities, of lecturers who are also judges of the Constitutional Tribunal, the Supreme Court or the Supreme Administrative Court
- Matriculation examination's difficulty level vs. recruitment to universities

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

- Problems of Polish families - the Commissioner for Human Rights' message to participants of the Parental Rights Congress
- Problems regarding the 500+ child benefit
- Victims of violence in the family not covered by the support system - incomplete definition of domestic violence
- Lengthy court proceedings concerning victims of domestic violence
- Support for children and young people with disabilities after their 18th birthday

Article 71(2) of the Constitution – Assistance for mothers before and after childbirth

- Non-adjusted meeting rooms in prisons

Article 72 of the Constitution – Children's rights

- Children for whom child maintenance is not paid
- Lengthy proceedings regarding child custody
- The issue of child victims of paedophilia crimes
- Search of children visiting their family members in prisons
- Transportation of minors to healthcare facilities pursuant to court rulings
- Problems with confirming Polish children's citizenship

Article 73 of the Constitution – Freedom of artistic expression, scientific research and access to objects of culture

- Erosion of freedoms regarding culture may pose a risk to the richness of cultural life in Poland - a report by a UN expert on human rights
- Compliance of the provisions on hunting with the Constitution and the UNESCO Convention for the safeguarding of intangible cultural heritage

Article 74 of the Constitution – Environmental safety and protection

- Smog in small towns and large cities
- Illegal waste landfills and waste management
- Pollution that poses a risk to life and health
- Odours and noise
- Illegal tree felling in the Białowieża forest

Article 75 of the Constitution – Housing policy and protection of tenants' rights

- Problems of members of the communist-era apartment saving scheme
- Rights of victims of "wild" property restitution evicted based on court rulings
- The right to community housing
- Problems concerning housing cooperatives

- Risk of losing an apartment due to an unfavourable loan agreement
- Heating costs settlements (heat meters)

Article 76 of the Constitution – Protection of consumer rights

- Problems regarding consumer bankruptcy
- The problem of notarised proxy documents not recognized by banks
- Problems of people whose mortgage loans denominated in Swiss francs
- The impact of financial institutions' problems on citizens
- Regulations to protect people who give up their apartments in exchange for pensions
- What is happening with the list of collective proceedings?

5. Measures to protect people's rights and freedoms

Article 77(1) of the Constitution – Public authorities' liability for damages

- The provisions on wrongful convictions do not take account of extraordinary complaints
- Lack of compensations for some families who suffered repressions for activities defending the independence of Poland
- The State Treasury's liability for damages caused by cranes and otters
- The State's liability for damages for wrongful conviction: the case of Tomasz Komenda

Article 77(2) of the Constitution – Recourse to court

- Lack of courts' control over apartment searches and personal searches conducted by the customs and revenue services and customs services and Border Guard officers
- Doubts regarding the 5-year time limit for annulment of administrative decisions issued based on unconstitutional provisions
- No possibility to appeal to court against the decision on co-funding the Polish Film Institute
- Increase in perpetual usufruct fees. Admissibility of appeals to administrative courts against Local Government Appeal Boards' decisions refusing time limit continuation

- May the Constitutional Tribunal's judgment on law interpretation provide a basis for resumption of civil proceedings?
- Possibility of appeal against a decision refusing subsidy for heating installation replacement

Article 78 of the Constitution – Right to two-instance proceedings

- No possibility to appeal against second-instance court's decision suspending criminal proceedings
- Complaint of a support prosecutor against a refusal to join proceedings: the Constitutional Tribunal has sustained the CHR's appeal
- The possibility to challenge a court clerk's opinion during enforcement proceedings

Article 79(1) of the Constitution – Right to constitutional complaint

Article 80 of the Constitution – Right to file a complaint with the CHR

6. Other regulatory standards

Article 2 of the Constitution – Rule of law

- Courts' right to refer a question to the EU Court of Justice for preliminary ruling
- Doubts about the wording of the consolidated text of the Act
- Citizens' legislative initiatives filed in the analogue form
- Rules of criminal liability for failure to report a crime
- Fines and administrative penalties for exploitation of minerals without a permit
- Unclear regulations on exploratory works regarding precious objects
- Unintentional restriction of powers of anti-terrorism police groups
- Other regulatory issues that may undermine citizens' confidence in the state

Article 22 of the Constitution – Freedom of economic activity

- Rules on inspection of improperly labelled products

Article 173 of the Constitution – Independence and impartiality of courts

- Disciplinary proceedings against judges

Article 217 of the Constitution – System of imposing taxes

- Problems with the Tax Code
- Regulatory pitfalls in the field of personal income tax
- Doubts regarding the value added tax
- Problems with customs duties
- Continued problems with the public television subscription
- Fees for municipal waste removal
- State Treasury debt claim through actio Pauliana

7. European cooperation

- Implementation of the EU Court of Justice's judgment regarding reinstatement to office of the retired judges of the Supreme Court
- Enforcement of the CJEU judgment on the Białowieża forest logging
- The need to implement the Directive that presumes innocence
- Implementation of judgments of the European Court of Human Rights in Strasbourg

International bodies' positions on legislative changes in Poland

I. The European Commission's opinions on the proceeding regarding the member state's failure to fulfil obligations (Article 258 TFEU)

- Letter of formal notice of 2 July 2018 concerning the Act on the Supreme Court
- Reasoned opinion of the European Commission of 14 August 2018 (second stage of the proceeding regarding the failure to fulfil obligations)
- On 24 September 2018, the European Commission referred the case to the Court of Justice of the EU. The Commission applied to the Court of Justice to impose interim measures until the judgment on the case is issued.

II. Opinions on the side of the United Nations

- Following her mission to Poland, held on 24 September - 5 October 2018, UN Special Rapporteur on Cultural Rights Karima Bennoune was pleased to note the widespread civic engagement with debates regarding law reform and the culture of the rule of law across Polish society. She expressed concern about activities that are aimed at influencing cultural programmes and management of cultural institutions, e.g. the Museum of the Second World War and the Malta Festival. Of concern was also increasing prominence and aggressiveness in Poland of some far right wing nationalist groups, Christian fundamentalist groups and media outlets.
- On 3-5 September 2018, the United Nations Committee on the Rights of Persons with Disabilities examined Poland's report on the implementation of the Convention on the Rights of Persons with Disabilities, and issued related recommendations. The Commissioner for Human Rights, as the country's independent body monitoring the implementation of the Convention, submitted the Commissioner's report in 2015 and updated it in 2018 in the form of a so-called alternative report. The Committee's recommendations are consistent with the postulates of the Commissioner.

Looking back at the last years it should also be noted that in 2018, the rights of Polish citizens were of special interest for European institutions and the EU justice system, and were subject to review by them. The process of the rule of law started to be assessed, which - regardless of the final result - gives a very important message to all citizens: it tells them they are members of a community for which democratic values and the rule of law are of utmost significance.

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