



International Ombudsman Institute
Institut International de l'Ombudsman
Instituto Internacional del Ombudsman

The Polish Commissioner for Human Rights
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Elżbieta Witek, Speaker of the Sejm
Tomasz Grodzki, Speaker of the Senate
Julia Przyłębska, President of the Constitutional Court

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In recent years, the International Ombudsman Institute (IOI) has been repeatedly dealing with difficult circumstances that pose a threat to the independent and continuous work of Ombudspersons around the world. As the only global organization for promotion of Ombudsman Institutions (OI), the International Ombudsman Institute takes such menaces very seriously and supports its member institutions in every possible way.

The IOI has been informed that a case of abstract constitutional control concerning the constitutionality of Article 3 para 6 of the Act on the Commissioner for Human Rights of Poland is pending before the Polish Constitutional Court. The issues, which are the subject of the case, concerning the term of office of the Ombudsman and the transition period before the appointment of a new officeholder, are of great importance to the IOI. One of the key objectives of the IOI is to ensure that OI are able to fulfil their mandate without interruption and to perform their functions in the most effective way.

While the IOI fully acknowledges the independence of the judiciary, the IOI initiated a brief survey on the constitutional and legal provisions in European jurisdictions concerning the extension of the

mandate of an Ombudsperson pending the appointment of his/her successor. According to this comparison, the relevant legislations of a number of OI, e.g. the People's Advocate (*Albania*),¹ the Federal Ombudsman (*Belgium*),² the Public Defender of Rights (*Czech Republic*),³ the Parliamentary Ombudsman (*Denmark*),⁴ the European Ombudsman (*European Union*),⁵ the Seimas Ombudsman (*Lithuania*),⁶ the Ombudsman of Malta (*Malta*)⁷ the People's Advocate (*Romania*)⁸ as well as the Síndic de Greuges de Catalunya (*Spain*)⁹ stipulate that the Ombudsperson of the institution shall remain in office until his/her successor has been elected or appointed, or has taken the oath of office.

Other OI, notably the People's Ombudsman (*Croatia*),¹⁰ the Chancellor of Justice (*Estonia*),¹¹ the Chancellor of Justice (*Finland*),¹² the Commissioner for Fundamental Rights (*Hungary*),¹³ the Ombudsman of Kosovo (*Kosovo*),¹⁴ and the Ararteko, the Ombudsman for the Basque Country (*Spain*)¹⁵ have stated that until a new head of the OI has taken office, one or more deputies shall act as the incumbent of the OI.

The Principles on the Protection and Promotion of the Ombudsman Institution (*"The Venice Principles"*)¹⁶ state in Art.6 that:

- *"The Ombudsman shall be elected or appointed according to procedures strengthening to the highest possible extent the authority, impartiality, independence and legitimacy of the*

¹ See Article 9 of the Law on the People's Advocate of Albania, passed on 4 February 1999, last amended in 2014.

² See Article 3 para 1, last sentence of the Federal Ombudsmen Act, Kingdom of Belgium, passed on 22 March 1995, last amended in 2007.

³ See Section 4 para 1 on the Act on the Public Defender of Rights (Ombudsman), passed on 8 December 1999, last amended in 2009.

⁴ See section 2 para 3 of the Ombudsman Act No. 473, passed on 12 June 1996, last amended in 2009.

⁵ See the Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom).

⁶ See Article 9 para 4 of the Law of the Seimas Ombudsmen of Lithuania of 3 December 1998, last amended in 2017.

⁷ See Chapter 385 Section 5 para 2 of the Ombudsman Act, passed on 25 July 1995.

⁸ See Article 8 of the Law on the Organization and Functioning of the Ombudsman of Romania of 13 March 1997, last amended in 2018.

⁹ See Article 16 of the Act on the Síndic de Greuges, passed on 24 December 2009.

¹⁰ See Article 12 of the Ombudsman Act of Croatia, passed on 29 June 2012.

¹¹ See Chapter XII of the Constitution of the Republic of Estonia, passed on 28 June 1992, last amended in 2003.

¹² See Section 16 of the Parliamentary Ombudsman Act of Finland, passed on 1 April 2002, last amended in 2015.

¹³ See Article 15 of the Act CXI on the Commissioner for Fundamental Rights, passed on 1 January 2012.

¹⁴ See Article 14 para 3 of the Law on the Ombudsperson, passed on 26 June 2015.

¹⁵ See Articles 5 and 8 of the Act establishing the Ararteko, the Ombudsman for the Basque Country, passed on 22 March 1985.

¹⁶ Venice Commission, Opinion No. 897/017, The principles on the protection and promotion of the ombudsman institution (*"The Venice Principles"*), Strasbourg 2019.

Institution. The Ombudsman shall preferably be elected by Parliament by an appropriate qualified majority.”

- They furthermore specify in Art. 7 that the “(...) *procedure for selection of candidates shall include a public call and be public, transparent, merit based, objective, and provided for by the law.*”
- Moreover, in Art 24 the Venice Principles stress that “*States shall refrain from taking any action aiming at or resulting in the suppression of the Ombudsman Institution or in any hurdles to its effective functioning, and shall effectively protect it from any such threats.*”

Consequently, the IOI concludes that the existing provision regulating the transitional period of the Polish Commissioner for Human Rights (Art. 3 para 6 of the Act on the Commissioner for Human Rights) is in line with international principles and also common among many other European jurisdictions.¹⁷

The IOI would like to stress that it is indispensable for the effective functioning of an Ombudsman institution, in order to allow citizens to receive proper service, to have an uninterrupted term of office until a new Head of the Ombudsman institution is elected.

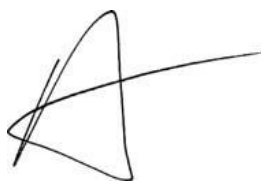
As the only global organization for the promotion of Ombudsman institutions, the IOI reiterates its support for the Polish Commissioner for Human Rights. A strong, effective and independent Ombudsman Institution, in compliance with the Venice Principles, is a key element for the promotion and protection of human rights in Poland, Europe and beyond.

The IOI remains available for any support and cooperation on this matter.

Yours sincerely,



Peter Tyndall
IOI President



Regional President Europe
Rafael Ribó



Werner Amon
IOI Secretary General

¹⁷ The IOI acknowledges and endorses the Urgent Note on International Standards and Comparative Practices applicable to the Term of Office of Ombudspersons and Transition Period before Appointment of the new Officeholder – Poland, issued by the OSCE Office for Democratic Institutions and Human Rights, Warsaw, 12 October 2020 (Note-Nr.: NHRI-POL/390/2020).