

SUMMARY

Report on the Activities
of the Commissioner for Human
Rights in 2022



RZECZNIK
PRAW OBYWATELSKICH

SUMMARY

Report on the Activities of the Commissioner for Human Rights and on the State of Observance of Human and Civil Rights and Freedoms in 2022



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In 2022, the office of the Commissioner for Human Rights was held by Marcin Wiącek

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Foreword by the CHR

Dear Readers,

2022 was a complex and challenging year for the people of our country and the institution of the Commissioner for Human Rights. We started to recover from the health and social trauma caused by the COVID-19 virus pandemic. The problems regarding the judiciary remained unsolved and the related rulings of European courts were not implemented. The refugee crisis on the Polish-Belarusian border continued. In addition, new problems significantly impacting citizens and the functioning of the state emerged. They included the war in Ukraine, economic problems and perturbations connected with the implementation of the Polish Deal, and tightening of the



Criminal Code provisions. The scale and consequences of these phenomena resulted in a record number of 75,239 applications received by the CHR Office. In view of the events that took place at least three conclusions can be drawn. Firstly, there is a growing dissatisfaction of citizens with the state of observance of their freedoms and rights. Secondly, the level of legal awareness in the society is increasing, thanks to which people more readily perceive violations of their rights and freedoms and know to whom they can turn for assistance. Thirdly, the figures are a reflection of growing trust in the institution of the Commissioner for Human Rights. Of course, this involves an increased effort on the part of the CHR Office staff. I would like to take this opportunity to warmly thank all my colleagues. We all have the mission of providing assistance to citizens with engagement and responsibility. Many problems have been solved and many issues have been clarified, also thanks to good cooperation with other public institutions, for which I also express my gratitude. We closed the year in the belief that the work aimed at strengthening human rights and protecting human dignity has not only a profound meaning but also a good future.

This publication constitutes a summary of the report on the activities of the Commissioner for Human Rights and on the state of observance of human and civil rights and freedoms in 2022. The report has been submitted to the Sejm and the Senate of the Republic of Poland pursuant to Article 212 of the Polish Constitution. The full version of the report is also available on our website. I strongly encourage you to read this publication.

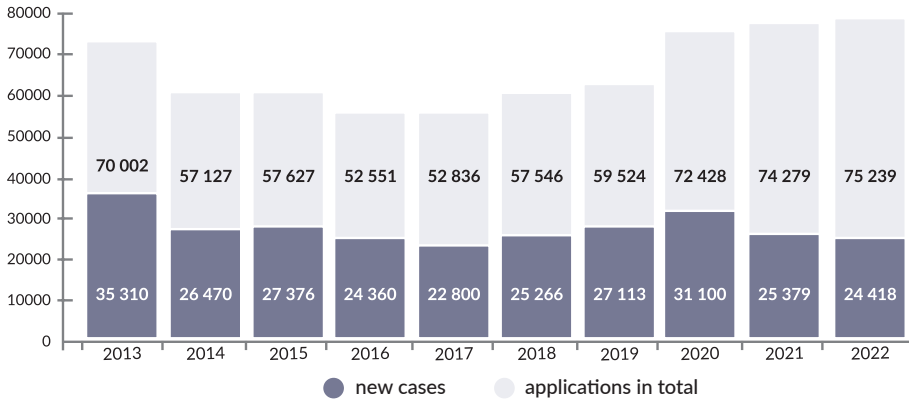
Marcin Wiącek
Commissioner for Human Rights

Introduction

Throughout 2022, the number of applications for assistance submitted to the Commissioner for Human Rights remained very high and reached 75 239, the most in the history of the Commissioner’s office (for comparison, in 2019 the number of incoming applications was 59 524). The very large inflow of applications since 2020 has been caused e.g. by the declaration of the state of epidemic, which resulted in major disruptions in the functioning of public institutions, in sudden unexpected changes in legislation and consequent restrictions of basic human rights and freedoms.

Moreover, in 2022 new types of cases appeared that were brought before the Commissioner for Human Rights in large numbers. The Russian armed aggression against Ukraine resulted in an increased inflow of applications filed by Ukrainian citizens seeking refuge in Poland and by Polish citizens who provided shelter to them. Also, the changes in tax law (the Polish Deal) introduced hastily and without appropriate consultations caused an increased inflow of applications from taxpayers who questioned the adopted solutions or were unable to find their way in the new tax reality. Another wave of applications incoming in 2022 resulted from changes introduced by the legislator in penal execution law. The changes, in the opinion of applicants held in prisons or remand prisons excessively limited their rights or freedoms.

Figure 1. Inflow of applications to the CHR Office in the last ten years (2013–2022) (the data is also presented in table 1 in the section “Tables”)



The total number of applications received throughout the 35 years of work of the CHR Office in Poland has been 1 850 178.

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

People whose matters have been dealt with to their satisfaction by public authorities do not seek assistance by the Commissioner for Human Rights. Such as-

sistance is sought by persons whose claims or expectations have not been met or those who believe that public authorities excessively interfere with their freedoms or rights. This publication is, therefore, a specific reflection of the applicants' dissatisfaction with the actions or passive approach of public authorities, verified as a result of explanatory activities undertaken by the Commissioner and then assessed from the point of view of the standards of protection of the rights of individuals.



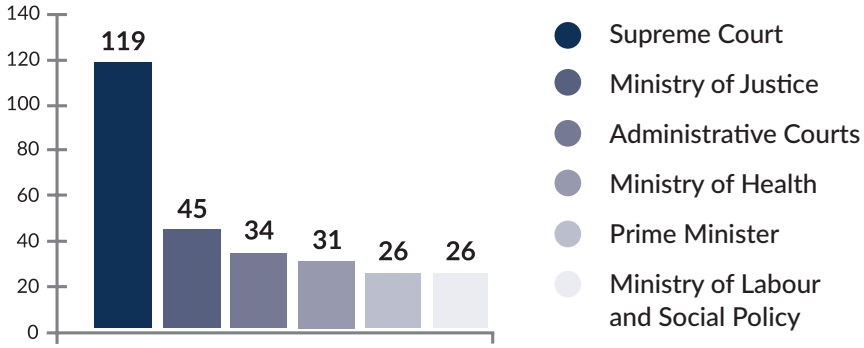
CHR Marcin Wiącek presenting a report on the activities of the Commissioner for Human Rights

In 48.6% of the cases the Commissioner's action was limited to the provision of explanations or information to the applicants regarding measures and remedies available to them, and in 36.2% of the cases relevant proceedings were started. The proportion shows that there is still a great need for legal information and advice, which is not met by the institutions formally required to provide it. In many cases, applications filed with the Commissioner come from people who are lost in the maze of regulations and are looking for advice on how to solve their legal problems. This is confirmed also by a large number of telephone calls during which advice is provided to citizens, which in 2022 reached 35 500.

In 2022 the Commissioner, apart from undertaking explanatory proceedings and sending intervention letters regarding individual cases, sent 254 problem-specific letters of intervention to the competent authorities. Among them were 101 letters concerning the need to take legislative action in order to remove the identi-

fied violations of human and civil rights and freedoms caused by the content of normative acts. The Commissioner’s intervention letters are a tool which enables assistance provision not only to the applicants but also to all persons whose freedoms or rights have been violated and who are in a similar situation.

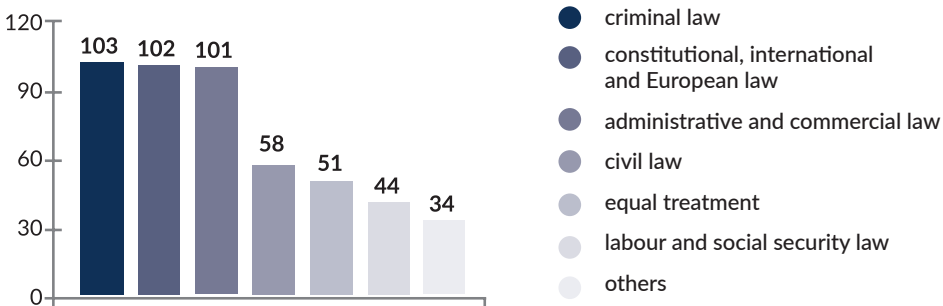
Figure 2. Main addressees of the Commissioner’s general intervention letters and case-specific legal remedies in 2022 (the data is also presented in table 2 in the section “Tables”)



In the reporting period, the Commissioner also made use of procedural measures for the protection of people’s freedoms and rights. Pursuant to his procedural powers, the Commissioner filed 3 applications with the Constitutional Tribunal and joined 25 proceedings before the Tribunal. He also filed 88 cassation appeals with the Supreme Court, 26 extraordinary complaints with the Supreme Court, 16 cassation appeals with the Supreme Administrative Court, 23 complaints with voivodeship (i.e. provincial) administrative courts, and 2 applications to the Supreme Administrative Court for interpretation of legal regulations. He also joined 33 proceedings before national courts and 8 proceedings before the European Court of Human Rights and the Court of Justice of the European Union.

A list of the CHR’s general intervention letters by type and number is included in Table 3 in the section „Tables”.

Figure 3. The Commissioner’s 493 general intervention letters and case-specific legal remedies by problem area in 2022 (the data is also presented in table 4 in the section “Tables”)



■ Difficult budgetary situation of the CHR

The significant increase in the number of applications filed with the Commissioner for Human Rights in 2020-2022 and the assignment of the new powers (to file extraordinary complaints) to the CHR was not accompanied by a proportional increase in the budget. A slight improvement was observed in the area of examining requests to file an extraordinary complaint with the Supreme Court. The improvement took place in 2022, i.e. four years after the introduction of the system of extraordinary complaints, when the Commissioner received the first additional funds for carrying out the task. It has made it possible to finance 9 new full-time positions which, however, is still insufficient in relation to the existing needs.

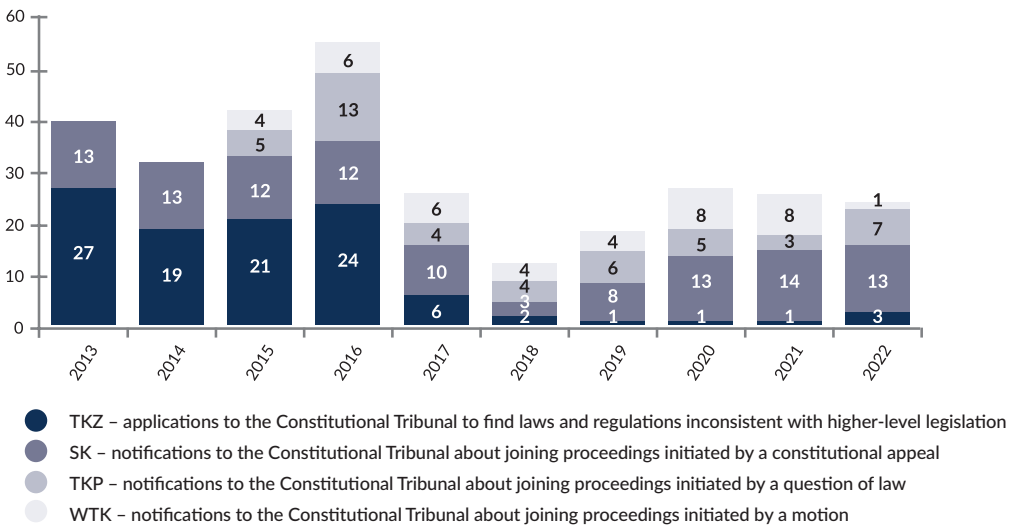
The repeatedly reported problem of insufficient funding for the exercise by the Commissioner for Human Rights of the mandate of the National Preventive Mechanism, which is implemented by carrying out preventive visits to places where people are deprived of liberty, has not been resolved either. In 2022, 10 employees of the National Preventive Mechanism visited 79 places of deprivation of liberty. However, there are approximately 3,800 such places in Poland which may be visited within the mandate of the National Preventive Mechanism. As a result, the visits carried out by the Commissioner within this mandate fail to meet the requirement of regularity, arising from the international agreement, and have thus been assessed by international bodies as insufficient.

Overview of key problems relating to human rights in Poland

The critical comments made in previous years by the Commissioner for Human Rights, regarding not only the quality of legislation but also the law-making process, are still valid. Acts of Parliament that are important from the point of view of citizens and their rights and freedoms are sometimes passed in haste, without any consultation. Comments, including those of the Commissioner for Human Rights, indicating that a given draft breaches human rights standards, are often not taken into account in the course of the legislative process. Moreover, the Senate’s legislative initiatives that are important from the point of view of the rights of individuals and that have been submitted to the Sejm are not followed up.

The judiciary crisis triggered by changes in the method of appointing judges to the National Council of the Judiciary remains unresolved. Changes introduced in the functioning of common courts, administrative courts, the Supreme Court and the National Council of the Judiciary have not only failed to improve the functioning of the courts but have added to the problems in their smooth operation. Thus, the waiting time for a case to be heard by a court has increased. Above all, however, the said changes have led to undermining the guarantees of independence and impartiality of the judiciary, which are of fundamental importance for human rights protection. This has been reflected in numerous judgments of the European Court of Human Rights (ECHR) and of the Court of Justice of the European Union (CJEU). As a result, many court proceedings in their initial phase do not focus on the substance of claims brought by the parties but aim to establish (which often takes several months) whether the composition of the court panel appointed to hear the case satisfies the independence and impartiality requirements.

Figure 4. Applications filed by the CHR with the Constitutional Tribunal and constitutional appeals, motions and question of law to the Tribunal, joined by the CHR in 2013–2022 (the data is also presented in table 5 in the section “Tables”)

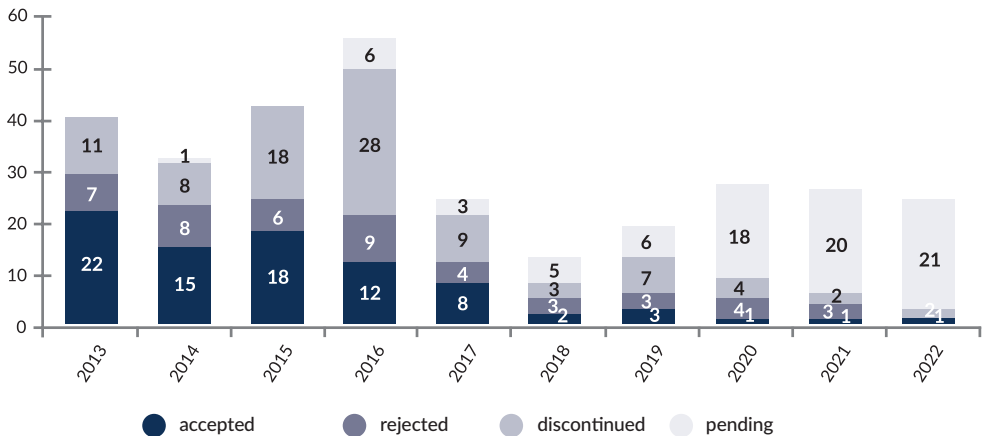


There have also been unprecedented cases of **non-enforcing ECHR judgments and interim measures** (e.g. ECHR Judgment of 7 May 2021 in the case *Xero Flor v. Poland*), which is a breach of Poland's obligation to respect final judgments in cases to which Poland has been a party and, in the case of interim measures, a breach of the obligation not to obstruct the effective exercise of the right to individual complaint.

The lengthiness of pre-trial detention remains a systemic problem. The average duration for which this measure is applied keeps increasing – it is currently around 9 months. The number of people deprived of liberty under this procedure is growing, although their right to a presumption of innocence has not yet been undermined by a final conviction. In addition, a legislative change is needed regarding the grounds for applying pre-trial detention, which would implement the case law of the Constitutional Tribunal.

The introduction of life imprisonment sentence without the possibility to apply for release on parole into the criminal law by the legislator must be considered a violation of the absolute prohibition of cruel or inhuman punishment. The change does not respect the standard established both in the Polish Constitution and in the European Convention on Human Rights.

Figure 5. Applications examined by the Constitutional Tribunal to find laws and regulations inconsistent with the Constitution; and constitutional appeals, motions and questions of law to the Tribunal, joined by the CHR in 2013–2022. The graph shows the status, as of 31 December 2022, of all cases referred to the CT by the CHR. The data is broken down by year of the CHR's application filed with the Tribunal. In 2017, in two cases the CHR was not granted consent to join proceedings (the data is also presented in table 6 in the section "Tables")



Also, the practice should be pointed out of **restricting the possibility for persons detained on remand to contact their family members, including minor children, which violates their right to protection of family life.** The amended penitentiary law provisions excessively limit the telephone contact of persons de-

prived of liberty with the outside world. This has been the subject of numerous complaints to the CHR.

The threats to the protection of the right to privacy and freedom of communication, emphasised by the Commissioner for several years, still exist. **The provisions in force allow the Police and other services to use operational control on a large scale and to collect telecommunications, postal and internet data without any limitations. At the same time, these provisions do not ensure effective control, independent of the executive, over the acquisition of these materials and data.** Courts receive only aggregate information on pending proceedings in which telecommunications data are gathered. However, they do not have the tools to protect the information autonomy of individuals. In order to identify, prevent or combat terrorist offences, the Head of the Internal Security Agency may, without the court's consent, order that operational activities are carried out for three months with regard to persons who are not Polish citizens (which in practice means that such activities may also be carried out with regard to Polish citizens who are recipients or senders of information in relations with a foreigner). In the case of these operational activities, the principles of subsidiarity and proportionality do not have to be adhered to. In the context of the right to privacy protection, the disclosed use of the "Pegasus" system for operational control needs to be clarified, as its capacity to obtain and process data on an individual exceeds the limits set by the applicable legislation.

Changes that led to **restricting the right of German minority to teach its own language** must also be assessed negatively. As a result of these changes, all national and ethnic minorities have three hours per week of their language teaching, except for German minority for which one hour per week of German language teaching is envisaged. **This change violates the constitutional right of a national minority to preserve and develop its own language.**

Regarding the protection of foreigners' rights, **the actions taken by both the public and the authorities to provide assistance and shelter to persons (primarily Ukrainian citizens) seeking protection on the territory of Poland due to the Russian aggression against Ukraine deserve recognition.**

However, the situation of foreigners caused by the migration crisis provoked by the Belarusian authorities on the Polish-Belarusian border is different. In this case, **foreigners, including families with children, crossing the Polish state border are the pushed back to Belarus. This practice employed against persons intending to apply for a refugee status in Poland violates both the international obligations and the national regulations of Poland**, as reflected in decisions of the Administrative Court (not yet final and binding). Also, in the Supreme Court case law the restrictions of freedoms and human rights introduced under the state of emergency in the area close to the border with Belarus are assessed negatively. When examining the cassation appeal filed by the Commissioner for Human Rights, the Supreme Court held that regulations on the state of emergency introducing a ban, unlimited in time and place, on access to the area covered by the state of emergency

and excluding the possibility of journalists to access said area, exceeded the scope of legislative authority and did not meet the proportionality test.

With regard to the freedom of speech and the right to information, it should be pointed out that **the National Broadcasting Council, which is the constitutional state body that should act as the guardian of the public interest and of the freedom of speech, has been deprived of its influence on the structure of bodies that manage the activity of public television**, as confirmed by the Constitutional Tribunal in its judgment, issued in 2016 and not yet implemented. Thus, the National Media Council (an extra-constitutional agency, which is not apolitical) remains responsible for appointing and dismissing the authorities of public television entities. In the light of the court judgment concerning the takeover of Polska Press by Orlen, **it is also necessary to take legislative action with the aim to ensure that in antitrust proceedings the freedom of social media, the freedom of speech, and the freedom of obtaining and disseminating information are guaranteed**. Indeed, the Court has stated that currently it is impossible in these proceedings to account for the issue of media pluralism when controlling media concentration.

The **system of legal incapacitation has not yet been replaced by the model of supported decision-making**. Thus, legally incapacitated persons are still dependent on other people's will in conducting their social lives, even if they are able to express their will themselves. This situation undermines their inherent and inalienable dignity. **There has been no change either in the legal situation of caregivers of persons who have been considered disabled in their adult age**. Although the Constitutional Tribunal's judgment regarding the matter was issued already in 2014, it has not yet been enforced. As a result, caregivers have to initiate lengthy proceedings before administrative bodies and administrative courts in order to receive financial support in the same amount as caregivers of persons who have been considered disabled in their childhood.

Actions taken in connection with the construction of the Central Transport Hub cause public concern and give rise to objections voiced by municipalities and their residents. The objections concern the planned location of related investments as well as the rules governing payment of compensation for expropriated real estate.

The high level of inflation enhanced the problem of valorisation of family benefits, care benefits, social assistance payments, and unemployment benefits, as well as the income thresholds for said benefits. This is because, in many cases, these benefits and application thresholds have not kept pace with the increase in the cost of living, in particular the increase in the price of electricity, heating, and gas. As a result, **families finding in difficult material and social situation do not receive adequate support from public authorities**.

The situation as regards exercising the right to equal access to publicly funded health services has not improved. The period of intensive efforts to counter the epidemic threat has aggravated the problems that have existed for years, i.e., the

shortage of doctors and nursing staff, as well as the system's bureaucratisation and underfunding. **The progressing decline of mental health care, including mental health care for children and adolescents**, despite the increased demand, should be mentioned. Access to health care is still difficult and inconsistent with the standards arising from the Constitution.

As regards tax issues, **the legislative chaos that accompanied tax changes introduced by the so-called Polski Ład (Polish Deal)** should first be noted. As a result of legislative work carried out in haste and without proper consultation further work was undertaken immediately after the enactment of new legislation, to amend it and introduce the necessary corrections in tax year. Such tax law making does not build taxpayers' trust in the state and the laws enacted by the state.

The events that took place in 2022 confirmed **that public authorities fail to appropriately perform the constitutional duties to protect the environment and to pursue policies ensuring environmental security for present and future generations**. An example is the environmental disaster in the Odra River.

These are only some of the systemic problems identified in connection with complaints handled by the Commissioner for Human Rights in 2022. Their more detailed description has been given in the CHR annual report, along with a thorough presentation of problems in the sphere of human rights and civil liberties.

In this publication, Number under which cases are handled at the CHR Office are given in this publication in brackets. More detailed information may be obtained at the Office. Those interested should always quote the case number or find the case on our website bip.brpo.gov.pl.

Economic crisis and financial problems of citizens

■ Economic situation and increase in energy prices

Insufficient benefits for the most disadvantaged groups

In the current socio-economic realities, with a significant increase in the cost of living and a significant decrease in the value of money, benefits for persons and families in need, i.e. family and care benefits, child benefit, benefit paid from the alimony fund, social assistance allowances and unemployment benefit are insufficient. The Commissioner for Human Rights received requests to intervene in cases concerning benefits for families with children, persons with disabilities and their care providers, as well as persons and families in difficult life situation and financial situation.

The CHR requested the Minister of Family and Social Policy **to consider taking measures to effectively protect the most vulnerable and at-risk groups**. The CHR indicated that the adopted mechanisms, procedures and dates for verifying the income criteria as well as the size of social benefits need to be reviewed and modified accordingly, as they do not respond to the current challenges.

In her response, the Minister assured that the size of family benefits and the income criteria of eligibility for the benefits were subject to verification (valorisation – in the case of nursing benefit) as provided for in the Act on Family Benefits. As regards the issue of meeting demands of carers of persons with disabilities, such as changing the conditions of entitlement to care benefits and increasing their amount, the Minister noted that such changes require systemic solutions. (III.7065.165.2022)

Tax on capital gains

In times of high inflation, with low interest rates on deposits, the taxation of capital gains represents a significant fiscal burden for households. The so-called 'Belka tax' has a negative impact on the willingness to save and accumulate capital. This problem mainly affects a group of less well-off citizens, who pointed out that the tax is levied on funds that have already been taxed, as these are usually income from work, pensions or annuities. This tax is perceived as a 'punishment' for saving capital.

The Commissioner requested the Minister of Finance for his view on the legitimacy of abolishing the tax on capital gains. The Minister replied that the abolition of the tax would cause a loss of revenue for the state budget, which would have to be compensated by revenue from other sources. The Minister assured that the legitimacy of changes in the income tax as regards reliefs and exemptions for cash

capitals, in particular changes aimed at encouraging long-term investment, is being analysed. (V.511.719.2022)

Increase in heating and electricity prices

Many of the complaints received by the Commissioner have concerned the increase in heating prices and the aid programmes implemented by the government. The most frequently reported problem was the exclusion of certain social groups from these programmes.

The Act on **Inflation Allowance** provided for state support for people most in need to cover a part of their electricity costs and rising food prices. The allowance amount would be increased by 25% if the household used solid fuel for heating. This discriminated against households that used LPG and fuel oil for heating.

The CHR requested the Minister of Climate and Environment to take legislative action aimed at supporting all households affected by fuel price increases. The Minister replied that the legislative action under the Act on Inflation Allowance was not intended to discriminate against any households but to support those who were most vulnerable to the effects of high inflation and the associated increased cost of living. The Minister explained that the higher inflation allowance for household that used solid fuels for heating was the result of an amendment tabled by a group of MPs. (IV.7215.81.2022)

The **coal allowance** has also posed many problems. The Act introducing the allowance and its subsequent amendments raised doubts among those seeking the Commissioner's assistance. They pointed out that certain groups of recipients were not covered by the Act. The amendments worsened the situation of citizens who had previously met the eligibility requirements for the allowance but whose applications were rejected after the amendments came into force. The amendments complicated the legal situation and led to interpretational chaos. The CHR also received signals that applicants, especially senior persons, had problems with filling in the documents correctly and thus submitted incorrect or incomplete declarations.

The Minister of Climate and Environment pointed out that the provisions of the Act on Coal Allowance, in their original wording, were abused and led to fraud attempts on significant scale. The amendments introduced to the Act stabilised the situation and made it possible to grant the coal allowance to those who should actually receive it. In 2022, the coal allowance went to approximately 3,970,000 households. (IV.7215.902.2022)

The Commissioner received information from citizens who feared a drastic increase in the cost of heating, regardless of the heating source used in their households. The problem most frequently reported was that **certain groups were being left out of assistance programmes**. There were also objections as to the functioning of these programmes, regarding, inter alia, energy consumption limits affected by the energy price freeze.

The multitude of assistance mechanisms introduced by successive laws may cause difficulties in obtaining support. As a rule, taking advantage of one of such

mechanisms excludes the possibility of using others. However, the choice of the mechanism optimal for a given recipient of state aid requires review of all legal acts governing it. It was inevitable that objections would be raised by those who benefited from a particular measure before another one was provided – offering more profitable solutions.

The Commissioner submitted these assessments and conclusions to the Ministry of Climate and Environment, hoping that assistance mechanisms will be reviewed, taking into account the groups of citizens potentially excluded from them. In response, the Ministry outlined measures taken to mitigate the effects of energy crisis and inflation, and to provide assistance to those recipients most in need of support. (V.7215.13.2022)

The Commissioner also received complaints that residents of multi-apartment buildings and certain vulnerable recipients were not protected against the **price increases of heat supplied by companies operating gas-fired boiler plants**. From the complaints, it was apparent that the increases in fees and charges for the premises were so high that residents were unable pay them without compromising their ability to meet other needs. The effects of such drastic increases were not mitigated by the Act on Inflation Allowance or other anti-inflation shield measures.

The CHR requested the Minister of Climate and Environment to consider the need for legislative action. The Minister replied that measures had been taken to reduce the increase in heat consumers' bills, namely the rate of value added tax on heat had been lowered. The Minister also informed that more far-reaching solutions were being analysed. (IV.7215.108.2022)

The Commissioner also received complaints from housing cooperatives and housing communities, drawing attention, inter alia, to **electricity sellers applying the increased rates while billing cooperatives and communities for electricity used in the common parts of properties**. The Commissioner inquired about this matter with the Energy Regulatory Office, which informed that the scope of statutory competence of the President of the Energy Regulatory Office did not provide grounds for taking steps to change the situation. The legal situation changed after the Act on Special Solutions for the Protection of Electricity Consumers in 2023 in Connection with the Situation in the Electricity Market was adopted. Thus, the CHR addressed the Energy Regulatory Office once again. The Commissioner pointed out that said Act imposed the obligation on energy companies acting as *ex-officio* energy sellers to submit tariffs for approval by the President of Energy Regulatory Office, however, such companies are exempted from the obligation to submit tariffs for approval under Article 49 of the Act – Energy Law. (IV.7215.768.2022) As a result, electricity sales agreements with housing communities were terminated on a massive scale, as pointed out in the complaints submitted the CHR.

The Commissioner also drew the attention of the Energy Regulatory Office to the problem of housing communities that have no possibility to conclude electricity sales agreements for common properties. (IV.7215.853.2022)

In the complaints filed with the Commissioner it was also indicated that investors of residential buildings using the so-called **building site power supply** are **not protected** against electricity price increases. When the Commissioner enquired whether immediate measures would be taken to cover natural persons who build single-family houses for their own needs with support, the Ministry of Climate and Environment responded that the problem was solved by the Act on Special Protection for Certain Consumers of Gaseous Fuels in 2023 in Connection with the Situation on the Gas Market. (IV.7215.911.2022)

■ The Polish Deal

Many complaints were caused by changes in personal income tax (the so-called Polish Deal).

The CHR Office received a high number of complaints e.g. **from pensioners who, as a result of the Polish Deal, received lower benefits compared to last year**. They voiced a feeling of being wronged and pointed out that they had been treated disrespectfully by the legislator who, at the end of their life's journey, introduced legislation that reduced their pension benefits at the time of high inflation and an epidemic. Pensioners did not understand why they were not eligible for the middle-class tax relief. The problem had already been pointed out when legislative work on the Polish Deal had been underway. The CHR had also drawn attention to this issue, pointing to the need to develop solutions that would allow this group of citizens to compensate for the lack of tax deductibility of health insurance contributions.

The Commissioner wrote an intervention letter to the Minister of Finance who replied that the new tax solutions were beneficial or neutral for about 90% of taxpayers in Poland. The Minister informed that almost 18 million citizens gained on them, and nearly 9 million Poles stopped paying PIT, including 2/3 of pensioners. He also reported that the government had decided to introduce new solutions beneficial for pensioners who receive higher benefits, with the aim of offsetting the increased tax burden due to the lack of possibility to deduct health insurance contributions from tax. (V.511.77.2022)

In complaints received by the Commissioner, attention was drawn **to the impossibility of people receiving social assistance benefits, such as sickness benefit or maternity benefit, to take advantage of the middle-class tax relief**. This is because, under the regulations, those who choose to claim the middle-class tax relief may ultimately lose their entitlement to it due to the fact that they would be receiving benefits during the tax year and would therefore not earn income in the required range. The Commissioner requested the Prime Minister to present his opinion on the matter. The Minister of Finance explained that the amendment to the Polish Deal, which came into force on 1 July 2022, abolished the middle class tax relief. It also introduced a mechanism ensuring that no taxpayer (who had been eligible for the middle class tax relief) would lose out as a result of the abolition of the relief. (V.511.134.2022)

In the requests received by the Commissioner, the issue was also raised of the worsening situation of single parents caused by the Polish Deal regulations, which eliminated the provisions on preferential taxation of such persons. Citizens informed the Commissioner that this ad-hoc amendment, introduced by way of a parliamentary amendment, with no public consultation, took them by surprise. The Commissioner appealed to the Minister of Finance to reinstate the previous regulation. The Ministry responded that a draft amendment to the Polish Deal had been prepared to meet the expectations of single parents, reinstating the former rules. Therefore, the Commissioner appealed to the authorities to reinstate the rules on single parent tax return applicable for almost 30 years. Then the Commissioner submitted comments to the Senate, asking it to make relevant amendments. The Senate adopted the amendments and the Sejm incorporated them. As of 1 July 2022, single parents have been restored the possibility of be taxed jointly with their child. (V.511.5.2022)

Another problem concerned the legal uncertainties related to the provisions of the Ministry of Finance regulation that changed overnight the **rules for settling advance income tax payments by certain payers in 2022**. This was intended to streamline the process of implementing tax changes, so that in the following months the taxpayers would not receive a salary lower than resulting from the programme assumptions. In his letter to the Ministry of Finance, the CHR pointed out that the regulation went beyond the delegation of legislative power. In response, the Ministry informed that the regulation was an ad hoc solution and that said solution had been transferred to the PIT Act, and that as at 1 July 2022 changes were introduced, more favourable to taxpayers. (V.511.221.2022)

The CHR also pointed out that following the implementation of the Polish Deal **the situation of individuals and institutions that receive funds from the 1% of tax donated to public benefit organisations has deteriorated**. In his intervention letter to the Minister of Finance, the Commissioner pointed out that this was a consequence of raising the tax-free amount to PLN 30,000 as well as of raising the second threshold of the tax scale to PLN 120,000. The Minister informed that the amendment changed the rules for donating a portion of the tax to a public benefit organisation. After the changes, a taxpayer can donate 1.5% of the tax due instead of 1%. This change already applied to the 2022 tax return. (V.511.214.2022)

The Commissioner received information that, as a result of entry of the Polish Deal into force, taxpayers are suffering double **negative tax consequences related to the obligation to pay the health insurance contribution**. People who complained about this solution pointed out that the contribution is no longer tax deductible and increases the taxable base. The Minister of Finance replied that by eliminating the deductibility of this contribution from PIT, the legislator exercised its discretion to grant reliefs and give tax remissions. The Minister added that this kind of preference was not a standard in the European Union: in most countries, health insurance contributions are compulsory and not deductible. (V.511.392.2022)

Entrepreneurs also complained about the new regulations on the settlement of health insurance contribution, pointing out the different way of determining income

for health insurance contribution purposes and for tax purposes. The Ministry of Health informed that a public consultation was underway in the course of which some proposals were formulated to simplify the determination of the monthly health insurance contribution, which would apply starting in 2024. (V.511.767.2022)

Many people expressed their concerns with **the negative tax consequences for citizens following the entry of the so-called Polish Deal 2.0 into force, on 1 July 2022**. Doubts were raised as to whether citizens would actually gain from the PIT reduction from 17% to 12%. Objections were also raised by tax law academics. The CHR requested the Ministry of Finance to present its position, noting that the amendment was introduced during the tax year and will apply to income (revenue) earned from 1 January 2022. Thus, according to the well-established case-law of the Constitutional Tribunal, this must not worsen the tax situation of citizens.

The Minister replied that the thesis on taxation increase was unfounded. (V.511.760.2022)

Meetings

In the context of doubts regarding tax consequences for citizens following the entry of the Polish Deal 2.0 into force, in July 2022, a meeting took place between Macin Wiącek, Deputy Minister of Finance Artur Soboń and experts representing the Ministry of Finance, the Ministry of Health and the Social Insurance Institution (ZUS).

Rights of persons with disabilities

■ 10 years of the UN Convention on the Rights of Persons with Disabilities in Poland

6 September 2022 marked the 10th anniversary of ratification by Poland of the UN Convention on the Rights of Persons with Disabilities. Its provisions emphasise that persons with disabilities can and should enjoy all freedoms and human rights on an equal basis with others. The Convention draws attention to the need to remove barriers that may hinder their full participation in society.

The provisions of the Convention should be translated into specific regulations in strategies, programmes, normative acts, and should improve the quality of life of persons with disabilities. The Commissioner for Human Rights is an independent institution that monitors the implementation of the Convention and promotes its provisions.

On the 10th anniversary of the ratification of the Convention, the CHR Office carried out an **information campaign**. In a series of information published on the CHR's website, some topics relevant for ensuring a dignified and independent life were presented. These included accessibility, non-exclusionary language, a system of supported decision-making, inclusive education or the participation of people with disabilities in the law-making process.



The necessity to ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities

One of the measures that ensure the effectiveness of the Convention on the Rights of Persons with Disabilities is the Optional Protocol, which grants the UN Committee on the Rights of Persons with Disabilities the competence to receive and consider communications from individuals or groups of individuals who claim to be victims of a violation of the Convention by a State Party. After examining the complaint, the Committee may make recommendations and guidelines to the state. However, this right cannot be exercised by persons under the jurisdiction of Poland, as Poland has not signed the Protocol. The CHR wrote a letter to the Minister of Family and Social Policy on this matter. The Minister informed that ratification is not planned. (XI.516.1.2015)

■ Reform of the system of disability certification

There are as many as six systems of issuing disability certificates in Poland. Four of them are focused on entitlement to disability benefits, one is focused on determining the degree of disability and the last one – on determining the entitlement to special education. This means that a given disabled person has to be examined by various specialist teams, which causes many problems for people with disabilities, particularly at the time of the pandemic. The regulations are often contradictory and confusing for people with disabilities who thus find it difficult to exercise their rights.

According to information provided by the Government Plenipotentiary for Disabled Persons, the reform of the system of disability certification, due to its complexity and financial consequences for the state budget, has been divided into three stages. In the first stage, planned to start on 1 January 2024, a system will exist in which disabled people will have assigned one of the three degrees of disability (low, moderate or severe, as at present) and one of the three degrees of difficulty in independent functioning. The latter degree will be determined based on diagnostic procedures different for people up to 18 years of age, and different for adults. In the second stage, a new model of disability assessment, based on two degrees of disability, is expected. It is also planned to implement new tools for the assessment by various specialists of the degree of disability in children and in adults. The specialists (physicians, psychologists, educators, career counsellors and social workers) will undergo appropriate preparation to use the model. In the third stage of the reform, disability degree assessment for the purpose of disability benefit award, for the purpose of education and for other purposes will be merged and unified within a single system and a new structure of disability assessment bodies will be introduced. (III.7060.1037.2015)

■ Reform of the legal incapacitation system

The Commissioner again raised the need for reforming the system of legal incapacitation, which had been highlighted in a number of his intervention letters in 2014–2019. The latest information about analytical works carried out in the Minis-

try of Justice in order to reform the system and to replace it with a model of supported decision making was received by the CHR Office in May 2019. Therefore, the Commissioner requested information on the current state of the works.

In response, the Ministry of Justice informed that analytical and conceptual works were carried out on the future model of supported decision-making in order to abolish the system of incapacitation. The Ministry stated that a bill was also drafted to amend the provisions on incapacitation. The content of the proposed regulations could not be made public, however, because the works had not yet ended. (IV.7024.26.2014)

The CHR submitted to the Ministry of Justice an opinion on the draft regulation of the Prime Minister on the establishment of an inter-ministerial team to draw up proposed normative solutions replacing the system of incapacitation with a model of supported decision-making. (XI.070.3.2022)

The Commissioner also raised the issue of voting rights of legally incapacitated persons. He pointed out that the lack of such people's right to take part in elections and to stand for election, although based on the Constitution of the Republic of Poland, is inconsistent with the requirements arising from international law, including the European Convention on Human Rights, and from European Union law. (IV.071.3.2022)

■ Personal assistance – deinstitutionalisation

The availability of assistance services is one of the most important aspects of the deinstitutionalisation process and respect for the individual's right to live independently, according to their autonomous choice. The assumptions of the Act introducing personal assistance for persons with disabilities were prepared by the Chancellery of the President of the Republic of Poland.

The CHR thanked for taking the work on the concept of the Act and made his comments. He pointed out, among others, that the assumptions of the Act do not refer to persons who are partially or totally incapacitated and would be interested in using assistant services. Thus, the work on replacing incapacitation with a system of supported decision-making should be accelerated. The draft Act assumptions also fail to address one of the key elements in ensuring that the right to independent living is exercised, which is the personal budget. Furthermore, linking personal assistance with working age needs to be reconsidered. Indeed, personal assistance means support for a person with a disability, carried out under his or her direction by another person, with the aim of enabling him or her to live independently. It also needs to be clarified whether the assistant can be a family member, a cohabiting person, or a household member. (XI.503.4.2016)

The CHR Office received complaints concerning **the rules governing the “Personal assistant for persons with disabilities” programme**. The complainants pointed out that restrictions as to who can be an assistant, in particular the exclusion of family members or relatives of persons with disabilities from this group, limits personal capacity and decision-making of persons wishing to benefit from this programme.

The Government Plenipotentiary for the Disabled explained that analyses had shown that a person with disabilities may be dependent on a carer/family member, which may result in lowering the quality of service provided. He assured that at the stage of developing the assumptions for the next Programme edition, work will be taken to improve individual regulation to ensure that Programme assumptions are implemented most universally and effectively. (XI.7061.6.2022)

■ Accessibility

Persons who are deaf and hard of hearing should have access to the means of communication, including information and communication technologies and systems, widely available or universally provided, in both urban and rural areas, on an equal basis with others. Television broadcasters must therefore ensure that their programmes are accessible for people with visual and hearing impairments, by introducing appropriate accommodations. This follows from the Broadcasting Act. In connection with the work on the **draft regulation of the National Broadcasting Council on accommodations for persons with disabilities in television programmes**, the CHR pointed out that the proposed changes are insufficient. The Commissioner recalled objections, included in a report on deaf people in Poland published in 2020, concerning the standards for Polish Sign Language (PJM) interpreting and the certification of interpreters. The regulation also fails to take into account the diversity of the deaf and hard of hearing community in terms of the language they use to communicate. The CHR pointed out, inter alia, to the need to clarify the obligation to inform about a programme with accommodations that is broadcast on another channel in parallel with the same programme without accommodations broadcast on the more popular channel. In the Commissioner's view, the proposed changes reverse the previously adopted approach aimed to ensure full accessibility of audio-visual broadcasts. The President of the National Broadcasting Council (KRRiT) indicated that the draft introduces relatively few changes. It simplifies some of the provisions and takes into account the demands presented while the previous KRRiT regulation, developed on the basis of broad consultations with communities of persons with disabilities, was in force. The legislator had foreseen that due to the number of inhabitants in the coverage area, the share of programmes in the audience, the method of distribution, and programme specialisation, as well as the needs of the audience and the capabilities of the broadcasters, a certain group of television programmes may have organisational, technical and financial difficulties in ensuring sufficient share of programmes with accommodations for persons with disabilities, as foreseen by the law. For these reasons, the legislator obliged the KRRiT to adopt a regulation providing for a lower proportion of accommodations in certain categories of programmes. (XI.815.22.2022)

The CHR pointed out the **need to implement the European Accessibility Act**, i.e. the Directive of the European Parliament and of the Council (EU) on the accessibility requirements for products and services. Member States were required to bring into force regulations necessary for its transposition, by 28 June 2022.

According to the information provided by the Ministry of Regional Funds and Policy, work on the draft Act on ensuring that economic operators meet the accessibility requirements for certain products and services is underway at the Committee for European Affairs. (XI.815.4.2022)

■ Education of persons with disabilities

The Commissioner pointed out, among others, to **the lack of possibility to learn a subsequent profession in a vocational school due to the education system reform**. Parents of students with disabilities pointed out that the educational law prevented their children from entering a level I secondary vocational school to learn a subsequent profession, because a primary school leaving certificate was required during recruitment, and their children only had a lower secondary school leaving certificate, which means that they did not meet the recruitment criteria. In the CHR's opinion, differentiating between students with disabilities based solely on their graduation document of a particular school has no basis in the legislation. The Commissioner intervened with the Minister of Education and Science.

According to the Ministry, if a disabled graduate of level I secondary vocational school wants to enter another school of the same type to learn a different profession – it is possible. A prerequisite for enrolment to level I secondary vocational school in the case of a graduate with disabilities is having a new evaluation on his/her need for special education, including the name of the new profession or the scope of training. In the case of a student who, on the basis of an evaluation on his/her need for special education, issued for a specific educational stage, was admitted to a specific school and completed it, the recommendations resulting from that evaluation have been implemented. (XI.813.1.2021)

The CHR drew attention to the need **to support students with disabilities who arrived in Poland due to the war in Ukraine**. He requested the Minister of Education and Science to provide information on initiatives taken for their benefit. He also pointed out that specialists – psychologists and therapists who speak Ukrainian – are needed in schools. Also, a fast-track verification of Ukrainian disability certificates should be introduced.

The Minister informed that he remained in contact with education superintendents and local self-government units within the framework of the Joint Committee of Government and Local Government. The Ministry of Education and Science and UNICEF signed a Memorandum of Understanding on counteracting the educational exclusion of children and youth from Ukraine. The Minister pointed out that one of the targets of governmental educational policy was “Developing the competences of teachers to work with students coming from abroad, in particular from Ukraine, as needed, as well as the competences of teachers of new subjects introduced into the core curriculum”. (XI.811.1.2022)

On request of the Commissioner, the Research Eye team conducted a study entitled **‘The situation of pupils with disabilities during the COVID-19 pandemic’**.

The aim was to identify the barriers and challenges faced by pupils with a range of disabilities attending primary schools during the pandemic and to assess how representatives of the authorities responded to these challenges. The study found e.g. that pupils in remote education experienced discrimination in three areas: access to education, access to information and subjective treatment. The study, as well as numerous complaints received by the CHR Office, demonstrate that one of the most important issues during the pandemic was to ensure access to education, adjusted to the needs and capabilities of students with disabilities. The CHR has requested the Ministry of Science and Education, the Government Plenipotentiary for Equal Treatment, the Government Plenipotentiary for Persons with Disabilities, the Ombudsman for Children and the school superintendents to analyse the report and take action to implement its recommendations. The replies of the education superintendents will be analysed and used to formulate further recommendations of the Commissioner regarding remote education of pupils with disabilities. (XI.402.1.2022)

Equal treatment of persons with disabilities, including counteracting discrimination on the grounds of disability, is one of the priorities for the Commissioner. For this reason, the Commissioner joined a case before Wojewódzki The Voivodeship Administrative Court in Gdańsk concerning **the obligation to provide a child with disabilities with free transportation to an educational institution (kindergarten for blind children) and care during the transport** (case file no. III SA/Gd 120/22). In the contested decision, the municipality offered the child's guardian reimbursement for the use of public transport, i.e. two trains and a bus, with assistance throughout the journey. The municipality stressed that it was all it could offer due to its limited budget. The Commissioner took the view that a disabled child should be provided with transport and care to the kindergarten of his/her parents' choice, taking into account his/her mobility problems and his/her problems with noticing obstacles on the way. The municipality obligation applies to the entire route – from the place of residence to the educational institution, and its financial situation has no impact on how this obligation is satisfied. The Voivodeship Administrative Court agreed with the Commissioner's arguments and, in its judgment issued on 6 October 2022, stated that the action taken by the municipality to transport the child was ineffective. The Court emphasised that the offer of the municipality proposal must cover the entire route from the place of residence to the kindergarten. The offer must also account for the objective difficulties of the child, the travel time to the selected institution, and the time for rest/leisure. (XI.7036.31.2021)

■ The situation of persons with disabilities in the context of the war in Ukraine

The CHR drew attention to **the special needs of people with disabilities arriving in Poland after Russia's aggression against Ukraine and to the need for supporting them**. The CHR's monitoring visits on the border demonstrated that many issues remain unresolved, including border crossings and reception points that are

not adjusted to the special needs of these persons. It is necessary to ensure that persons with disabilities are assisted while waiting for border control, when crossing the border, and thereafter. Ensuring that vehicles transporting persons from border crossings to reception points are adjusted to the needs of persons with disabilities is also important. Moreover, it is necessary to adapt the very reception points and to ensure that medications as well as medical and mobility equipment are available on the border. Thus, at the beginning of March 2022, the Commissioner appealed to the Minister of Family and Social Policy to bring these issues to the attention of the competent authorities.

The Ministry assured that adequate support was a priority and took measures aimed at safeguarding the needs of persons with disabilities. (XI.811.1.2022)

Organising assistance for war refugees with disabilities relied primarily on non-governmental organisations. It was from them that the Commissioner received information that the forms of assistance offered to refugees were insufficient or inadequate for their actual needs. Said organisations pointed out that many activities were taken at grassroots and required an efficient coordination system to be put in place. There were signals that people crossing the border require support in obtaining orthopaedic equipment, medications or other supporting supplies, as well as equipment to enable children with disabilities to participate in remote education. The lengthening queues to obtain a PESEL number were also a major concern. Another difficulty was the need to apply for a disability certificate in Poland, despite having an equivalent Ukrainian one. The Commissioner requested the Government Plenipotentiary for War Refugees from Ukraine to analyse the above demands.

The Plenipotentiary assured that the government was monitoring the situation and that funds from the Assistance Fund to support refugees from Ukraine were being transferred on an ongoing basis. The Plenipotentiary also informed that the government and voivodes were collaborating with NGOs. (XI.811.1.2022)

The Commissioner drew attention to **the problems faced by refugees from Ukraine in obtaining disability certificates**, as they are obliged to follow the same procedure as Polish citizens. However, this procedure does not take into account the difficulties that these persons may face, including the need to submit relevant medical documents. It is difficult, if not impossible, to meet this requirement, given that some people have lost their documentation due to the war or have left it in Ukraine. The Commissioner suggested to consider a possibility to grant disability status based on a doctor's certificate and a Ukrainian disability certificate presented.

The Government Plenipotentiary for Persons with Disabilities informed that to change the procedure of disability assessment boards, one has to change the legislation first. The Plenipotentiary provided the disability assessment boards with sample forms in Polish and Ukrainian. The boards were obliged to provide Ukrainian citizens with an interpreter and all necessary assistance in providing information on the principles of granting the disability status. (XI.811.2.2022)



Among those fleeing the war from Ukraine were also persons with disabilities. In his intervention letters, the CHR pointed out the problems they faced

■ Other problems faced by persons with disabilities

Safeguarding the rights of children with disabilities placed in social care homes is an important issue. The legislation does not provide for a procedure obliging to search for foster families for children placed in a social care homes and thus to incorporate these children in the foster care system. Hence the Commissioner requested voivodship offices to provide information and data on searches for foster and adoptive families for children placed in social care homes in the period starting when the Act on Family Support and the Foster Care System entered into force.

From the analysis of the response it is evident that the rights of children with disabilities are not fully exercised. Social welfare establishments cannot satisfy the emotional and social needs of children, including their sense of security. The stay of children in social care homes does not contribute to their well-being, as it slows down their physical and emotional development and causes deficits in social skills, including functioning in the family. The data collected show that a negligible number of children leave social care homes being transferred to foster families and adoptive families. The Commissioner requested the Minister of Family and Social Policy for a position on this issue and also for the information on

the rights of children at risk of being placed and children actually placed in social care homes.

The response emphasised that if parents are unable to care for a child, the primary form of support, regardless of the child's degree of disability, should be placing the child in foster care. Placement in a social care home should be, and usually is, the option of last resort and should, in each case, be based on assessment whether placing the child in a social care home is legitimate. It was added that changes should be aimed at of deinstitutionalisation, meaning that institutional should be replaced by care in the family environment. (III.554.2.2021)

The situation of persons with disabilities is also of interest to the Department of the National Mechanism for the Prevention of Torture (NMPT) that operates within the Commissioner's Office. Employees of the CHR Office visit, inter alia, private residential care facilities run on a commercial basis and providing 24-hour care for persons with disabilities and chronically ill or elderly people. The NMPT identified the problem of the lack of legal regulations on admission to such facilities of persons who are not officially incapacitated but are not capable of clearly perceiving realities, consciously expressing their will or making decisions, and have no legal representatives to do this for them.

Another problem concerns cases in which a resident, upon admission, is fully aware of realities and is able to complete all formalities independently and voluntarily, but over time and with the development of the disease the resident loses the ability to clearly perceive their situation. In such cases, there are no tools for verifying whether the resident still intends to remain in the facility.

In the Commissioner's opinion, it would be desirable to regulate this issue in the legislation, and to this end the Commissioner wrote an intervention letter to the Minister of Family and Social Policy. The Ministry stated that the Commissioner's proposals for changes in the law deserve attention. Since such changes mostly relate to the competence of the courts, the Ministry pointed out that it would request the Ministry of Justice to comment on the proposed amendments. (KMP.573.1.2022)

The applications received by the Commissioner also raised the **issue of people with severe disabilities being summoned to appear in person for military conscription**. According to those concerned, such persons should not be condemned to additional humiliation of having to appear for military conscription. The Chief of Central Military Recruitment Centre informed that those classified as persons with a severe disability do not have to undergo medical examination, on condition that they present a disability certificate or an extract of disability certificate to the conscription commission. The Commissioner pointed out that, from the perspective of protecting human rights and freedoms, the problem is not so much the exemption from medical examination as releasing a person with a severe disability from the obligation to appear for conscription. The Commissioner requested the Minister of Defence to change relevant regulations.

The response acknowledged that, for persons with disabilities and their families,

the obligation to appear in person was excessive. It was added that an amendment to the Homeland Defence Act is being considered that would provide for earlier provision of documents on health condition and thus allow for being released from the obligation to appear in person and being issued a certificate of unfitness for military service. The Ministry also informed that, pending the relevant legislative changes, guidelines will be provided to the bodies responsible for military conscription on how to enforce the obligation to appear for conscription in the case of persons with significant disabilities, respecting their dignity and eliminating any inconvenience. (WZF.7043.56.2022)

The issue of **imprisonment conditions for persons with physical disabilities** is of interest to the Commissioner. The CHR Office examined the case of an inmate who, due to his severely limited capacity for independent existence, required constant care and assistance in all activities of daily life. During his stay in four penitentiary institutions, the inmate was placed in cells adapted to the needs of persons with disabilities, with appropriately selected persons to assist him. The practice of prison staff making cellmates responsible for providing assistance to prisoners with disabilities is not correct and it is incompatible with the position of the ECHR. The Commissioner requested the Director General of the Prison Service to present his position on the issue.

The Director responded that the situation of inmates with disabilities was being constantly monitored. The Prison Service makes organisational and financial efforts to ensure that such persons receive appropriate care and support. All detainees are provided with medical care appropriate for their conditions and are given above-standard care by prison staff. (IX.517.562.2022)

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

2022 was a special year with regard to protection of the foreigners' rights. This was caused, on the one hand, by the migration crisis on the border with Belarus and, on the other hand, by the Russian aggression against Ukraine. Actions taken both by the public and by the authorities to provide assistance and shelter for persons (mainly Ukrainian citizens) seeking refuge in Poland deserve recognition. However, the situation of foreigners caused by the crisis on the Polish-Belarusian border has been different. The so-called pushbacks (forcing people back to the border line) have been used against foreigners, including families with children, illegally crossing the Polish state border. Using pushbacks against persons intending to apply for refugee status in Poland violates Poland's international obligations and national regulations, as confirmed by administrative court decisions.



One of the most important areas of the CHR's activities in 2022 was the protection of the rights of Ukrainian citizens fleeing their homeland from war and seeking refuge in Poland

■ Special Act of Parliament on Assistance to Citizens of Ukraine and related benefits

The Russian aggression against Ukraine has triggered the largest humanitarian crisis in the history of modern Europe. Since 24 February 2022, millions of people – in particular Ukrainian citizens – have crossed the Polish-Ukrainian border in search of refuge. They found themselves under the jurisdiction of the Polish state and their rights were regulated by a special Act of Parliament which laid down specific rules for legalising the stay of Ukrainian citizens who arrived in Poland from Ukraine due to the hostilities. The Act set out special rules for providing them with social assistance, access to the labour market, possibility to run a business, and educate their children. Under this Act, war refugees from Ukraine were granted the same rights in many spheres of life as Polish citizens. The Commissioner presented his opinion on the draft Act and repeatedly presented his position on amendments proposed thereto.

The Commissioner believes that the Act has been a necessary and justified initiative. At the same time, the rapid pace at which it was drafted meant that some of proposed solutions raised doubts and discussions. The CHR accepted with approval the scope of assistance offered by the Act which was broader than guaranteed by the Act on Granting Protection to Foreigners within the Territory of Poland. However, restricting the impact of the Act to citizens of Ukraine and their spouses who arrived in Poland legally after 24 February 2022, directly from Ukraine, left a significant group of persons outside of the assistance system. The Commissioner pointed out that the protection and rights granted by the Act would not apply to Ukrainian citizens who, for example, arrived in Poland via another country, nor to family members other than spouses who did not have Ukrainian citizenship. The Commissioner called for extending the group of entities entitled to benefit from assistance offered by the Act. He also called for solutions to protect foreigners fleeing from Ukraine who are not Ukrainian citizens. (XI.543.104.2022)

In his opinions on amendments of the Special Act, the Commissioner drew attention to **the need to ensure access to health care services** for Ukrainian citizens who arrived in Poland before 24 February 2022 and for stateless persons as well as foreigners who, like Ukrainian citizens, fled from the war. (V.7010.62.2022)

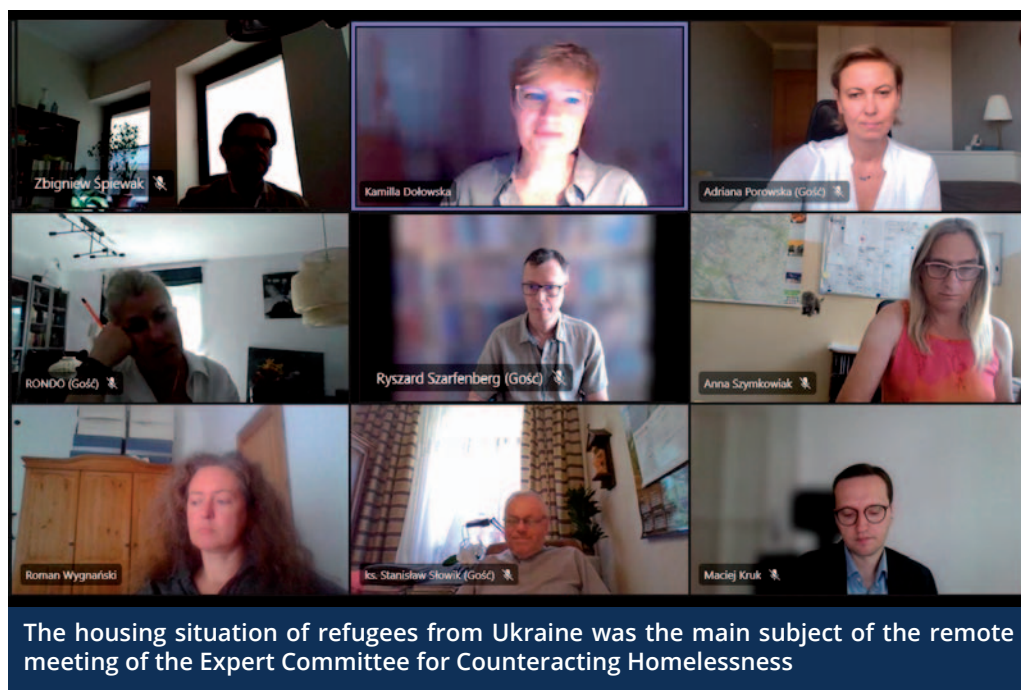
The CHR also signalled the problem of **suspension of time-limits for issuing residence permits** and the scope of data processed in the register kept by the Commander-in-Chief of the Border Guard. The CHR also raised the issue of entrusting, on a temporary basis, by the guardianship court, of the function of a foster family or a family orphanage in respect of a child from Ukraine to a Polish citizen who is no related to the child and who did not complete the required training. (XI.543.104.2022)

The Commissioner intervened on the issue of **benefits for families assisting refugees from Ukraine**. The CHR pointed out that the legislation was silent on the form in which the benefit would be refused, which could give rise to doubts. He also inquired about legal remedies. The Ministry of the Interior and Administration

informed that the Special Act amendment clarified that in cases of cash benefits for providing accommodation and board to Ukrainian citizens, an administrative decision would not be issued and that the provisions of the Code of Administrative Procedure would not apply. It was added that the issue pointed out by the CHR, namely the manner of regulating conditions for awarding the benefit would be analysed. (III.7065.58.2022)

One of the Special Act amendments extended the period when the benefit would be paid from 60 days to 120 days and introduced the requirement that in the application for benefit payment the PESEL number of persons accepted for accommodation should be given. The Commissioner received complaints from citizens indicating that this regulation deprived them of the possibility to apply for the benefit. Those providing shelter, who did not have the PESEL numbers of people they hosted, would not be able to claim the benefit. In particular, those who hosted refugees in the first weeks after the war outbreak (when the simplified procedure for assigning PESEL numbers to Ukrainian citizens was not in place yet) or those who did not hurry with their applications may have problems with receiving the money. The CHR requested the Government Plenipotentiary for War Refugees from Ukraine to solve the problem. Regulations were changed by the Act, as suggested by the Commissioner. (III.7065.87.2022)

■ Housing situation of war refugees from Ukraine discussed in a meeting of Expert Committee for Counteracting Homelessness



On 25 July 2022, a meeting of the Expert Committee for Counteracting Homelessness was dedicated to the housing situation of war refugees from Ukraine in the context of changes in the housing situation in Poland caused by this migration. Representatives of the Ministry of Economic Development and Technology and the Ministry of Interior and Administration.

■ Monitoring visits at the Polish-Ukrainian border and reception points

Representatives of the CHR Office made numerous visits to the Polish-Ukrainian border. The aim was to check the conditions in places where foreigners were staying and to assess the situation at border crossing points.

Representatives of the CHR Office visited inter alia: border crossing points in in Medyka, Korczowa, Krościenko, Hrebenne, Budomierz and Zosin; Border Guard posts in Podkarpackie and Lubelskie Voivodeships; Border Guard premises used for detainees; reception points for foreigners in Łodynia, Równia, Korczowa, Medyka, Lubycza Królewska; and at the railway station in Przemyśl.

On 15 March 2022, the Commissioner visited selected places where people arriving in Poland were received: the reception centres in Przemyśl and the border crossing in Medyka. He spoke to volunteers, representatives of local governments, and representatives of the regional Border Guard commander.



CHR Office representatives repeatedly visited the border areas, border crossings and reception points, informing about CHR's assistance options and monitoring the observance of the rights of refugees



The Commissioner and CHR Office representatives met with representatives of local authorities, uniformed services and organisations helping Ukrainians in Poland



CHR Marcin Więcek during his monitoring visit to the reception centre in Przemyśl



Meeting of the Commissioner and CHR Office representatives with the Bieszczady Border Guard Unit commanders on the situation on the Polish-Ukrainian border

Representatives of the CHR Office also conducted monitoring visits to the reception points located in the Mazovian Voivodeship at Modlińska Street in Warsaw and in Nadarzyn near Warsaw. During the visit in Nadarzyn, in September 2022, a meeting took place between the CHR, the Ukrainian Commissioner for Human Rights Dmytro Lubinets, and the Head of Mazowsze Voivodeship government Konstanty Radziwiłł.

■ Problems with entry and legalisation of stay

The Commissioner received information about the problem caused by failure of Polish authorities to issue residence permits for citizens of Ukraine and other foreigners who arrived in Poland after 24 February 2022. The Commissioner addressed the Government Plenipotentiary for War Refugees from Ukraine, indicating that the lack of documents certifying legal residence in Poland and confirming the fact of meeting the conditions for temporary protection, including crossing the border after 24 February 2022, makes free travelling to other EU Member States impossible.

In response, it was reported that to regulate the movement of Ukrainian citizens within the Schengen area, the Ministry of Internal Affairs and Administration notified the European Commission about using a provisional electronic document, which is made available to Ukrainian citizens to certify the legality of their stay in Poland. After official notification, the Diia.pl electronic document fulfils the role of

a residence permit used, together with a valid travel document, to cross the EU external border, and allows movement within the Schengen area for 90 days during any 180-day period. (XI.540.32.2022)

■ Support for vulnerable and at-risk groups fleeing Ukraine

Among refugees fleeing from Ukraine in 2022 there were people in need of special support. They included **persons with disabilities**, for whose benefit the Commissioner took actions discussed in the section on the rights of persons with disabilities, as well as other groups.

Women and girls predominated among those fleeing the war. Thus, it was necessary to ensure that their rights were protected against any violations, in particular against gender-based violence, including sexual violence. And, in the event of such a violation, to ensure that women received appropriate support: legal, psychological, and medical. Towards this end, the Commissioner requested the voivodes to ensure that appropriate support was available at reception points. (XI.518.8.2022) The massive influx of women and girls in crisis also calls for special attention to be paid to countering the crime of human trafficking effectively.

A separate group of people requiring support were **older people**. Seniors should be effectively provided with detailed information on their rights and available forms of assistance. The CHR pointed out that respect for the autonomy and independence of each such person should be the guiding principle, regardless of their physical and mental capacity. This means, inter alia, providing those in need with adequate personal assistance.

The Commissioner also stressed that **members of the Roma community** arriving in Poland are particularly vulnerable to violence in the context of armed conflict. The CHR Office had received complaints about prejudice and stigmatisation of Roma at some reception points. The CHR noted that it is not always possible for Roma persons to get help, which may be a consequence of the lack of documents proving their Ukrainian citizenship. Staff and volunteers at reception points should be sensitized to the fact that people have no documents does not mean that they are not war refugees and have no right to support.

The Commissioner appealed to the Government Plenipotentiary for War Refugees from Ukraine to ensure that the system of support for persons leaving Ukraine due to the current threat to life and health is sensitive to the needs of disadvantaged groups. (XI.518.9.2022)

Following a meeting of the Expert Committee on Mental Health on the situation of **people with mental illness** in Ukraine, the Commissioner wrote an intervention letter to the Prime Minister in which the Commissioner pointed out that among the refugees, there were people who experienced a mental health crisis in the past as well as people who needed specialised assistance due to their experiences. Special care for Ukrainian children is also essential. Hence, it is necessary to train and sensitize teaching staff to emerging symptoms of disorders in children and adoles-

cents. The Commissioner called for comprehensive and coherent regulations to be put in place in the field of mental health protection.

The Minister of Family and Social Policy informed about a planned amendment to the special Act of Parliament on Assistance to Ukrainian Citizens which stipulated that holders of Ukrainian psychology degrees would be able to provide services in Poland without the need for nostrification. This information was confirmed by the Minister of Health, who also pointed out that the Children's Ombudsman's Helpline had launched a service of specialists providing support in Ukrainian and Russian. (V.7016.24.2022)

■ Education of children from Ukraine

Among the numerous issues related to the education and upbringing of children and young people who are citizens of Ukraine, the organisation of external examinations in the school year 2021/2022 drew particular attention. Objections were raised, inter alia, to **the obligation for Ukrainian pupils to take the eighth-grade exam** as a condition for completing primary school and participating in the recruitment to secondary schools. The Commissioner pointed out that the majority of incoming Ukrainian pupils had no sufficient command of Polish to perform satisfactorily at the exam, so the choice of secondary school would be limited to those still having places when Polish pupils have been admitted. The Commissioner requested the Minister of Education and Science to present his position on the issue.

The Minister assured that existing regulations not only guarantee equal treatment of Ukrainian pupils and Polish pupils but also include many accommodations and adaptations for children from Ukraine. Accommodations for the eighth-grade exam include a separate room, an interpreter, permission to use dictionaries, psychological support, and teacher assistance. The Minister also informed that there would be no separate rules for recruitment to secondary schools for refugee children who complete primary school in the Polish system. (VII.7031.13.2022)

In connection with the situation of children and young people from Ukraine, consultations on education were held at the CHR Office. They concerned the problems and challenges facing the education system. The topic of cooperation with Ukraine was raised. Attention was also drawn to the problem of support for pupils who remained in the Ukrainian system, in particular providing the right conditions for remote learning. There was also a discussion about staff shortages, the unavailability of good textbooks, and how to provide care for children during school holidays.

The Spokesman of the Ministry presented main conclusions of the meeting and recommendations for action to strengthen the education system. More information on this topic can be found in the section on education. (VII.7030.14.2022)



Consultations at the CHR Office of on the education of children and young people from Ukraine

The CHR presented an opinion on the Senate's draft amendment to the special Act of Parliament on Assistance to Ukrainian Citizens and to the Education Law, which provided for introducing facilitations in the organisation of the education system, accounting for children and young people coming from Ukraine and their parents. (VII.071.21.2022) He also intervened with the Ministry of Education and Science on the issue of schooling for Ukrainian children and young people with disabilities. More information on this topic can be found in the section on the rights of persons with disabilities. (XI.811.1.2022)

■ Healthcare for the citizens of Ukraine

The Commissioner analysed the problems of impact that the war in Ukraine had on the Polish health care system, raised in complaints to the CHR Office and by members of the CHR Expert Committee on Healthcare.

The problems include e.g.: access to medical treatment, epidemic situation in the field of infectious diseases, funding for interpreter services, treatment in primary health care (PHC), treatment of patients without medical documentation, and difficulties in accessing health services in the absence of the PESEL number. Access to medicines is also of importance, i.e. reimbursement under drug programmes as well as access to medicines in the absence of medical documentation. A separate issue is the conditions that representatives of medical professions from Ukraine must satisfy

to work in Poland. This is of particular importance in the context of including another group of patients in the system, which may result a shortage of doctors. The Commissioner requested the Minister of Health to present his opinion on the issue.

The Minister informed that separate medical facilities for refugees from Ukraine were not envisaged. Funding for additional medical costs for Ukrainian refugees was provided for in the Act on Assistance to Citizens of Ukraine. The Minister pointed out the lack of legal basis for the National Health Fund to cover the costs involved in the participation of an interpreter in the provision of health care services to a foreigner adding that the lack of a PESEL number is not an obstacle to access to health care services for persons entitled under the Special Act. Regarding reimbursement under drug programmes, it was pointed out that a citizen of Ukraine, stay in Poland legally, is entitled to medical care on the same principles as those insured in Poland. (V.7010.74.2022)

■ Other intervention letters related to the situation of refugees from Ukraine

The Commissioner expressed his opinion on many issues relating to the arrival in Poland of people fleeing the war. These included:

- Intervention letter to the President of the Office of Competition and Consumer Protection (OCCP) on the artificial overpricing of transport, hotel, catering and currency exchange services in the voivodeships bordering Ukraine. (V.7224.54.2022)
- Intervention letter to the Prime Minister and to the President of the National Bank of Poland on the hryvnia exchange problems. (V.7106.4.2022)
- Intervention letter to the Ministry of Justice on the repeal of the COVID ban on forced eviction, which may adversely affect the situation of refugees from Ukraine. (IV.512.42.2022)
- Intervention letter to the Ministry of Infrastructure regarding concessions on public transport for Ukrainian refugees. (V.565.69.2022)
- Intervention letter to the Ministry of Family and Social Policy on the problems faced by Ukrainian refugees in obtaining disability certificates. (XI.811.2.2022)
- Intervention letter to the Ministry of Finance on the tax problems of Ukrainian citizens in Poland, including the problem of double tax residency. (V.511.874.2022)
- the Ministry of Family and Social Policy on including war refugees from Ukraine in the nationwide count of people in homelessness crisis. (IV.002.2.2016)

The CHR backed the appeal to guarantee **financial support from the European Union to NGOs** providing assistance to refugees from Ukraine (VII.053.1.2022), and also the appeal **for donations to NGOs to be subject to a preferential VAT rate.** (VII.053.3.2022)

Following a visit to the border by employees of the CHR Office Department for Soldiers and Officers, the Commissioner sent a letter to the Ministry of Internal Affairs on **the arduous conditions of service for the Border Guard on the border with Ukraine**. In his letter, the Commissioner pointed, inter alia, to the enormous psychological and physical strain on officers carrying the risk of professional burn-out. The situation of officers, confronted, on a daily basis, with human tragedies and the exhaustion of refugees, requires adequate psychological assistance, which is difficult to access. (WZF.7050.4.2022)

■ Conditions in guarded centres for foreigners

In connection with the refugee crisis on Poland's border with Belarus, representatives of the Office of the Commissioner for Human Rights visited guarded centres and detention facilities for foreigners. The objective was to verify the manner of treatment of migrants placed there. The activities carried out in this regard have been summarised in the **report „Situation of foreigners in guarded centres during the Poland-Belarus border crisis”**.

The report pays attention to such aspects of the centres' operation as overcrowding, staff shortages and unfriendly infrastructure. It points out that the minimum living space per migrant in a centre is 2 m², which is inconsistent with international standards and is less than the living space in prisons. The foreigners in the centres have difficult access to any form of therapy or support groups. No educational activities conducted by psychologists are available. There is still no effective tool for identifying victims of violence or people in poor health prior to placement in a centre, and no requirement to carry out a medical examination upon placement. Therefore, there is no system safeguarding foreigners' right to appropriate medical care and psychological support. Different treatment of patients depending on their origin or legal status would be an unacceptable form of discrimination and contrary to doctors' professional ethics. However, in most of the visited facilities, the approach to foreigners was based on respect, and there were very few objections as to their treatment. The centres' managers sought to improve the living conditions there. The NMPT representatives were strongly impressed by the commitment of the managers and staff members. The staff shortages and increased responsibilities resulted in the necessity to work overtime and, consequently, increased tiredness, stress and frustration levels.

The report was presented at a press conference held on 20 June 2022, the World Refugee Day. The report was also analysed by the Parliamentary Committee on Administration and Internal Affairs.



Situation of foreigners in guarded centres during the Poland-Belarus border crisis

In July 2022, the **Commander-in-Chief of the Border Guard related to the irregularities mentioned in the report**. He informed e.g. that foreigners in the centres were provided with comprehensive medical care including, if needed, psychiatric care and addiction therapy. He also assured that there had never been any cases of physical ill-treatment of persons detained in the centres, including disrespectful behaviour of Border Guard officers.



Presentation of the NMPT report „Situation of foreigners in guarded centres during the Poland-Belarus border crisis“

The Commissioner also wrote to presidents of 22 regional courts to sensitise their judges to the possibility of adjudicating measures alternative to detention. He pointed out that the courts, when taking decisions on migrants' placement in guarded centres, should be guided by the principle of proportionality, which excludes automatic placement and requires individual assessment of the circumstances of every case. Particular attention should be paid to material conditions in some facilities, which may lead to inhuman and degrading treatment. This applies, in particular, to families with children, unaccompanied minors or adults who have experienced torture. None of the guarded centres is a place suitable for children. Their placement in the facilities may negatively impact their development and mental and physical condition. (KMP.572.1.2021)

■ The problem of so-called pushbacks

In April 2022, **the Office of the Council of Europe Commissioner for Human Rights published a report entitled *'Pushed beyond the limits. Four areas for urgent action to end human rights violations at Europe's borders'*** relating to the phenomenon of pushbacks, i.e. turning migrants back to the state border line by certain Member States of the Council of Europe, including Poland.

It was pointed out in the report that by using pushbacks Member States run the risk of violating the so-called non-refoulement principle, which prohibits the expulsion of a foreigner if it could violate the right to life or could result in a real risk of being subjected to inhuman or degrading treatment or punishment.

The Commissioner reminded having been critical of the procedures, introduced into the Polish legal order in August and October 2021, for returning foreigners to the border line and for commanders of Border Guard posts issuing decisions ordering to leave the territory of the Republic of Poland. The Commissioner underlined the necessity to implement recommendations presented in the report of the Council of Europe Commissioner for Human Rights. The Commissioner requested the Prime Minister to analyse the report.

The Undersecretary of State at the Ministry of the Interior and Administration stressed in his response that in the course of performing its duties the Border Guard adheres strictly to the provisions of the law applicable to persons seeking international protection in Poland. He pointed out that under Community law, the Border Guard is obliged to protect the integrity of the external borders of the European Union. The Undersecretary of State informed that turning people back to the state border line is regulated by Polish law and is enforced only if the statutory conditions are met. He noted that most people who decide to apply for international protection in Poland are not interested in continuing the refugee procedure and without waiting for its completion in a Polish office they head to Western Europe, mainly to Germany. The CHR recommendation that additional regulations and rules of conduct be put in place for bodies responsible for border control, that would ensure respect for human rights and refugee protection standards in dealing with persons crossing the border in places not intended for this purpose, is superfluous, as such guarantees are included in the existing legislation and are applied. (XI.543.238.2022)

On 15 September 2022, the Voivodeship Administrative Court in Białystok issued a **judgement in a case that concerned a seven-person family from Iraq being turned back to the state border line**. The Court upheld the complaints of the CHR and of the foreigners' attorney. The Court took the view that turning the foreigners back was contrary to the provisions of national law, including the Constitution of the Republic of Poland, as well as to international agreements binding upon Poland. The Court held, inter alia, that border regulation was unconstitutional, as it regulated matters that had already been regulated by the Acts and was issued exceeding the statutory delegation. The Court pointed out that the procedure of returning foreign-

ers to the border infringes their right to apply for refugee status in Poland and thus violates Article 56(2) of the Constitution of the Republic of Poland and Article 18 of the Charter of Fundamental Rights of the European Union. (XI.543.10.2022)

The CHR, in general intervention letters addressed, inter alia, to the Border Guard Headquarters and to the Minister of Internal Affairs and Administration, pointed out that **forcing people back to the border line**, introduced in the border regulation, **is incompatible with national and international law**. Also, the statutory regulations introduced in October 2021 was criticised based on which the Border Guard was given the authority to issue decisions ordering to leave the territory of the Republic of Poland. The main reason for this criticism is **the lack of an adequate procedure to determine the individual situation of a person who has crossed the border illegally**.

In a letter to the Ministry of the Interior and Administration, the Commissioner pointed out that objections to these regulations did not result in their repeal – both procedures are in force and continue to be applied against persons crossing the Polish-Belarusian border.

The Ministry informed that regulations on forcing people illegally crossing the border with Belarus back to the border and issuing decisions ordering to leave the territory of the Republic of Poland are not applied against persons seeking international protection in Poland. They are an adequate and proportionate measure to manage illegal migration at the Polish national border. Returning a foreigner to the border line is always carried out in assisted of officers, in a manner ensuring safety of the foreigner and respect for his/her rights. (XI.543.84.2022)

The Commissioner submitted an *amicus curiae* brief in a case pending before ECHR and regarding a group of people returned to the Poland-Belarus border line (*R.A and Others v. Poland*, application no. 42120/21). In the brief, the Commissioner pointed out that he had received many complaints describing situations in which foreigners were turned back to the border line and forced to cross it in a place not intended for this purpose, regardless of their health condition, disability or age. The Commissioner was also aware of cases in which families with several-month-old children were returned to the Belarusian side of the border. For example, representatives of the Commissioner intervened at a place where a family of several persons with a four-month old child, who had been returned to Belarus eight times before, were apprehended by the Border Guard.

The CHR emphasized that in some cases people were turned back also in difficult weather conditions, at night, in winter, when temperatures were low. The procedure of turning people back was applied by the Border Guard despite the awareness that Belarusian border service officers did not allow foreigners to leave the border line and move farther into the territory of the Republic of Belarus in an attempt to safely return to their country of origin. The officers in some cases forced foreigners to take subsequent attempts to cross the border using violence or threats of killing. The Russian aggression against Ukraine and the support of the

aggressor by Belarus had no impact on turning people back. In the opinion of the Commissioner, the process of turning people back to the border line in the form provided for in Polish regulations undermines migrants' right to seek international protection in Poland. (XI.543.76.2022)

■ Extradition to Belarus

In the uneasy geopolitical situation related to the war in Ukraine and the crisis in relations between Poland and Belarus, the issue of extradition, including the surrender of foreign nationals to the Republic of Belarus, is of vital importance. The Commissioner was concerned about the instrumental use of the so-called Interpol Red Notes and of international cooperation in criminal matters by Belarusian authorities. In an intervention letter to the Minister of Justice, the CHR drew attention to the problems of a growing number of Belarusians who had fled to Poland in fear of repression by the Belarusian authorities. He also pointed to the 2022 amendments to the Belarusian Criminal Code and the Code of Criminal Procedure, which expand the use of death penalty and introduce the possibility of initiating special proceedings (*in absentia*) in criminal cases against the accused who reside outside Belarus. The Commissioner requested that issuing instructions for public prosecutors should be considered to prevent the surrender to Belarusian authorities of persons whose human rights may be violated there.

The Ministry informed that it forwarded the Commissioner's intervention letter to the National Prosecutor's Office, and announced that judges coordinating international cooperation in voivodeship courts would be notified of the Commissioner's position. (II.516.1.2022)

System of justice and the right to a court

■ Independence of the judiciary

One of the major current problems as regards the protection of freedoms and human rights in Poland is **the lack of sufficient guarantees of the independence of the judiciary and the independence of judges**. Numerous judgements of the European Court of Human Rights and the Court of Justice of the European Union remain unenforced. This leads to a deepening crisis of judicial power and exposes Poland to even more adverse rulings by international tribunals.

In February 2022, a presidential draft **amendment to the Supreme Court Act** was submitted to the Sejm of the Republic of Poland. The main change concerned the reorganisation of the Supreme Court through establishing the Chamber of Professional Responsibility and abolishing the Disciplinary Chamber. At the stage of parliamentary work, the CHR presented an opinion to the Senate of the Republic of Poland on the legislation passed by the Sejm, in which he pointed out that the **Act was a step in the right direction but insufficient to fulfil Poland's treaty obligations**. The Act only partially implemented the judgments of the CJEU and the ECHR holding that the adjudication by the Disciplinary Chamber of the Supreme Court of disciplinary and immunity cases of judges is a violation of the right to an independent court, established by the Act. The Commissioner also noted that the Act did not implement the judgments in which it was stated that the method of appointing members of the National Judicial Council adopted in 2017 failed to provide sufficient guarantees for the independence of the judiciary.

The Commissioner also pointed out that the Act laid down new rules governing the disciplinary responsibility of judges without sufficiently modifying the rules currently in force, which would complicate the legal status and raise the existing interpretation doubts. In particular, the Act does not exclude the possibility that a judge may be liable for disciplinary action for the content of a judicial decision, thereby leaving unenforced the 2021 judgment of the CJEU Grand Chamber, according to which the possibility to classify the content of judicial decisions as a disciplinary offence (except in obvious and flagrant cases) is a breach of the Treaty on European Union.

The Commissioner also commented on the so-called test of judicial impartiality, which is a specific procedure for excluding a judge from hearing a particular case on the grounds that he/she does not 'comply with the requirements of independence and impartiality given the circumstances surrounding his/her appointment and his/her conduct after his/her appointment'. In the Commissioner's opinion, this test was constructed without adequate safeguards for the parties to the proceedings and in a manner that raised legislative concerns, creating conceptual confusion and giving rise to conflicts with other regulations. (VII.510.49.2022)



The Supreme Court building at Plac Krasieńskich in Warsaw

The Commissioner presented his **opinion on the “amnesty” act adopted by the Sejm regarding the so-called “envelope elections”** (the Act on abandoning prosecution for certain acts related to the organisation of the elections of the President of the Republic of Poland, scheduled for 10 May 2020). In his opinion drafted for the Senate, the Commissioner noted that an analysis of the Act adopted by the Sejm leads to the conclusion that the Act is not of an amnesty or abolition nature. Its real purpose is not the remission of crimes and penalties, which is characteristic of amnesty, but the verification and undermining of court decisions. Consequently, the Act encroaches excessively into the sphere of administering justice, and must therefore be regarded as violating the principles of the separation of powers, the independence of the judiciary and the exclusivity of the courts in the administration of justice. (II.519.1146.2022)

■ The need to make the justice system more efficient

The CHR has repeatedly drawn attention to the need for necessary reforms of the system of justice. Against the background of cases examined by the Commissioner, a problem has come to light of the impossibility **to obtain a statement of reasons for a ruling if an irremovable impediment occurs**. This is related to the Rules of Procedure of Common Courts. The absence of a written statement of reasons, especially in the context of criminal proceedings, has adverse consequences

for persons wishing to exercise an appeal measure. Such a situation affects the constitutional guarantees of persons wishing to exercise a legal remedy. Thus, in practice there may be situations when it is impossible to draw up a statement of reasons for a judgment within the time limit laid down in the Rules of Procedure (e.g. death of the judge) or the time of drafting the statement of reasons may be significantly increased. In his letter to the Minister of Justice, the Commissioner concluded that the current provision of Article 119(2) of the Rules of Procedure of Common Courts is incompatible both with the provisions of the Act on the System of Common Courts and with Article 92(1) of the Constitution. (VII.511.41.2020)

Another problem is **the need for a comprehensive Act of Parliament on court expert witnesses**. This need, related to the need to provide citizens with an adequate guarantee of their right to a court, has been raised by the Commissioner on a number of occasions over the past years. The CHR's correspondence with the Ministry of Justice shows that work on the draft Act on court expert witnesses has been undertaken. However, there is still no information provided to the public on the progress of work on the government's draft act. The Commissioner therefore requested the Minister of Justice to provide information on the current status of the work on the Act on court expert witnesses, and appealed for its acceleration.

The Minister informed that in the course of work on the draft act, its shortcomings had been diagnosed and work had been undertaken primarily to strengthen the mechanisms for verifying the qualifications of court expert witnesses, to regulate the status of specialist institutions and to create a legal basis for the functioning of a central register of court expert witnesses. The work is in progress. Work is also underway at the Ministry to include the lists of court expert witnesses from all district courts in a single ICT system. (VII.510.20.2015)

The Commissioner received complaints about the **problems with the delivery of court mail** by Poczta Polska S.A. (Polish Post). The complainants pointed out that postmen, despite being informed that the addressee does not live and has never lived at the indicated address, fail to accept this information and do not make a relevant note on the letter but leave a delivery notice. In such a situation, the postman should make an appropriate note on the letter instead of leaving a delivery notice. This is because failure to collect a letter (when a delivery notice has been left) has negative procedural consequences. The Commissioner has exchanged correspondence on the issue with both Poczta Polska and the Ministry of Justice.

Poczta Polska informed the Commissioner that it provides services in accordance with the law and with the will of its clients. Its employees do not have instruments enabling them to check whether the addressee actually lives or stays at the indicated address nor to verify the information provided by third parties. In turn, the Ministry communicated that regulations governing the service of court letters in civil and criminal proceedings do not require the postman to check the identity of person making the statement, nor define a specific form of such statement. All information about the reason for non-service of the correspondence, regardless of

how it was obtained by the postman, should be included in the acknowledgement of receipt form. (VII.501.36.2022)

The Commissioner also received requests concerning **digitalisation of the justice system**. These included allowing the use of the ePUAP platform for communication with courts and prosecutors' offices. Prosecutors' offices and courts do not take into account procedural positions and appeals submitted by parties in criminal and misdemeanour proceedings via this platform. Meanwhile, during the COVID-19 pandemic, citizens have become accustomed to dealing with most official matters remotely. In the Commissioner's opinion, the use of the ePUAP platform for the citizen's procedural communication with courts and prosecutors' offices should be considered. However, this would require a change in legislation. Therefore, the Commissioner addressed the Minister of Justice about it. The Minister noted that making electronic delivery available to the extent requested by the Commissioner is waiting to be put in practice. The relevant rules on mail delivery will be amended as of 1 October 2029, in accordance with the Act on electronic service. (II.511.260.2022)

The Commissioner, at the request of the Association of Sworn Translators in Poland, intervened on the issue of **remuneration for sworn translators**. They reported certain problems, namely the lack of time-limit for payment of remuneration for a translation performed and no indexation of translation rates. In a letter to the Minister of Justice, the CHR pointed out that a sworn translator plays an important role in court proceedings, and that further actions taken by the court often depend on the translator's knowledge and skills, which has an impact on the realisation of the constitutional right to a court within a reasonable time. The Minister informed that analyses of awarding and payment of remuneration in common courts are underway in the Ministry, and letters are being sent to the presidents of appellate courts indicating the need to intensify supervisory activities aimed at eliminating irregularities in this regard. (VII.510.76.2022)

The Commissioner joined the proceedings before the Supreme Court on the legal issue concerning the **collegial composition of the adjudicating panel** (case file no. III CZP 77/22). He took the view that Article 15zzs¹(4) of the so-called COVID-19 Act, which changed the composition of the court hearing a case from three judges to one judge and authorised the Court President to order that the case be heard by the Court in its previous composition, did not apply to cases initiated before that Act entered into force and in which the adjudicating panel of three judges had already been appointed. In the Commissioner's opinion, the amendments introduced by the Act of 28 May 2021 raise fundamental doubts about compliance with the constitutional standard as well as the standard arising under international law that is binding for Poland. The Supreme Court declined to adopt a resolution and pointed out that in its rulings it had already been clarified on several occasions that the Court of Justice of the EU has as the competence in the matters of the interpretation of EU law necessary to assess the conflict of national law with the EU law. Therefore, if the Supreme Court is presented with a legal issue concern-

ing the conflict of an Act with the EU law, requiring an interpretation of that law, it should refuse to adopt a resolution. Although the Supreme Court case law also recognises that, due to the precedence of the EU law over Polish Acts, the Court may – if not in doubt – refuse to apply the Polish law, this was not done in the case. (VII.510.131.2021)

■ Right to a court and to a fair trial

With the COVID-19 pandemic receding, the government changed the ‘state of epidemic’ in the country to the ‘state of epidemic emergency’, and lifted most sanitary restrictions. Despite the changes, the regulations that governed the functioning of Common and Administrative Courts, introduced during the epidemic, which provided for numerous **restrictions on parties to court proceedings, were not repealed**. In view of complaints from citizens challenging this state of affairs, the Commissioner requested the Minister of Justice to take appropriate legislative action. In response, the Minister informed that the Ministry opposed a hasty repeal of the emergency measures introduced due to the epidemic but did not exclude the need for a gradual change. The Minister also informed that analytical work was underway on restoring the participation of lay judges in adjudication and to extend the parties’ control over the court’s decision to refer a case to a closed session. (VII.510.13.2022)

The CHR pointed to the need for extending the scope of the **obligation to record the course of actions minuted in criminal proceedings**, including trials and hearings. Introducing an obligation of audio recording during minuted actions would enable full reconstruction of witness statements and of other evidence at a later stage of criminal proceedings. It would, in particular, reduce the risk of violation of the procedural rights of interrogated persons, especially those acting without a defence counsel or an attorney, including by significantly reducing the possibility of unlawful influence over the content of their statements. The Commissioner requested the Minister of Justice to address the concerns raised. In its response, the Ministry indicated that, under the current state of the law, the guarantees for persons taking part in minuted procedural actions, in terms of controlling the minuted content, remain at a relatively high level. There is no need for every procedural action, regardless of its significance for a given criminal proceedings, to be recorded. The introduction of such an obligation, assuming that video and audio would be played at the trial, would lead to prolonged proceedings. Therefore, no work is planned in this area. (II.519.1039.2017)

Against the background of cases examined by the Commissioner, the problem was brought to light **of the lack of possibility to challenge a court’s decision excluding admission of the public to court proceedings**. This situation results in a violation of the principle of two-instance proceedings. The Commissioner wrote to the Minister of Justice on this issue. In the opinion of the Minister, the lack of possibility to appeal the court’s decision excluding admission of the public to court proceedings does not limit the procedural rights of a party. Thus, there are no grounds undertaking a legislative initiative. (VII.510.32.2022)

The Commissioner joined the proceedings before the Constitutional Tribunal concerning **the lack of possibility to challenge the actions taken by public prosecutor in the course of operational control** (SK 58/22). He requested the Tribunal to declare that Article 459(2) of the Code of Criminal Procedure in connection with Article 168b of the Code of Criminal Procedure – to the extent that it does not grant the suspect the right to lodge a complaint against the prosecutor's decision to use in criminal proceedings the evidence of an offence committed by a person subject to operational control other than that covered by the operational control order, or the evidence of an offence committed by a person other than that covered by the operational control order – is inconsistent with a number of Constitutional regulations. The Commissioner emphasised that operational control may be applied only in cases expressly specified in the Act, and its application is possible only when other measures have proved ineffective or there is a high probability that they will be ineffective or useless. However, Article 168b of the Code of Criminal Procedure allows for arbitrariness of covert actions by public authorities. Indeed, the materials obtained as a result of operational control may be used not only for the prosecution of serious crimes, precisely described in the law, but for the prosecution of any crime. This leads to a violation of the right to privacy, the freedom and protection of the secrecy of communication, the inviolability of the dwelling, as well as of the prohibition to obtain and collect information on citizens other than indispensable in a democratic state ruled by law. (II.511.493.2022)

The Commissioner also joined a case before the Constitutional Tribunal concerning **the delegation of judges by the Minister of Justice**. The Commissioner requested that Article 77(1) of the Act on the System of Common Courts be declared unconstitutional. The Commissioner pointed out that the current dual role of the Minister of Justice, who is also the Prosecutor General, violates the principle of separation of powers as the Minister of Justice has essentially unlimited powers to delegate judges. Moreover, the free use of the delegation mechanism infringes the prerogative of the President of the Republic of Poland to appoint judges, which in turn translates into an infringement of the right to have a case heard by an independent court. (VII.510.55.2022)

■ **Opinion on the draft Act on the State Committee to Investigate Russian Influence**

The Commissioner presented his comments on the draft Act on the State Committee for investigating Russian influence on the internal security of the Republic of Poland between 2007 and 2022. The Commissioner pointed out that there is no doubt that the Committee would have a possibility to annul any administrative decision issued in the years 2007-2022. On the other hand, the **issuance by the Committee of an administrative decision finding that a person acted under the influence of Russian Federation to the detriment of the interests of Poland goes beyond the functions entrusted to public administration**. Such decision is tantamount to depriving such person of his/her honour and good name. In its

essence, it corresponds to the criminal measure of making the judgment public. On the other hand, the application of the remedial measure in the form of a ban on performing functions related to the spending of public funds for a period of up to 10 years corresponds to the criminal measure prohibiting to hold a specific position. Thus, the actual purpose of the proceedings conducted by a public administration body under the proposed Act is not to resolve an administrative case but to impose a penalty. Such measures do not fall within the scope of public administration tasks. Public administration does not administer justice, which is the exclusive domain of the courts.

In the Commissioner's opinion, the assumption of the draft, conferring on a body public administration the competence to stigmatise persons undertaking actions under Russian influence to the detriment of the interests of the Polish State and to impose sanctions on them for such actions, is incompatible with the Constitution. The proposed solution also violates the principle of separation of powers, as it vests the competence to administer justice in an executive branch. Moreover, the draft provides for the punishment of persons whose acts from the years 2007-2022 were not subject to punishment and did not violate the law. Consequently, the draft is inconsistent with Article 42(1) of the Constitution. (II.510.1126.2022)

■ Free legal assistance and the role of attorneys

The Commissioner joined the proceedings before the Constitutional Tribunal concerning the motion filed by a group of MPs, regarding the compatibility with the Constitution of the provisions determining the **membership in a bar association on the basis of the place of exercising the occupation or the place of residence**. The CHR requested that the proceedings be discontinued on the grounds that the judgment was inadmissible. The issues raised in the motion are related to the right to effective legal assistance from an independent lawyer in judicial and extra-judicial proceedings, and as such concern the right to a court and the right of defence. The role of self-governing bodies of public trust professions such as attorneys is to ensure that representatives of said profession practice it diligently as well as to guarantee a high level of legal services provided by persons who are suitably trained and an impeccable morale. In the Commissioner's view, allowing the motion would weaken the system of legal assistance. (VII.561.6.2022)

The Commissioner pointed out that even though over two years had passed since the Constitutional Tribunal's decision, the provisions regulating the fee of attorneys appointed *ex officio* in a discriminatory manner, compared the analogous fees available to attorneys of choice, had not been yet amended. In his letter to the Minister of Justice, the Commissioner recalled that in April 2020, the Constitutional Tribunal had declared unconstitutional a provision of the Regulation issued by the Minister of Justice which reduced by half the fee of an attorney *ex officio* compared to that of an attorney of choice in the same case.

The Minister replied and emphasised that the existing principles governing the fees for attorneys take into account both the interests of attorneys and the inter-

ests of citizens. The solutions must take into account the adequacy of payment, considering the quality and quantity of attorney's work but should also take into account the financial capacity and social interest of citizens. Taking only one of these aspects into account could limit the access to services of a professional legal representative. The Minister also informed that analytical and conceptual work on this issue was underway in the Ministry, with the aim to make a comprehensive regulation governing the fees and rates of services provided by attorneys. This would be achieved by synchronising them appropriately and setting their amount in a manner proposed by the Tribunal, and rational from the point of view of budget expenditure. (IV.510.15.2022)

Health care system

Issues related to the impact of COVID-19, the ongoing challenges in the context of non-availability of medicines and lack of reimbursement for certain medicines and medical devices, as well as the topic of treatment of rare diseases remained areas of interest for the CHR. Intervention letters also concerned the foster care, the situation in child psychiatry, and the hospice care.

■ Effects of COVID-19

Alarming number of deaths due to COVID-19 in Poland

At the beginning of 2022 the official number of COVID-19 deaths exceeded 100,000. According to the information provided to the Commissioner, the number of deaths in Poland was higher than in Western countries. The pandemic highlighted and exacerbated the flaws that the system had been facing for years. Now it has to deal with unresolved, compounding problems, including staff shortages, underfunding, insufficient equipment supply and availability of services. Therefore, the Commissioner requested the Minister of Health for his opinion, and also inquired whether the Ministry kept an officially available register showing the general effects of treatment, including intensive care, detailing the mortality of COVID-19 patients treated in intensive care units. The Minister explained that he had issued a regulation on the National Registry of COVID-19 patients. Due to the processing of sensitive personal data, it is not possible to make its data publicly available. The Minister also established a team to analyse the health situation of the population during the COVID-19 pandemic and the health consequences thereof. (V.7018.38.2022)

Epidemic situation in the country in the face of another wave of COVID-19

In mid-2022, when there were signs of another wave of COVID-19, the Commissioner began to receive information on the growing public concern. The Commissioner therefore requested the Minister of Health to comment on the current scale of the phenomenon and on the monitoring of the situation. The Minister assured that the Ministry of Health was taking appropriate preventive measures and was monitoring the epidemic situation on an ongoing basis. The Minister also informed that, despite the lifting of most of the orders and bans, the authorities of the State Sanitary Inspectorate also continued intensive anti-epidemic measures. He pointed out that the best way to overcome the pandemic was through safe and effective COVID-19 vaccines and outlined the activities taken in relation to the vaccination of Poles with the second booster dose. The Minister recalled that a number of measures had been put in place over the past two years to prepare the health system for the increasing number of infections and hospitalisations. Some measures were also taken, financed by the European funds. (V.7018.250.2022)

Making medical education conditional on receiving the COVID-19 vaccination

The CHR Office received complaints from medicine students about making the possibility to continue their studies conditional on receiving the COVID-19 vaccination. According to the CHR, such a solution restricts the right to education. The obligation to hand over a vaccination certificate to the university encroaches upon the right to privacy and is not regulated by an Act of Parliament. The Commissioner wrote to the Minister of Health that, out of concern for safe education conditions, the law should be amended.

The Minister shared the Commissioner's position and pointed out that medicine students were required to take a COVID-19 vaccination just as they were required to take a Hepatitis B (HVB) vaccination. The requirement for students to document that they have undergone the required COVID-19 vaccination finds no reflection in the law but the extent to which universities are taking steps to increase the sense of responsibility is very important to raise public awareness. Universities should intensify awareness-raising activities dedicated to the effectiveness and desirability of vaccination. If a legislative initiative to introduce the possibility for university authorities to verify the vaccination status of students is taken, the Ministry will submit to the CHR the proposed amendment with a rationale. However, changes in the legislation have not been introduced in this regard. (VII.7033.12.2022)

People in crisis of homelessness and the epidemic situation

The CHR informed **that people in crisis of homelessness found it difficult to obtain a referral for a COVID-19 test due to lack of health insurance**. Also, regulations imposing home isolation were inappropriate to their situation. Difficulties in access to COVID testing violated their right to health care. The Commissioner pointed out that a solution to the problem was also desirable in view of the obligation imposed on the authorities to combat epidemic diseases.

The Minister replied that the funding of healthcare services covers all persons suspected of COVID-19 infection or with COVID-19 infection, to ensure that they have appropriate access to diagnosis and treatment, regardless of their health insurance entitlement. The Minister also reported that the Ministry had not received any information about a lack of antigen tests for shelters or night shelters, nor any information that test results of people in crisis of homelessness were not being entered into the EWP information and communication system (system for monitoring the epidemic risk). (V.7018.141.2022)

■ Health care and the war in Ukraine

Challenges for the Polish health care system in the face of the refugee crisis caused by the armed conflict in Ukraine

War refugees from Ukraine face problems in accessing appropriate health care. These include: dedicating separate hospitals to Ukrainian citizens and relocation standards, the epidemic situation as regards infectious diseases, the issue of funding for interpreter services, treatment in primary health care (PHC) establishments, treatment of patients without medical documentation, and difficulties in accessing health services in the absence of the PESEL number. Also access to medicines is important, i.e. reimbursement under drug programmes and access to medicines in the absence of medical documentation. A separate issue is the conditions that representatives of medical professions from Ukraine must satisfy to work in Poland. This is important in the context of including another group of patients in the system, which may result a shortage of doctors. The Commissioner requested the Minister of Health to present his opinion on the issue.

The Minister replied and informed that no sharp increase in infectious diseases had been observed due to the influx of Ukrainian nationals. It was also not envisaged to dedicate separate facilities to them. Funding of treatment was provided for in the Act on Assistance to Ukrainian Citizens due to the armed conflict. The payer of benefits did not report any healthcare providers where patient admissions would be halted or limited due to the wave of refugees. Among others, an application was launched to improve medical advice for Ukrainian citizens. Also, there were no legal grounds for the National Health Fund to cover the costs of an interpreter when providing healthcare services to a foreigner. As regards lacking medical documentation or doubts as to the completeness or quality of such documentation originating from another country, the Minister pointed out the necessity for such a patient to undergo relevant diagnostic tests in order to determine the proper therapeutic path. The lack of a PESEL number was not an obstacle in access to services. As regards the issue of employing doctors from Ukraine, the Minister pointed out that the Act on the Professions of Physician and Dentist regulates three ways of temporary admission to practice the profession of doctor and dentist for people who obtained their qualifications outside the EU (usually in Ukraine), under the so-called simplified procedure. (V.7010.74.2022)

Support for Ukrainians in mental illness crisis

Following the meeting of the Expert Committee on Mental Health, the Commissioner addressed the Prime Minister requesting him to consider the establishment of an interdisciplinary team that would develop comprehensive and consistent regulations on supporting persons in mental crisis arriving from Ukraine. In responses received from the Ministry of Health and the Ministry of Family and Social Policy it was indicated that Ukrainian citizens holding a psychology degree would be allowed

to provide psychological assistance to their compatriots without the need for having their degree recognised. The Children's Ombudsman's Helpline had launched a service of specialists providing support in Ukrainian and Russian. (V.7016.24.2022)

■ Systemic problems

The future of the mental health care system in Poland

The Polish Association of Community Psychiatry addressed an open letter to the Prime Minister on the future of the mental health care system in Poland. The community of psychiatrists have noticed some signals indicating a move away from reforming the psychiatric care system and going back to the dysfunctional and archaic system of centralised mental health care. Meanwhile, civil society organisations expect a continuing systematic development of the network of mental health centres and an increase in their funding. The Commissioner supported these expectations and requested the Prime Minister to present his position on the matter.

The Minister of Health replied informing that measures aimed to ensure access to psychiatric care, as well as support and access to specialists for people struggling with mental disorders and their relatives, are a priority for the Ministry. A support programme for child and adolescent psychiatry had been prepared, with additional funds – a total of PLN 220 million – earmarked e.g. for improving infrastructure and modernising facilities, implementing a pilot programme of therapeutic interventions for children and young people with problems caused by using new digital technologies and for their families, and for treating addictions. The Minister assured that the outlays to cover the costs of healthcare services funded from the National Health Fund, including psychiatry and addiction treatment, and child psychiatry, are steadily increasing. (V.7016.42.2022)

The process of implementing child and adolescent psychiatry reform

In the CHR's opinion, the fundamental flaw of the child and adolescent psychiatry reform is the system of payment for the services. According to it, facilities get paid for the number of services provided and not for covering a specific group in need of psychiatric care. Counselling centres must be responsible for young people in a given area. They should cooperate with the local community – especially with schools and social welfare assistance. There are no effective solutions to encourage doctors and therapists to provide care funded under the National Health Fund. Also, in the case of early childhood psychiatry, preventive and educational measures taken on a daily basis in schools are of key importance. The Minister of Health assured that the issues raised by the Commissioner would be taken into account. The Minister added that spending on child psychiatry is being increased every year; also the number of doctors is growing. (V.7016.73.2022)

■ Equal access to health care services

Situation in the field of palliative care in rural areas

At a conference held by the Commissioner and the Prophet Elijah Hospice Foundation, some requests were presented regarding palliative care in rural areas. It was emphasised that the rapid ageing of the rural population is accompanied by underdeveloped infrastructure, and limited access to public transport, social services and healthcare. This negatively affects the quality of life of the oldest residents and their right to care and a dignified old age. The Regulation of the Ministry of Health on guaranteed palliative and hospice care services contains a limited list of diseases that qualify for palliative and hospice care. This implies that under hospice care one may die only for a few diseases listed in this regulation. Meanwhile, hospices accept all dying people, regardless of their disease. Indeed, according to the Council of Europe's guidelines, palliative care is not linked to a specific disease. The Commissioner addressed a letter on the issue to the Ministry of Health, the Ministry of Family and Social Policy, and the President of the National Health Fund.

The Ministry of Family informed that the issue was beyond its competence, however social assistance can be one of the elements of the system supporting the health system in this area. The Minister recalled that since 2018, the 'Care 75+' programme had been implemented, the strategic objective of which was to improve the access to care services, including specialised care services, for people aged 75 and over. He added that work is also underway to implement the deinstitutionalisation of social services in Poland.

As regards measures to reduce the effects of e-exclusion of seniors in rural areas, the Minister of Health indicated that since January 2019, the Ministry carried out the Accessibility Plus programme, implemented under the Operational Programme Knowledge Education Development (OP KED) 2014-2020, co-financed from the European Social Fund. Work is also underway to establish a team responsible for drafting a long-term strategy for developing palliative and hospice care.

The National Health Fund informed that a monthly lump sum had been set for doctors providing primary care services in sparsely populated areas. Broadening the eligibility criteria for palliative and hospice care may lead to longer queues and result in a situation where patients in poorest condition may not live to see the day when they are covered by care. (V.7010.140.2019)

Impeded access to treatment and hospices for oncological patients

The organisation and financing system of service provisions not only fails to provide the expected opportunities for early cancer detection but also for adequate treatment. The situation seems particularly difficult in radiotherapy centres with the greatest ever number of patients who require palliative treatment. They undergo radiation for pain relief but there is no longer any chance of a cure for them.

This situation is caused by the limited treatment during the pandemic, when the number of consultations, diagnoses and hospital admissions fell dramatically. As a result, there will be excess deaths for several years, including oncological patients.

Currently, this trend is becoming apparent in hospices. Some patients waiting to be admitted die before they receive hospice care. This is caused by the high number of those waiting to be admitted and the insufficient funding. Already in 2019, an audit by the Supreme Audit Office (NIK) revealed a lot of negligence and the lack of accessibility to hospice care. In the Commissioner's opinion, the funding of palliative care needs to be changed urgently. There is a risk that if the care procedure price per point centres is not adequately increased and "friendly rules" for the palliative and hospice care are not introduced to cover all patients in need of such care, by 2023 the non-governmental hospices may no longer exist. The CHR requested the Minister and the President of the National Health Fund to present their positions on the matter.

The Minister informed that the decreasing trend in the numbers of doctors and nurses in the health care system had been reversed thanks to the efforts taken by the Ministry, while the team responsible for drafting a long-term strategy for developing palliative and hospice care was working on the issues of providing palliative and hospice care services and the rules governing their settlement.

The President of the National Health Fund assured that the Fund is successively increasing its funding and is continuously monitoring and analysing data on the availability of services, including radiotherapy oncological services. Oncological services offered within the framework of inpatient or outpatient specialised care, namely oncological diagnostics or oncological treatment provided on the basis of an oncological diagnostics and treatment card, are unlimited. The duration of being covered by inpatient hospice care, palliative care, and home hospice services is not strictly defined, and depends mainly on the patient's health condition and life expectancy. Therefore, it is not possible to predict the first available date of admission to such a facility. (V.7010.162.2022)

Rare diseases and reimbursement of their treatment

Rare diseases, especially among children, and the reimbursement of their treatment is of special interest for the Commissioner. This issue requires systemic changes, as results both from the complaints of citizens received by the CHR Office and from the requests of members and experts of the Commissioner's Expert Committee on Healthcare. Rare diseases affect approximately 6-8% of the population, i.e. 2-3 million people. Most are not diagnosed and are 'invisible' in the system. Such a patient is discriminated against in access to diagnostics, has no treatment options, and also no right to a diagnosis. He/she is at risk of using low-quality, unreliable genetic testing, without interpretation of clinical test results, without genetic counselling, without further diagnosis. There are no regulations protecting against this risk. Staff shortages in medical/clinical genetics are worrying. The level of medi-

cal care for children with birth defects has declined in the pandemic. The body coordinating the Plan for Rare Diseases is not functioning.

Measures recommended by the experts to improve the situation include first of all: implementing the measures provided for in the Plan for Rare Diseases, inter alia through Expert Centres for Rare Diseases (ECRD); improved diagnostics, including access to modern diagnostic methods using genomic technologies; access to medicines and foodstuffs for particular nutritional uses; Polish Rare Diseases Registry/Rare Diseases Register; Rare Disease Patient Passport; Rare Diseases Information Platform; amendment of the reimbursement Act regulation; adopting an Act on genetic testing; establishment of a new specialisation 'Medical Molecular Genetics' for biotechnologists; and a new medical profession 'genetic counsellor'. Changes are also needed in the reimbursement of genetic diagnostics. There is a need to expand new-born screening diagnostics and to increase the pharmacological offer for patients with rare diseases. The Commissioner requested the Minister of Health for information on the Ministry's plans and actions.

The Minister assured that Rare Diseases have become a priority and that the Plan for Rare Diseases, adopted in 2021, is aimed to improve the situation of patients with rare diseases and their families, by creating an integrated healthcare model that enables comprehensive and coordinated care. A Rare Diseases Council has been established to monitor, in collaboration with the Minister, the various stages of the Plan including, inter alia, the establishment of relevant expert teams, organising competitions to obtain the ECRD status, and coordinating collaboration. The Minister also informed that a so-called Rare Disease Patient Passport will be prepared in electronic form. This will be a regularly updated resource of information about the patient and his/her disease, made available to healthcare providers.

In a subsequent letter, the Minister explained that work was underway at the Ministry to expand diagnostic genetic testing. As of April 2021, one of the 30 congenital diseases being tested for is SMA (spinal muscular atrophy). As a pilot programme, such testing has been introduced successively in individual voivodeships. Currently, these tests are performed throughout Poland. The Ministry is aware of the problem of diagnosing and, at a later stage, treating a rare disease. Rare Diseases are one of the priorities for the Ministry of Health. (V.7010.128.2022)

Reimbursement of a drug used to treat spinal muscular atrophy (SMA) in older children

The Commissioner was concerned with the information he received about the problems in access to reimbursement for a drug for children struggling with SMA. The list of reimbursed drugs includes Zolgensma, the most expensive drug used to treat SMA in children. However, the drug will only be prescribed for children up to the age of six months. In the Commissioner's opinion, the age criterion is not justified. Pursuant to Article 68(2) of the Constitution, equal access to healthcare services, financed from public funds, shall be ensured by public authorities to citizens,

irrespective of their material situation. Therefore, the Commissioner addressed an intervention letter to the Minister of Health.

The Minister responded that when specifying the age of patients who could be treated with Zolgensma only clinical trials and recommendations of medical specialists and experts were taken into account. The main registration study of the drug submitted by the manufacturer was conducted in the age group 0-6 months. This age, as the most appropriate for administration of the drug, is also indicated by the Public Assessment Report of the European Medicines Agency. The Minister further pointed out that there are two other therapies in use for SMA patients, which are also effective. Thus every patient is guaranteed equal and full access to a life-saving therapy.

In another intervention letter, the Commissioner pointed out that, according to the summary of product characteristics for Zolgensma, which is available on the European Medicines Agency's website, there are no age limitations for its use. However, it is stated in the summary that experience in using the product in patients aged 2 years or over or weighing more than 13.5 kg. In addition, the largest package of the drug that the manufacturer is allowed to sell in the EU is intended for patients weighing 20.5-21 kg. This entitles one to ask whether the adopted age criterion has a direct and necessary connection with the efficacy of Zolgensma and whether it is not possible to refer to a parameter such as the child's weight.

The Minister pointed out that for over three years, the treatment of spinal muscular atrophy had been publicly funded for the entire patient population. From 1 January 2019, the drug Spinraza (nusinersen) was covered by reimbursement. And from 1 September 2022, two additional therapies – the gene therapy Zolgensma and the drug Evrysdi – have been covered by reimbursement. All three drugs are available as part of a single integrated medicine programme.

In another intervention letter to the Minister of Health, the Commissioner noted that in the reply he did not find information addressing his all concerns. In particular, there was no reference to the fact that the age limits for the use of the drug had not been introduced. At the same time, the Commissioner noted that it would be important to know whether the Ministry sees the possibility of administering Zolgensma as part of emergency access to drug technology in a situation where a patient has, for example, experienced treatment failure with Spinraza (nusinersen) or Evrysdi. The Minister replied that there are no plans to modify the drug programme. (V.7013.61.2022)

Freedom of speech and freedom of the media

A conference to mark the 15th anniversary of the establishment of the Regional Representative Office of the Commissioner for Human Rights in Katowice, entitled “The Commissioner for Human Rights standing guard over the freedom of expression”, was devoted to the issue of freedom of expression. The Commissioner began his speech by quoting Article 11 of the 1789 French Declaration of the Rights of Man and of the Citizen: “The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law. The provision dates from long ago yet it expresses a contemporary understanding of the freedom of expression, explaining that it is, on the one hand, one of the most precious rights but, on the other hand, this right is unrestricted and can be abused”, he noted. He recalled that the foundations of European thinking on freedom of expression were set out in the case law of the European Court of Human Rights. In his speech, the Commissioner spoke, inter alia, about the problems concerning freedom of expression mentioned in complaints received by the Commissioner. These include, for example, the blocking of websites by the Internal Security Agency, attempts by local authorities to influence the staffing of editorial offices of local newspapers, the lack of effective means of protection against fake-news, hate, and hate speech in social media, or banning journalists from some meetings.



The conference celebrating the 15th anniversary of the establishment of the CHR Regional Representative Office in Katowice was devoted to the freedom of expression

■ Pluralism of the media – the issue of media ownership concentration

According to the Commissioner, **legislative action is needed to ensure, by way of antitrust proceedings, an adequate level of protection of freedom of the media and freedom to express opinions and to obtain and disseminate information.**

The comments on the issue were based on the findings made in the course of an explanatory proceedings, conducted in the CHR Office since 2020, on the take-over by PKN Orlen S.A., a company owned by the State Treasury, of Polska Press Sp. z o.o., a company having large shares in the market of local printed and online press titles, which take-over would lead to ownership concentration on the market. The Commissioner held that the existing regulations did not permit control over ownership concentration from the point of view of the above-mentioned constitutional values but only an assessment of the concentration from the point of maintaining market competition, assessed based on economic criteria and parameters. In 2022, the District Court in Warsaw dismissed the appeal against the decision in which the President of the Office of Competition and Consumer Protection (UOKiK) consented to the acquisition of Polska Press by PKN Orlen (case file no. XVII AmA 43/21). The Court explained that under the consumer protection law, non-economic criteria may not be taken into account and – although media pluralism is a constitutional value - it is not possible to take this value into account in proceedings before the President of UOKiK.



Representatives of the CHR during a remote court session

In a statement issued after the ruling the Commissioner stressed that **pluralism of the social media is an extremely important value for the functioning of democracy but, in the existing legislative situation, is insufficiently protected. It is therefore necessary to change the law on ownership concentration on the media market. Procedures should be in place to enable an independent body to assess ownership concentration on the press market from the point of view of media pluralism and the freedom to obtain and disseminate information.** The Commissioner also announced undertaking an analysis of the issue, which resulted in an intervention letter addressed to the Prime Minister.

In his intervention letter to the Prime Minister, the CHR underlined that the impossibility to take into account the issue of pluralism of social media while controlling ownership concentration on the media market is a significant problem caused by the existing competition law. The lack of an Act of Parliament providing a basis for taking account of the issue of protecting the freedom and pluralism of the media should be regarded as a significant gap in the legislation. Closing the gap is not possible through direct application of the Constitution by the Court or the President of the Office for Competition and Consumer Protection. Amendment of the legislation is thus necessary, as confirmed by the Court ruling in the case of Polska Press and by actions taken at the level of the European Union. (VII.716.26.2020)

■ Rights of journalists

The Commissioner received complaints in which journalists pointed to the problem of **being denied entry to state offices and to events organised by public institutions.** The reason for such denials was information from the databases available to the State Protection Service. In such situations, journalists are not informed of the specific reasons for the refusal nor of the source of information about them being dangerous and its content. Moreover, the State Protection Service officers do not inform journalists of the available remedies. In the Commissioner's view, such a situation is a violation of the constitutional rights and freedoms of journalists, inter alia, limiting their professional opportunities. Possible restrictions on the activities of journalists must be considered in the context of the specific function performed by the media in a democratic society, that is pursuing the public interest of ensuring wide access to information. Therefore, any kind of refusal to allow journalists to attend events of public importance should be subject to strict scrutiny. In a letter to the Minister of the Interior and Administration, the Commissioner emphasised that the legislation must not allow for complete arbitrariness of decisions by public officials, combined with the lack of information on the reasons for such decisions.

The Minister explained that the criterion taken into account by the State Protection Service during the vetting process was the security of the most important persons in the state and the objects to be protected. The profession pursued by those with respect to whom the State Protection Service officers take measures stipulated by the law cannot affect the officers' involvement in preventing crimes against protected persons and objects. The Minister stated that the activities undertaken

by the State Protection Service are legal, and that the provisions regulating the issue raised in the intervention letter need not be amended. (VII.564.82.2021)

On 18 January 2022, the **Supreme Court acquitted three ARTE TV and AFP journalists from the penalty in the form of a reprimand for an offence of violating the ban on staying in the area on which a state of emergency was imposed**. A cassation appeal against the verdict by which the Court found the journalists guilty of the offence was filed by the Commissioner. The Supreme Court agreed with the arguments of the cassation appeal and found the punishment of the journalists to be manifestly unfair. The Commissioner pointed out in the cassation appeal that the ban had been imposed in breach of the Constitution. This was because the government had gone beyond the restrictions on the rights of the individual set out in the Presidential Decree on the state of emergency, which relate to the ban on staying in designated places, objects and areas at specific times. Therefore, it could not be the basis for punishing journalists.

The Supreme Court held that there had been a disproportionate encroachment on the freedom of movement and the choice of stay, resulting in a violation of Article 52(1) of the Constitution. The Council of Ministers regulation on the ban to stay in the state of emergency zone also violated the freedom of the media, as journalists were not included in the numerous exceptions to said ban. However, it is those in journalism profession who have a unique legitimacy to be in places where events of importance to the political community take place. It is not reasonable to assume that it is this professional group that poses a threat to the appropriate conduct of activities aimed at restoring the normal functioning of the state. The Supreme Court noted that commonly the presence of correspondents reporting events is not questioned even under conditions of a state of war. (II.510.1116.2021)

■ Freedom of assembly

In connection with enactment of the Act of 28 April 2022 on the Copernican Academy, the CHR addressed the Minister of Education and Science presenting his comments on the compatibility of the provision of Article 76 of said Act with the freedom of assembly and the freedom of expression. According to the Act, once in 5 years a World Copernican Congress is organised to exchange information, experiences and results of scientific research in the last 5 years in the astronomy, economics and medicine. Pursuant to the Act, during 72 hours before the start of the first Congress to 48 hours after its conclusion, the **so-called spontaneous assemblies** are to be banned in Toruń. According to the Commissioner, this raises a number of questions. The Act on Copernican Academy introduces a difference in the treatment of assemblies, dividing them into those that can take place during the first World Copernican Congress (assemblies of which the organiser notifies the municipal authority) and those that are prohibited at this time (spontaneous assemblies). The Ombudsman appealed to the Minister to bring the legal situation into conformity with the constitutional standard of freedom of assembly. The

Minister forwarded the appeal to the Office of the President, which had prepared the draft Act.

In the response from the Office of the President, it was explained that introducing the questioned regulations was aimed to ensure security and public order during the Congress. Since terrorist threat may be associated with its organisation, the participation of state services in taking measures to protect security is increased. The ban on spontaneous assemblies was introduced due to the need to ensure security and public order. It was clarified that the freedom of assembly may be exercised during the First World Copernican Congress in other forms than spontaneous assembly, and the question regulation lies within the regulatory freedom of the legislator. (VII.613.2.2022)

The Commissioner continued efforts to **ensure that the rights of participants in spontaneous assemblies and counter-manifestations were properly protected**. He took general action, drawing attention to the obligation of state authorities to ensure security for all groups demonstrating at the same time, as well as action in individual cases.

■ Change in the standard of terrestrial broadcasting of TVP channels

The President of the Office of Electronic Communications (UKE) has granted the request of the Ministry of Internal Affairs and Administration to change the frequency reservation for TVP S.A., intended for the distribution or dissemination of programmes by digital terrestrial broadcasting in MUX-3C. The decision affected approximately 2.5 million people who were deprived of the freedom to obtain information from TV stations other than public television. According to the Commissioner, the UKE decision led to differentiating between citizens in terms of their ability to freely exercise their constitutional freedom. The decision raises a number of questions, including in the electoral context. Not only the free elections but also the freedom of expression and, in particular, the freedom of political debate, jointly constitute the foundation of a democratic system. They are interconnected and mutually reinforcing, and thus the ability to follow political debate from a variety of sources must be considered an essential element of democracy. The CHR pointed out that the change coincides with the period of the election campaign and people who, as a result of the frequency changes, will not have access to other sources of information, will remain only within the reach of the public television broadcasting and will be deprived of the possibility to follow the election campaign in other media. The Commissioner therefore requested the UKE President to provide clarification.

In response, the UKE President UKE explained that it was clear from the information provided by the Ministry of Internal Affairs and Administration that the state of preparation for the change from DVB-T to DVB-T2 was unsatisfactory. Approximately 4-5 million citizens did not have new receivers or decoders capable of receiving digital terrestrial television signal in the new technology. This meant that numerous

households would be deprived of access to terrestrial television if the switchover was carried out on schedule. This would have resulted in a significant limitation of access to information and the Regional Warning System, which was unacceptable in the situation of circumstances of threat to defence, state security or public safety and order. At the same time, the UKE President noted that those who only have access to content transmitted in the third multiplex could at any time purchase a new digital receiver, enabling them to receive terrestrial digital television signal also in the new standard, for which subsidies could be obtained. (VII.564.23.2022)

■ Publication of the local press by local government entities

Publishing press by local governments carries the risk of hampering the function played by the media in a democratic society, which is to exercise public control over the actions of authorities at both central and local level. Local governments can publish their press titles out of touch with the market rules, using public funds and supported by hired officials, and the press they publish is often distributed for free. This distorts competition in local media and information markets and impedes the smooth functioning of non-public media, causing limitations in exercising the freedom of press. The Commissioner addressed the Minister for Culture and National Heritage on this issue.

The Minister informed that the Ministry recognises the problem presented in the CHR's letter as well as the worrying phenomenon of press published by local government monopolising the local media market in Poland. However, introducing a ban on publishing newspapers by local governments may raise constitutional doubts.

In a subsequent intervention letter sent to the Ministry of Culture and National Heritage, the Commissioner pointed out that local governments are not the subjects of constitutional human and civil rights and freedoms, in particular the freedom of the press. While on the one hand the Constitution did not prohibit the publishing of press by local governments, leaving the decision in this respect to the legislator, on the other hand, if the legislator decided to allow local press publishing or financing by local governments, it is necessary to regulate in detail this type of activity in an Act at the national level, same as in the case of public media. (VII.564.28.2022)

Education

■ Pupils and students and the war in Ukraine

In the last months of the 2021/2022 school year, approximately 200,000 Ukrainian children were studying within the Polish education system, of which approximately 40,000 attended kindergartens. It was estimated that about half a million of refugee children continued their education remotely – in the Ukrainian system. Most of the children and young people were not enrolled in Polish institutions and therefore schools could not provide support to pupils and respond to arising problems. Even after the end of the war in Ukraine, refugees and immigrants will continue to come to Poland. This is linked to global problems such as the climate crisis, armed conflicts, discrimination against minorities, hunger, unemployment and poverty.

In view of the above, the CHR formulated **recommendations on how to strengthen the system of education**, and presented them to the Minister of Education and Science. These are, inter alia, facilitating the employment of people from Ukraine: teachers, therapists, cultural assistants and other staff; intensifying integration of refugees; taking systemic measures aimed at pupils learning remotely by ensuring that they have contact with peers and adult support; providing support by the Ministry of Education and Science for schools established within the Ukrainian system, and establishing international branches; providing anti-discrimination education. The Ministry responded and informed that the CHR's recommendations would be followed in the course of continuing work on providing adequate education for young people from Ukraine. (VII.7030.14.2022)

Some objections were also raised the context of educating Ukrainian children and young people, inter alia, **the obligation for Ukrainian pupils to take the eighth-grade exam caused concern**. More information on the subject can be found in the section on education for children from Ukraine above. (VII.7031.13.2022)

The Commissioner's doubts were also raised by the provisions of the Act on Assistance to Ukrainian Citizens due to the armed conflict, regulating access of persons fleeing Ukraine to education in Poland. In his opinion on this Act, the Commissioner pointed out that it contained a general authorisation for the Minister of Education and Science to determine, by regulation, the organisation of education and care for children and youth who are citizens of Ukraine. Such a solution may give the Minister too wide a regulatory discretion. (XI.543.104.2022)

Difficulties for students of Ukrainian universities to obtain documents confirming their education

The Commissioner received a complaint from a Polish citizen regarding continuation of studies at Polish universities by medical students who had to leave

Ukraine after the Russian aggression. Polish universities required students wishing to continue their studies in Poland to submit original documents. However, the rector of the Ukrainian university prohibited their issuance. After the intervention of the Polish Consulate, the students were informed that they could not obtain a transcript of the documents but only a certificate with a full list of grades, however on the condition that they settled their accounts with the university and resigned from further studies there. The Commissioner requested the Minister of Health to present his position on the matter and requested the Ukrainian Commissioner for Human Rights for assistance in solving the problem. As a result of the action taken by the Ukrainian Commissioner, the documents that the students had been waiting for were issued to them. (VII.7033.84.2022)

The Commissioner also drew attention to **individual needs of pupils with disabilities who arrived to Poland from Ukraine and to the necessity to support them**. More information on this topic can be found in the section on education of persons with disabilities. (XI.811.1.2022)

The Commissioner discussed with the Deputy Minister of Education and Science the current problems caused by the arrival of refugees from Ukraine in Poland in the context of education. The CHR Office also held consultations on the education of children and young people from Ukraine. The consultation meeting was attended by dozens of representatives of the Ministry of Education, local governments, school boards, social organisations, and the CHR Office – Round table on education.

■ Universities

The rights of parties to disciplinary proceedings concerning academic staff, students and doctoral students

The Commissioner keeps monitoring the issue of respecting the rights of parties to disciplinary proceedings in cases involving academic staff, students, and doctoral students. When disciplinary proceedings are conducted at a university, the victim of actions of an academic teacher, student or doctoral student does not have the status of a party. Complaints received by the Commissioner show that the victim is then in a worse position than the defendant who often occupies a higher position in the professional or scientific hierarchy. Therefore, the Commissioner requested the Ministry of Justice to take appropriate legislative action.

The Minister did not agree with the Commissioner stating that potential changes should result first of all from the information provided by the academic community, and there were none. In connection with this response, the Commissioner requested the President of the Student's Parliament of the Republic of Poland, the President of the National Representation of Doctoral Students, and the President of the Conference of Rectors of Academic Schools in Poland to present their position on the issue. (VII.7033.115.2022)

The need to extend the deadline for doctoral programmes commenced prior to the 2019/2020

The new Act on Higher Education and Science requires discontinuation of habilitation and professorship proceedings not completed by the end of 2022. Similarly, doctoral theses not completed by the end of 2023 are to be closed. In the complaints received by the CHR the plight of scientists after the pandemic is underlined. The CHR requested the Minister of Education and Science to consider amending the regulations.

The Minister replied that the deadline for finalising proceedings initiated before 30 April 2019 had already been extended once, and no further extension was foreseen. (VII.7033.113.2022)

Untimely completion of reviews in promotion proceedings

One of the most frequently reported problems as regards awarding degrees and titles is the untimeliness of reviews in promotion proceedings, despite regulations stipulating that a person who failed to meet the reviewing deadline twice in the past 5 years cannot be a reviewer. In his intervention letter sent to the Ministry of Education and Science, the Commissioner pointed out that the lack of clear solutions calls into question the practical meaning of these regulations.

The Minister explained that opinions were commissioned by the Council for Scientific Excellence, which also received the opinions of reviewers. The Council for Scientific Excellence in turn responded that a good idea to streamline verification would be to place relevant data in the POL-on Integrated Information System for Higher Education and Science which contains the database of promotion proceedings documents, including, inter alia, reviews with dates when they were written. The Minister replied that legislative work was planned to collect more detailed data in this database. (VII.7033.125.2022)

■ The CHR's comments on the education law amendment

On 4 November 2022, Polish Sejm adopted an amendment to the Act- Education Law and some other Acts. The CHR, on the basis of citizens' requests, submitted comments to the Act to the Marshal of the Senate. The amendment contained solutions suggested by the CHR, e.g., specifying conditions for closing a school. At the same time, however, the legislator again proposed changes that may raise doubts from the point of view of rights and freedoms protection. The Commissioner also pointed out that if a regulation has a significant impact on numerous entities, broad public consultations are a must to comply with the principles of decent legislation. In his opinion to the Senate, the Commissioner concluded that this condition had not been met. Finally, on 15 December 2022, the President refused to sign the enacted Act. (VII.7037.73.2021)

■ Staff shortages in educational institutions

In the Commissioner's opinion, a shortage of teachers can cause irreparable damage to pupils' education and negatively affect the fulfilment of the right to education. Reasons for teachers leaving the profession include low salaries, high psychological strain, and professional burnout. Another problem is working overtime beyond the limit. The appeal of a teacher's job is conditioned by the level of payment, good organisation of schools, and the respect for the profession in society. There are increasing warnings that the problem will grow due to the retirement of older teachers and low interest in working at school among teaching graduates. The Commissioner requested the Ministry of Education and Science to provide the results of its analysis of the problem and to inform about further actions.

The Minister replied that in 2022 measures had been taken to increase teachers' salaries, regardless of systemic changes in the status of this professional group. He noted that the working time of teachers in Poland (in terms of the statutory number of teaching hours, i.e. 'at the blackboard') is among the shortest in Europe. At the same time, the Minister agreed with the opinion that the current solutions in the area of teachers' pragmatics were not satisfactory. To make the teaching profession more attractive, it is necessary to change system of salaries along with teachers' pragmatics. (VII.7037.106.2021)

■ The contents of the history and the presence textbook

The Commissioner received complaints from teachers and parents of pupils about the content of the textbook for grade 1 of secondary and vocational schools, entitled *History and the Present – 1945-1979*. The Commissioner emphasised assessing school textbooks from the point of view of methodology, factual correctness, or didactic suitability is not within his competence. However, doubts were raised in the public space as to whether certain passages of the textbook comply with the standard according to which public authorities should remain impartial in the matters of worldview and whether the textbook content violates the inherent dignity of the human being. Therefore, the Commissioner wrote an intervention letter to the Minister for Education and Science.

The Minister explained that the publisher's application for approval for school use of the textbook entitled *History and the Present. Textbook for high schools and vocational schools. Class 1. 1945-1979* had been reviewed by experts who assessed that the textbook satisfied the conditions set out in the Act on Education System. So far, a total of three textbooks were approved for school use for the subject History and the Present. The Minister pointed out that which textbooks a school uses depends solely on the decision of that school. (VII.7037.18.2022)

■ Reduction in the number of hours and funds for German minority education

The CHR was approached by representatives of the German minority and, in solidarity with them, by representatives of other national and ethnic minorities concerned that, as of 1 September 2022, the number of German language hours per week for German minority was to be reduced to one hour – from three thus far. Pursuant to the Regulation of the Ministry of Education and Science, language teaching for other minority groups will continue for three hours per week. In the Commissioner’s opinion, this is discriminatory and contrary to constitutional norms and international law. The Commissioner sent intervention letters in this matter to the Marshal of the Senate of the Republic of Poland and to the Prime Minister.

The Prime Minister’s Office responded that repealing said Regulation would be a premature action given that regulations were not subject to review of the Constitutional Tribunal. In turn, the Minister of Education and Science announced at a meeting of the Joint Committee of the Government and National and Ethnic Minorities on 14 December 2022 that measures would be taken to restore three hours of German language teaching. (XI.813.18.2021)

Equal treatment

In May 2022, the **National Action Programme for Equal Treatment for the years 2022-2030** was published. In January 2022, CHR submitted comments on the draft Programme to the government. The Commissioner pointed out, inter alia, that protection against unequal treatment remained limited in Poland (e.g., protection against discrimination in access to goods and services is limited to gender, race, ethnic origin, and nationality). According to the CHR, anti-discrimination education should be made compulsory again and anti-discrimination procedures should be introduced in schools. In response, the Government Plenipotentiary for Equal Treatment informed, inter alia, that the evaluation of equal treatment legislation will be carried out taking into account both European Union legislation enacted since 2010 and directives and other documents on which work has not yet been completed. The Plenipotentiary also invited the CHR to discuss the direction of the necessary legislative changes and actions to raise social awareness and fuller realisation of the principle of equal treatment in Poland. (XI.070.8.2020)

■ Counteracting violence against women

In connection with the global campaign “16 Days of Action against Gender-Based Violence”, the **CHR Office conducted the #PowiedzNiePrzemocy [#TellNoViolence] campaign**. It started on 25 November on the International Day Against Violence Against Women, and ended on 10 December 2022 on International Human Rights Day.

The campaign on social media and the CHR website consisted of 5 videos on different forms of violence, 5 infographics, and an Emergency Plan for people experiencing violence, prepared by the CHR Office and partner organisations and containing information on how to get help when experiencing domestic violence.

Emergency Plan for people experiencing domestic violence (in Polish)

Plan awaryjny
dla osób doświadczających przemocy domowej

- 1. Obserwuj zachowania osoby agresywnej**
Będziesz wiedzieć jakie zachowania zapowiadają najgorsze i kiedy sytuacja staje się niebezpieczna.
Jeśli awantury, krzyki nasilają się, jeśli coraz częściej słyszysz groźby pod swoim adresem, jeśli doświadczasz przemocy fizycznej czy seksualnej - **to są sygnały, że przemoc się nasila i narasta.**
- 2. Jeśli masz dzieci - naucz je dbać o bezpieczeństwo**
Powiedz dzieciom:
 - gdzie mogą szukać pomocy,
 - że mogą pukać do zaprzyjaźnionej sąsiadki, sąsiada,
 - naucz je numeru alarmowego,
 - upewnij się, że znają adres domu, gdyby musiały wzywać pomoc,
 - możecie ustalić wspólnie słowo alarmowe.
- 3. Bezpieczne miejsce**
Zastanów się, gdzie w Twoim domu możesz znaleźć bezpieczne schronienie. Powinno to być miejsce **bez niebezpiecznych narzędzi i przedmiotów**. Unikaj kuchni, garażu, łazienki.

„Plan awaryjny” opracowało Biuro Rzecznika Praw Obywatelskich, działając we współpracy z ekspertkami Fundacji Feminoteka, Centrum Praw Kobiet i Niebieskiej Linii IPZ.

People who took part in the campaign next to the Commissioner Marcin Wiącek and Deputy Commissioner Valeri Vachev included: President of Kobiety w Centrum [Women in Focus] Association Magdalena Sobkowiak, President of the Women's Rights Centre and a court bailiff Urszula Nowakowska, and White Ribbon Laureate Robert Damski.



PRZEMOC W RODZINIE

168 058 osób było dotkniętych przemocą domową w 2021 r.

100 417 (60%) stanowiły **kobiety**

23 832 (14%) **mężczyźni**

43 809 (26%) **dzieci**

Wśród zatrzymanych przez Policję domniemyanych **sprawców przemocy w rodzinie**

17 451 (96%) to byli **mężczyźni**

746 (4%) stanowiły **kobiety**



#PowiedzNiePrzemocy

Źródło: Sprawozdanie z realizacji Krajowego Programu Przeciwdziałania Przemocy w Rodzinie w Roku 2021 za okres od dnia 1 stycznia do dnia 31 grudnia 2021 r.

Infographic prepared by the CHR Office – data on domestic violence (in Polish)

In an intervention letter addressed to the Minister of Justice, the CHR outlined the **demands** that have been made publicly **for a change in the definition of the crime of rape**. This crime should be determined solely by the lack of informed and freely given consent to sexual contact. This is, inter alia, a requirement imposed on

Polish legislation by the Council of Europe Convention on preventing and combating violence against women and domestic violence (the so-called Istanbul Convention). (XI.518.88.2020)

■ Ageism

The importance of protecting the rights of the elderly in Poland was highlighted by the CHR in an intervention letter addressed to the Minister of Family and Social Policy. **In Poland, the prohibition of age discrimination applies only to employment and access to training.** This translates into discriminatory legislation, e.g. not including seniors in education law or limiting their access to palliative care. The Commissioner pointed to various international initiatives in this area, including the European Council conclusions, the Open Letter to the UN Working Group on Ageing on a convention on the rights of older persons, the UN Human Rights Council Resolution on the rights of older persons and countering age-related discrimination.

In a subsequent intervention letter addressed to the Minister of Family and Social Policy, the CHR inquired whether the Government intended to participate in the **work of the UN to strengthen the protection of the rights of older persons within the framework of the human rights agenda**, namely the work of the UN Working Group that is preparing a Convention on the Rights of Older Persons. The Commissioner also called comprehensive solutions to be worked out for financing policy on seniors in each municipality, as well as a systematic review of public policies with a view to eliminating systemic age discrimination.

The Ministry responded that it was monitoring the work of the Working Group. It also reported that the 12 sessions of this Group held so far had not identified the specific human rights of older persons and the legal gaps in the protection of older persons that would justify the adoption of a separate international agreement within the UN framework dedicated to older persons. At the same time, the Ministry provided information on the activities undertaken in support of older people. (XI.503.2.2016)

The CHR Office **received complaints about the way in which the new tax exemption for working seniors introduced under the so called Polish Deal reform was designed.** It concerns the so-called zero PIT for those who work after reaching retirement age. The possibility to benefit from the tax exemption was made conditional on reaching retirement age and did not take into account those who had acquired the right to early retirement. In addition, the group of persons entitled to the exemption is too narrowly defined as regards the source of their income. The Commissioner addressed the Ministry of Finance on the issue. (V.511.509.2022)

The Commissioner received a letter from a woman aged 60+ indicating **a problem with the obligation for owners of small businesses (up to five employees) and the self-employed who pay their own social insurance contributions to file the monthly declaration only electronically.** She indicated feeling discriminated against in this way, as her age and lack of digital skills made it impossible for her to file the return correctly, without having to incur additional costs of hiring a profes-

sional to deal with this, and in the prospect forcing her to even stop working. The Commissioner supports digitisation and computerisation initiatives that make the contact between the citizen and the authorities easier. However, no one should feel excluded and discriminated against in such a process. Therefore, the CHR addressed the President of the Social Insurance Institution on this issue. In her reply, the President of the Social Insurance Institution assured that a payer of contributions, reporting up to five insured persons for insurance, still had the possibility to submit insurance documents (including declarations) in paper form. (VII.801.2.2022)

In response, the Ministry indicated that it did not share the Commissioner's position. Candidates for lay judges complained to the Commissioner about a provision in the Law on Common Courts Organisation, according to which **anyone under the age of 70 can be a lay judge**. This may be a violation of the prohibition of discrimination. The Commissioner addressed the Minister of Justice on this issue. The Ministry responded that it did not share the Ombudsman's view. (VII.801.1.2019)

In 2022, the CHR Office published a Report **"Supporting older persons during the pandemic", prepared on the basis of a study on the situation of people aged 60+ during the COVID-19 pandemic in Poland**. The report contains a list of recommendations taking into account: the right of older people to dignity, the right to information, the right to health care, the right to social inclusion, and the right to equal treatment. The Commissioner pointed, inter alia, to the need to implement a systemic way of reaching older people with information, especially about the possibilities of obtaining support from public institutions.

Among the recommendations, the Commissioner singled out the need to increase the educational offer for older people from the State, including education in digital competences. The Commissioner also pointed to the need to create local strategies for dealing with crisis situations in relation to groups of people at particular risk of exclusion, including older persons.



Supporting older persons during the pandemic – a CHR report

■ Work-life balance for parents and carers

The problem of **unequal sharing of care responsibilities between women and men** is one of the main obstacles to achieving real gender equality. The CHR emphasises the need for legislative measures to achieve real equality in employment. One of the main obstacles remains the double burden of professional and domestic work on women. The Commissioner submitted an opinion on the draft

law, prepared by the Ministry of Family and Social Policy, transposing the EU Directive 2019/1158 on work-life balance for parents and carers into Polish law.

In a further intervention letter, the CHR requested that the works on the draft be finalised as a matter of urgency. Member States were required to adopt legislation necessary for its implementation by 2 August 2022. (XI.022.1.2022)

■ The rights of LGBTQ+ people

The Commissioner continued his actions as regards resolutions adopted by some local authorities to counter 'LGBT ideology'. All of the resolutions (nine) previously challenged by the Commissioner were found by the administrative courts to have been adopted without any legal basis and to be invalid due to a gross infringement of the law. The administrative courts found that **the resolutions (also referred to as position statements or declarations) against 'LGBT ideology' discriminate against specific persons and create a hostile, derogatory and intimidating atmosphere around them, which may cause a risk of violence against these persons**. The judgments emphasised that no one can be discriminated against by public authorities on the basis of their sexual orientation and gender identity, and that by adopting such resolutions, local governments advocated non-respecting the generally applicable law. On 28 June 2022, the Supreme Administrative Court dismissed cassation appeals filed against four judgments of voivodeship administrative courts. (XI.505.32.2019, XI.505.1.2020, XI.505.13.2019, XI.505.30.2019)

Said resolutions are still binding in some municipalities and districts, so the Commissioner appealed to 24 municipalities and 12 districts to take action to repeal them. (XI.505.10.2020)

The Commissioner has noted that – due to legislation in other countries – problems arise in Poland concerning the rights of children raised by same-sex couples. For example, the Commissioner joined a case in which a girl born in Canada in a surrogacy procedure was refused confirmation of the citizenship. Her birth certificate revealed two fathers as parents: the biological father (a Polish citizen) and his husband. The Supreme Administrative Court ruled that the child had the right to confirmation of Polish citizenship. (XI.534.3.2018)

In another case, the Court of Justice of the EU expressed its opinion on **the refusal to transcribe into Polish civil status records a foreign child's birth certificate** on which same-sex persons are named as parents. In its answer to a preliminary question (C-2/21), the CJEU pointed out that a Member State must ensure that its minor citizens are able to travel within the EU with either parent, regardless of their gender – and the refusal to transcribe a birth certificate on the grounds that [Poland] does not recognise same-sex marriages may not be an obstacle. (XI.534.5.2019)

The Commissioner submitted **his comments to the Marshal of the Senate regarding certain provisions of the Act on passport documents, adopted by the Sejm**. The Commissioner stressed, inter alia, that a desirable change would be to

abandon the requirement to indicate the mother's and father's data when applying for a temporary passport, as this obligation cannot be fulfilled by children who have two mothers or two fathers listed on their foreign birth certificates. (XI.534.4.2016)

The Commissioner also submitted **comments** to the Ministry of Justice **on the amendment to the Act on Civil Registry Records** and other acts that introduce provisions defining the legal status of foreign civil status records that refer to events unknown to Polish law or not recognised in the Polish legal order, such as, inter alia, same-sex marriages, other registered same-sex unions, and same-sex parenthood, and that introduce the institution of a certificate issued for the purpose of exercising rights under the EU freedom of movement. (XI.501.11.2022)

The CHR also joined a case of a transgender person employed under a civil contract with a security company, who was required to work in a male uniform – even though that person lived in compliance with her perceived female gender. Her gender recognition proceedings were then pending. The person refused to work in a male uniform and sued the employer, and the Court found that the employer's action was a form of discrimination. The Prosecutor General lodged an extraordinary appeal against this ruling. On 8 December 2022, the Supreme Court dismissed this appeal in accordance with the Commissioner's request. (XI.801.8.2019)

Prohibition of torture and inhuman treatment

■ Twentieth anniversary of the adoption of the Optional Protocol to the Convention against Torture

18 December 2022 marked 20 years since the adoption by the UN General Assembly of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). It provides a **legal basis for the establishment and functioning of national preventive mechanisms**. The protocol is based on the assumption that all places of detention may become places where torture takes place, either as a result of abuse or because of uncontrolled use of the power over detainees. The elimination of this phenomenon requires supervision, vigilant approach and monitoring.

In the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on the visit to Poland in 2019, the Committee expressed disappointment with the failure of the Polish authorities to implement its long-standing recommendations. **The systemic problem with the implementation of the international recommendations** means, first of all, that Polish places of isolation increasingly depart from the standards required to ensure real freedom from torture and ill-treatment. Therefore, the NMPT Department, which operates as part of the Office of the Office of the Commissioner for Human Rights, assessed the degree of implementation of the CTP and SPT recommendations in the facilities visited by international experts in the past. The conclusions from the visits as well as the recommendations for the authorities were published in the **report “Human rights in places of isolation”**.

Applications received by the CHR Office from prisoners and their relatives show that certain **problems related to serving imprisonment by people with physical disabilities** remain unsolved. The provision of appropriate assistance to people unable to independently perform basic daily activities, including self-care, remains a major challenge. The Commissioner wrote to the Director General of the Prison Service with regard to the issue. In the response it was pointed out that the Prison Service made every effort, both in terms of work organization and expenditure, to ensure that people with disabilities received appropriate care and support. The CHR was also assured that all such detainees received medical care adequate to their diagnosed diseases and were provided with above-standard care by prison staff. (IX.517.562.2022)



Human rights in places of isolation – a report of the NMPT

■ Implementation of the Mendez Principles

The principles on effective interviewing for investigations and information gathering (the so-called Mendez Principles) promote **effective, ethical and non-coercive interrogation, focused on the principles of the presumption of innocence and the pursuit of truth**. The Commissioner wrote to the Police Commander-in-Chief requesting information on the progress in the implementation of the Principles. In response, the Commander assured that the Polish translation of the **Mendez Principles were disseminated among the police**. However, no changes were introduced to courses and training programmes, and teaching materials were not updated, apart from the modifications required by changes in Polish legislation. (KMP.570.9.2021)

Every year, judgments regarding acts that constitute torture, inhuman or degrading treatment or punishment are issued in Poland. The perpetrators should be held liable. However, the authorities should develop regulations ensuring maximum protection to citizens as well as increasing the safety of persons deprived of their liberty. The Department of the National Mechanism for the Prevention of Torture issued, in 2022, a publication entitled “Crime of Torture in Poland”. It includes, among others, description of judgments which became final in 2020 and which imposed penalties on police officers who committed such acts.

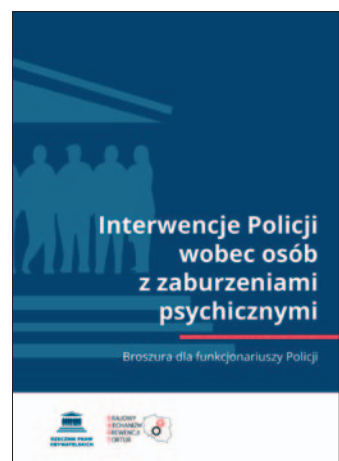
■ Application of coercive measures with regard to people with mental disorders

Cases of citizens’ deaths during police actions, disclosed in the media, clearly show that officers’ knowledge about the particularly sensitive nature of interventions regarding people with mental disorders is still insufficient. Therefore, the NMPT team developed an information brochure for police officers. It describes the main principles of conducting interventions regarding people who, due to their limited consciousness, require special approach.

At the CHR Office a **seminar** was also held in which NMPT employees, scientists and police officers discussed **how and in what situations coercive measures should be used with regard to people with mental disorders**. The NMPT employees presented the latest standards set by the CPT and SPT



The crime of torture in Poland – a publication of the NMPT



Information brochure for the police

committees in the field of police actions. During the meeting, the need to constantly improve and update the qualifications of police officers was also emphasized.



Seminar at the CHR Office on the use of coercive measures with regard to people with mental disorders

The Commissioner also sent an **intervention letter to the Minister of the Interior and Administration regarding the use of handcuffs in people with mental disorders**. According to the CHR, it is necessary to amend the Act on the Police so as to adjust it to the European standards. The list of coercive measures permitted in people with mental disorders should be specific and should not include handcuffs. In response, the ministry informed that the proposed amendment of the Act on the Police was ungrounded. At the same time, however, the Ministry of the Interior and Administration stated that it saw the need to amend the Act on coercive measures and firearms. (II.574.1.2022)

The Commissioner drew the attention of the Minister of Health to the issue of the use of non-standard procedures, not regulated by law, during care provision to residents of social care homes, nursing facilities and residential medical care facilities. The procedures do not formally constitute coercive measures and are thus not regulated in the Act of 19 August 1994 on mental health protection but they restrict people's freedom. In some psychiatric hospitals, **coercive measures not provided for in law** are used as protective measures with regard to people placed in such hospitals by a court. The measures include straitjackets, incapacitat-

ing belts, back-belts, belts put on patients' hands and belts with a magnetic lock, used to attach a patient's hand to a nurse's wrist. The Commissioner requested the Minister of Health to express an opinion on the subject. In response, the ministry informed that the applicable regulations appropriately eliminate the possibility of irregularities related to the use of coercion with regard to people with mental disorder. (IX.517.36.2020)

■ **Situation of foreigners in guarded centres during the Poland-Belarus border crisis**

Due to the refugee crisis on the border between Poland and Belarus, which took place in the second half of 2021, the NMPT representatives carried out 15 unannounced visits to guarded centres and detention centers for foreigners. The visits took place in the period from 30 August 2021 to 29 April 2022. The aim was to check the treatment and the observance of basic rights of migrants at the centres and the material conditions there. The report **"Situation of foreigners in guarded centres during the Poland-Belarus border crisis"** issued in June 2022, summarised the visits. The report was described in the section devoted to conditions in guarded centers for foreigners.

■ **Rights of people placed in the National Centre for the Prevention of Dissocial Behaviours**

The Commissioner pays attention to the situation at the National Centre for the Prevention of Dissocial Behaviours (Polish: Krajowy Ośrodek Zapobiegania Zachowaniom Dys socjalnym, KOZZD) in Gostynin. In May 2022, **representatives of the CHR Office visited the KOZZD branch in Czersk**. In July, a report on the visit was presented. It contained detailed comments and recommendations aimed at strengthening the protection of the patients against the risk of torture. Some of the recommendations have already been implemented. As regards the remaining issues, the CHR continues to monitor the situation and send intervention letters to relevant authorities. (KMP.574.2.2022)

There have also been applications by KOZZD patients to the European Court of Human Rights regarding a violation of the prohibition of inhuman treatment by failure to respect their rights to freedom, to family life and to appeal to court. The CHR submitted amicus curiae briefs in the cases. The briefs contained e.g. information on the living conditions in the Gostynin centre, collected as a result of examining the cases of the KOZZD patients and during visits to Gostynin and the branch facility in Czersk. The conditions have deteriorated over the years. (IX.517.272.2022, IX.517.262.2022)

Since the establishment of the centre in 2014, the Commissioner has been monitoring the changes in the legislation regulating the facility's operation. In May 2022, the CHR submitted to the Minister of Health comments on the draft amendment to the so-called Act on KOZZD. He pointed out that the draft solves some of the prob-

lems but many of the proposed provisions seemed unacceptable, including those regarding the rights of the centre's patients, which should meet the standards applied in the Netherlands and Germany. (IX.022.3.2022)

On 9 September 2022, **a conference was held at the CHR Office on cases pending before the European Court of Human Rights that relate to the Gostynin Centre.** The Commissioner emphasized that when talking about people held in the facility, their human dignity is not sufficiently discussed. The experts discussed changes and patterns that could help protect their dignity while achieving the centre's aims. They also discussed the case law of the European Court of Human Rights relating to the standards of functioning of such entities. The functioning of KOZZD was compared to the work of similar facilities in other countries. Changes taking place in the law were also discussed.



The conference at the CHR Office on cases pending before the ECHR with regard to Gostynin Centre patients

■ Use of non-standard forms of care in nursing facilities and residential medical care facilities

The National Mechanism for the Prevention of Torture also conducts visits to social care homes, private long-term care facilities and residential medical care facilities. At such establishments, the NMPT noticed the practice of applying **non-standard procedures in taking care for residents.** They included e.g. the use of hand straps; putting socks on residents' hands to prevent them from scratching

parts of the skin changed by a disease; tying a resident to the bed with a strap on the hand in order to prevent them from falling down off the bed, securing residents who are unable to remain in the proper sitting position in an armchair, chair or wheelchair by using bedsheets, towels, back support belts or even tights. The Commissioner wrote an intervention letter to the Minister of Health regarding the need to regulate the use of such measures by way of a parliamentary act. In response, the Minister informed that any action requires an in-depth analysis to improve the protection of the rights of all groups of patients. In December 2022, the Commissioner sent another intervention letter requesting information on the planned new legal solutions and their place in the legislative system. (KMP.573.9.2022)

Selected cases before courts and tribunals

Constitutional Tribunal



In 2022, the Commissioner submitted 3 applications to the Constitutional Court to declare laws and regulations inconsistent with higher-level legislation, 13 notifications about joining proceedings initiated by a constitutional appeal, 7 notifications about joining proceedings initiated by a question of law, and 1 notification about joining proceedings initiated by a motion

- On 22 April 2022, the Constitutional Tribunal discontinued the proceedings initiated on CHR's application, filed in 2015, on the right of employees to increased pay or time off for overtime. The Constitutional Tribunal held that the CHR had challenged a so-called legislative omission, which does not fall within the scope of the jurisdiction of the Tribunal. (case file no. K 20/15) (III.7040.73.2014)
- On 27 April 2022, the Constitutional Court ruled that non-appealability of court decisions on the lack of conflicting interests of suspects defended by a single defence counsel is unconstitutional, in line with the CHR's position. (case file no. SK 53/20) (II.5150.3.2020, II.5150.4.2020)
- On 28 June 2022, the Constitutional Court discontinued the proceedings concerning the impossibility to complain about operational control. This is incompatible with the constitutional right to a court, the right to appeal, and the principle of two-instances, assessed the CHR, who joined the case. The

Constitutional Tribunal held that it was a legislative omission, which is not assessed by the Constitutional Tribunal. (case file no. SK 60/21) (II.511.810.2021)

- The provision on suspending a driving licence, by a head of county government, for speeding solely on the basis of information from a traffic control authority is inconsistent with Article 2 of the Constitution, as the Constitutional Tribunal ruled on 13 December 2022. This was requested by the CHR who joined the case. (case file no.K 4/21) (II.510.858.2019)
- In connection with the CHR's application, on 13 December 2022 the Constitutional Tribunal ruled that Article 24(1)(1a) and Article 37b(1)(1) of the Act on the National School of Judiciary and Public Prosecution (KSSiP) were unconstitutional. The issue was that persons over the age of 35 could not apply for the judgeship training and the prosecutor's apprenticeship at the KSSiP, and over the age of 40 for supplementary training or apprenticeship. (case file no. K 3/22) (VII.561.7.2019)
- On 15 December 2022 the Constitutional Tribunal discontinued proceedings on the National Electoral Commission rejecting the financial reports of two parties. In one of the proceedings, the Supreme Court had doubts as to whether the automatism of such a decision was compliant with the Constitution. This objection was shared by the CHR. (case file no. P 8/17 i P 2/19) (VII.610.1.2019)

The Supreme Court



In 2022 the Commissioner filed 119 motions to the Supreme Court

- On 18 January 2022, the Supreme Court, upheld the cassation appeal filed by the CHR and acquitted (case file no. I KK 171/21) three journalists from the punishment of a reprimand for the offence of violating the ban on being in the area of the state of emergency. (II.510.1116.2021)
- On 24 February 2022, the Supreme Court upheld the cassation appeal filed by the CHR in favour of an entrepreneur, owner of several shops, fined by the Court for trading on Sundays. Indeed, the defendant's shops were exempt from the trading ban (case file no. II KK 486/21) (II.511.50.2021)
- On 15 March 2022, the Supreme Court upheld the cassation appeal filed by the Commissioner in the case of blockage of the 2019 march in memory of the 'accursed soldiers' near the former prison on Rakowiecka Street. The Supreme Court confirmed that a peaceful counter-demonstration was under protection of the Constitution. (case file no. II KK 90/22) (II.510.456.2021, II.510.457.2021, II.510.134.2021)
- Polish nationality of a convict with dual nationality is not an obstacle to surrender him to another country to serve his sentence, the Supreme Court ruled on 7 April 2022, thus upholding the cassation appeal filed by the CHR (case file no. IV KK 578/21) (II.510.884.2015)

- On 26 October 2022, the Supreme Court upheld the cassation appeal filed by the CHR in favour of a citizen. In 2013, the Court refused to annul a Stalinist-era judgement convicting a citizen, inter alia, for armed struggle against the army, the Security Office and the Citizen's Militia. The Supreme Court held that there were no grounds to exclude armed struggle from the notion of 'acting for the independent existence of the Polish State'. (case file no. III KK 375/22) (II.510.571.2019)
- On 16 November 2022, the Supreme Court upheld the cassation appeal filed by the CHR in favour of a citizen convicted of stealing wood from a forest. The Supreme Court held that exemplary damages can only be ordered if someone is convicted of felling trees in the forest or stealing a felled or fallen tree, whereas the convicted person had taken pine wood that had been cut into pieces and stored. (case file no. III KK 328/22) (II.510.1178.2020)
- Courts may disregard the invalidated provisions of the Acts if they find them unconstitutional – this is how the Supreme Court decided on the legal question on 17 November 2022, in line with the position presented by the CHR. (case file no. III PZP 2/21) (III.7044.95.2019)
- On 7 December 2022, the Supreme Court upheld the cassation appeal filed by the CHR and acquitted a citizen who had been sentenced in 1960 to 3 years of imprisonment for "participating in an assembly and public incidents that obstructed the execution of certain legal official acts in the Catholic House in Zielona Góra". This concerned the illegal eviction of a parish from the Catholic Home, which met with public resistance. (case file no. I KK 443/22) (II.510.963.2022)
- On 14 December 2022, the Supreme Court upheld the cassation appeal filed by the CHR in favour of a citizen who had been convicted of, inter alia, helping another offender to evade criminal liability by arranging for him a safe conduct. This action had not adversely affected the criminal proceedings. (case file no. I KK 418/22) (II.511.447.2017)

The Supreme Administrative Court and administrative courts



In 2022, the CHR filed 16 cassation appeals with the Supreme Administrative Court

- On 12 January 2022, the Supreme Administrative Court ruled that the issue of collecting undue care allowance payments should be decided by the administrative authority not by a common court. The Supreme Administrative Court agreed with the woman in whose case the CHR intervened. (case file no. I OSK 918/21) (III.7065.199.2019)
- On 24 January 2022, the Voivodeship Administrative Court in Kraków referred back to the municipality for review the case of non-awarding of nursing benefit to the guardian of a disabled nephew for whom – after the death of the guardian’s brother and his wife – he had been designated as a non-relative foster family. The CHR joined the case. (case file no.III SA/Kr 622/21) (BPK.7064.2.2021)
- On 8 June 2022, the Supreme Administrative Court upheld the judgments of the Voivodeship Administrative Court on revoking four so-called anti-LGBT resolutions, challenged by the CHR. (case file no.III OSK 4028/21) (XI.505.30.2019)

- On 7 July 2022, the Supreme Administrative Court confirmed the absence of grounds for not allowing a journalist into the Sejm; the CHR joined the case (case file no. III OSK 1363/21) (VII.6060.30.2018)
- On 15 September 2022, the Voivodeship Court in Białystok admitted complaints of the CHR and of the attorney of an Iraqi family on being turned back to the state border line (the so called pushback). The Court held that turning them back was contrary to the provisions of national law, including the Constitution of the Republic of Poland, as well as to international agreements binding Poland. (case file no. II SA/Bk 492/22) (XI.543.10.2022)
- On 6 October 2022, the Voivodeship Administrative Court in Gdańsk found the actions taken by the municipality as regards transportation of a child with motor disabilities to school to be ineffective. The CHR requested that the complaint of the child's mother, to whom the municipality offered to reimburse the costs of commuting by public transport – two trains and a bus – be admitted. (case file no. III SA/Gd 120/22) (XI.7036.31.2021)
- On 14 November 2022, following a legal question from the CHR, the Supreme Administrative Court held that a condition for granting the right to a nursing benefit to persons other than first-degree relatives of persons in need of care is that his/her persons next of kin have a certificate of significant degree of disability. (case file no. I OPS 2/22) (III.7064.45.2022)

Common courts

On 7 June 2022, the District Court in Warsaw dismissed the CHR's appeal against the consent of the President of the Office of Competition and Consumer Protection for PKN Orlen S.A. to take control over Polska Press sp. z o.o. According to the court, non-economic criteria may not be taken into account on the grounds of consumer protection law. Media pluralism is a constitutional value but the court is not in a position to take it into account when assessing merger cases. (case file no. XVII AmA 43/21) (VII.716.26.2020)

International courts

■ European Court of Human Rights

The Commissioner for Human Rights may submit written observations in proceedings before the European Court of Human Rights, subject to the consent of the President of the Court (so-called opinions of a friend of the court, *amicus curiae*).

In 2022, the Commissioner for Human Rights joined the following proceedings before the European Court for Human Rights in Strasbourg:

1. *Wróbel v. Poland*, application no. 6904/22. A case concerning the waiver of the immunity of a judge.
2. *Wałęsa v. Poland*, application no.50849/21. A case concerning the annulment by the Supreme Court Chamber of Extraordinary Control and Public Affairs of a final judgment on the case.
3. *R.A. and others v. Poland*, application no.42120/21. A case concerning turning back a group of foreigners to the Polish-Belarusian border line.

■ Court of Justice of the European Union

The Commissioner for Human Rights may join court proceedings in which courts refer preliminary questions to the Court of Justice of the European Union. In such a case, the Commissioner becomes a participant of the proceedings before TSUE.

In 2022, the Commissioner joined, inter alia, the following proceedings:

1. Case C-520/21 concerning consumer rights.
2. Case C-638/22 concerning the Polish procedure of child deportation.
3. Cases C-181/21 and C-269/21 concerning the procedure of appointment of judges in Poland.
4. Case C-2/21 concerning the relevance of transcription of a child's foreign birth certificate and issuance of an identity document or passport.

Special duties of the Commissioner for Human Rights

The Commissioner for Human Rights acts as an **independent equality body**. The main tasks of the Commissioner in this role are to consider applications filed with the equality body, including complaints regarding violation of the principle of equal treatment, and to take other action in accordance with the provisions of the Act on the Commissioner for Human Rights. The Commissioner's activities relate to discrimination on grounds such as: gender, race, ethnic origin, nationality, religion, denomination, belief, disability, age and sexual orientation. However, Article 32(2) of the Constitution prohibits discrimination on any grounds. Therefore, the Commissioner may take action also in cases when a person is treated unequally for other reasons such as health, material status or migration experience.

The CHR has the duty to analyse, monitor and promote equal treatment of all persons, to conduct independent research on discrimination and to develop and issue independent reports and recommendations on problems related to discrimination.

The Commissioner for Human Rights in Poland also performs the function of an **independent mechanism monitoring the implementation of the Convention on the Rights of Persons with Disabilities**. The Commissioner's activities in this area focus on the possibilities to exercise the right to education, on ensuring architectural, information, communication and digital accessibility, on the process of deinstitutionalisation of the support system, the possibility to obtain funding from the State Fund for Physical Rehabilitation of People with Disabilities and the protection of such people against violence.

In 2022, the Commissioner took a decision to appoint the CHR's plenipotentiary for the implementation of the provisions of the Convention on the Rights of Persons with Disabilities. Her main task is to undertake activities aimed at implementing the Convention, to disseminate knowledge about it and to support the Commissioner in the cooperation with public authorities, institutions and non-governmental organisations.

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

In 2022, representatives of the NMPT carried out a total of 79 preventive visits. The Commissioner, in his role of the NMPT, drew up 8 general intervention letters and three thematic reports ("Human rights in places of isolation. How Poland implements the recommendations of international bodies for the prevention of torture (CPT and SPT)"; "Situation of foreigners in guarded centres at the time of

the crisis on the border between Poland and Belarus “, and “The crime of torture in Poland”). An information brochure was also developed for police officers. It describes the main principles of conducting interventions regarding people who, due to their limited consciousness, require special approach by police officers. In 2022, the NMPT employees continued the training activities within the framework of the campaign „State without Torture“. The NMPT team members also conducted training sessions for, employees of social care homes, youth care centres and youth social therapy centres.

The structure of the CHR Office comprises a **Department for Soldiers and other Uniformed Service Officers**. In 2022, employees of the department carried out numerous visits to military units and Border Guard units. The conclusions of the visits were presented by the Commissioner in his intervention letters to the relevant state authorities. As regards the protection of the rights of police officers, in his intervention letters the Commissioner raised e.g. the issue of a gap in the legislation on the rules of recruitment to the police and the problem of dismissal from the police on the grounds of citizenship of another country. He also pointed to the need to strengthen the protection of reinstated police officers. Furthermore, the Commissioner wrote intervention letters with regard to the reduction of benefits of Prison Service officers who were on sick leave and to the use of surveillance systems in prisons and remand prisons for the purpose of supervising Prison Service employees and officers. The Commissioner also wrote intervention letters concerning the possibility to pay cash allowances to firefighters for their service in the first half of 2022, and concerning the problem of officers not entitled to severance pay for their service period.

**Organization system
of Commissioner for Human
Rights' activities**

CHR regional offices and citizen reception points

Pursuant to Article 22 of the Act on the Commissioner for Human Rights, the Commissioner, with the consent of the Sejm, appointed the Commissioner's regional representatives in Gdańsk, Katowice and Wrocław. They act for and on behalf of the Commissioner and are required to follow the rules governing the exercise of the Commissioner's duties.

The Commissioner for Human Rights' Regional Representative Offices deal with all issues that fall within the Commissioner's remit, except for matters requiring the personal involvement of the Commissioner or his Deputies.

In order to facilitate citizens' direct contacts with the CHR Office, in addition to the Offices of the Regional Representatives there are also citizen reception points where, on designated days, advice can be obtained from an employee of the CHR Office or an application to the Commissioner can be filed. After the temporary suspension of operations due to the declared state of epidemic, in September 2022 the reception points in Bydgoszcz, Koszalin, Kraków, Lublin and Wałbrzych resumed their activities. In 2022, a sixth citizen reception point was opened in Szczecin. All the points are open on the first Thursday of the month.



Opening ceremony of the citizen reception point in Szczecin



- CHR's Headquarters Office in Warsaw
- Regional Representative Office in Gdańsk
- Regional Representative Office in Wrocław
- Regional Representative Office in Katowice

Territorial competence of the CHR Regional Representative Offices and citizen reception points

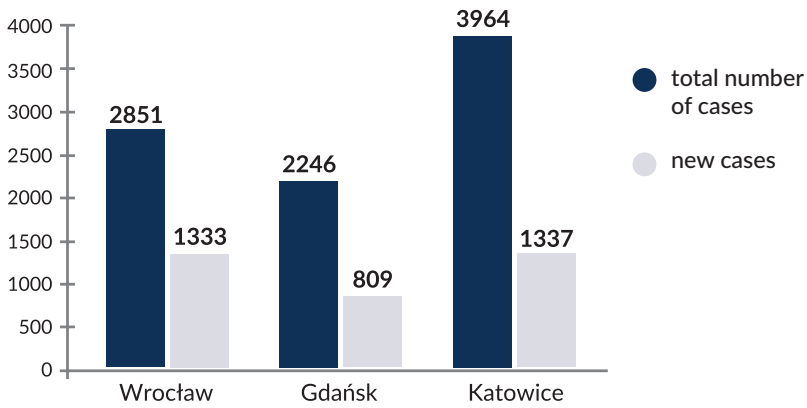
In 2022, a total of 9,061 applications were received by the CHR Regional Representative Offices and citizen reception points, of which 3,479 concerned newly registered cases.

The territorial competence of the CHR Regional Representative Office in Gdańsk covers the following voivodships: Pomorskie, Warmińsko-Mazurskie and Zachodnio-pomorskie. In 2022, the Regional Representative Office and citizen reception points in Wrocław received 171 persons seeking help and answered 1222 telephone calls, providing explanations and advice to citizens. The number of incoming cases reached 2246, of which 809 were newly registered cases.

The territorial competence of the CHR Regional Representative Office in Katowice covers the following voivodships: Małopolskie, Śląskie and Świętokrzyskie. In 2022, the Regional Representative Office and citizen reception points in Katowice received 154 persons seeking help and answered 2018 telephone calls, providing explanations and advice to citizens. The number of incoming cases reached 3962, of which 1337 were newly registered cases.

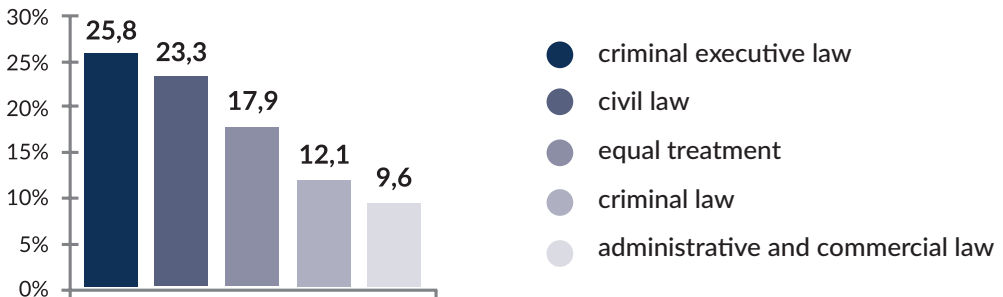
The territorial competence of the CHR Regional Representative Office in Wrocław covers the following voivodships: Dolnośląskie, Lubuskie and Opolskie. In 2022, the Regional Representative Office in Wrocław received 225 persons seeking help and answered 1630 telephone calls, providing explanations and advice to citizens. The number of incoming cases reached 2851, of which 1333 were newly registered cases.

Figure 6. Inflow of cases to Regional Representative Offices in 2022 (the data is also presented in table 7 in the section “Tables”)



The restrictions related to the coronavirus pandemic influenced the number of citizens received in person in the first half of 2022. In all Regional Representative Offices, in-person meetings were replaced with remote contacts via email, the e-PUAP system or telephone.

Figure 7. Main problem areas dealt with by Regional Representative Offices in 2022 (the data is also presented in table 8 in the section “Tables”)



Almost half of the cases reported to the CHR Regional Representative Offices related mainly to the area of executive criminal law (25.8%) and civil law (23.3%). Large numbers of applications (17.9%) concerned compliance with the principle of equal treatment, criminal law (12.1%), administrative and economic law (9.6%), labour and social security law (7.9%). Cases concerning constitutional, international and European law accounted for 2.4%, to the protection of the rights of soldiers and officers – 0.2% and those within the scope of competence of the National Preventive Mechanism – 0.2% of the total number of cases.

Figure 8. Cases examined by CHR Regional Representative Offices in 2022 (the data is also presented in table 9 in the section “Tables”)

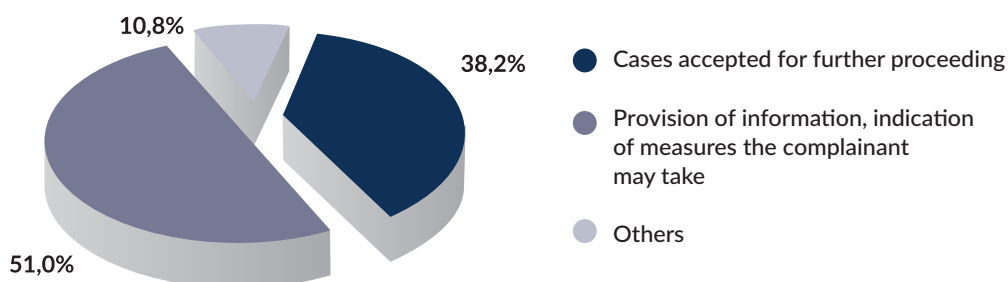
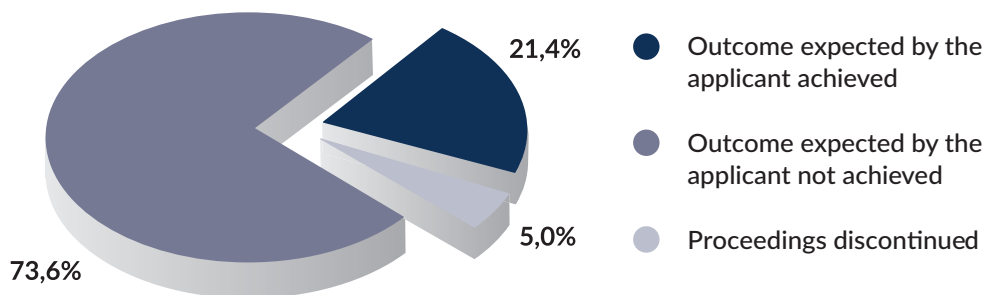


Figure 9. Completion of cases handled by CHR Regional Representative Offices in 2022 (the data is also presented in table 10 in the section “Tables”)



The activities of the Commissioner for Human Rights’ Regional Representative Offices in 2022 focused on two main areas: the ongoing processing of applications and assessment of the legality of the activities of local public authorities, and the representation of the Commissioner for Human Rights in external relations. After a two-year suspension period, the Regional Representative Office in Wrocław resumed on-site meetings with young people at schools. The office’s employees also engaged in information actions for refugees from Ukraine. As in previous years, the Wrocław

office also carried out activities to protect the rights of people with disabilities and cooperated in this area with the Mayor of Wrocław and Dolnośląskie Voivodship Marshal's Plenipotentiary for People with Disabilities.

2022 marked the 15th anniversary of the establishment of the CHR Regional Representative Office in Katowice. On this occasion, on 23 September 2022 in Katowice a conference entitled „The Commissioner for Human Rights standing guard over the freedom of speech” was held.

CHR activities in the field of social communication

The Commissioner carries out information and education activities aimed at disseminating knowledge about human rights and freedoms.

The main source providing information about the Commissioner's work is the Public Information Bulletin of the Office (bip.brpo.gov.pl). In 2022, the website registered a record number of over 4 million 700 thousand entries. In 2022, it published 1,334 posts about the Commissioner's activities and the website registered over 2 million 600 thousand entries.

In connection with the war in Ukraine, the website bip.brpo.gov.pl was expanded by subpages in the Ukrainian and Russian languages. They contain information about the CHR's competencies, the rights of foreign citizens as well as methods of contacting the Commissioner to seek assistance. The application form for filing with the CHR is also available in the two languages.

A new type of activity, started in 2022, was the posting on the bip.brpo.gov.pl website of short videos with statements of the Commissioner, Deputy Commissioners and CHR Office Staff members. Starting from May 2022, 23 videos were published.

In 2022, the CHR Office continued to promote the activities of the Office and of the Commissioner on social media (Facebook, Twitter, Instagram and LinkedIn). The total reach i.e. the number of people who saw the materials on the CHR Office profiles or the information on them was 1 849 092 (Twitter: 1 049 000, LinkedIn: 498 603, Facebook: 289 683, Instagram: 11 806).

In late November and early December, in connection with the global campaign „16 Days of Activism against Gender-Based Violence” the CHR Office conducted a campaign #PowiedzNiePrzemocy (Say No to Violence). The campaign, conducted on social media and on the CHR website, consisted of 5 videos on different forms of violence, 5 infographics and an Emergency Plan for persons who experience violence, developed by the CHR Office and partner organisations.

The CHR Office hosted e.g. the following events: a workshop for judges “Direct application of EU law in criminal proceedings”, a conference “People excluded in rural areas today”, a scientific seminar “Legal aspects of the freedom of construction”, an expert seminar “Police interventions regarding persons with mental disorders”, a conference “Cases pending before the Strasbourg Court with regard to the National Centre for the Prevention of Dissocial Behaviours”, a conference „Possibilities of support provision to people with an advanced dementia and to their relatives”, a conference “The right to leisure as a human right”, a conference “ The Commissioner for Human Rights standing guard over the freedom of speech “, consultation meeting “A round table on education” on education of children and youth from Ukraine “Round table on education”, and meetings and workshops for self-advocacy groups of persons with the autism spectrum disorder.

In 2022, the CHR Office issued 14 publications. 11 titles were published in the printed form, in the overall number of 9,150 copies. The website of the CHR Office, bip.brpo.gov.pl, meets the accessibility standards. The publications contained there met the WCAG 2.1 (Web Content Accessibility Guidelines) standard.

Since 2006, the Commissioner for Human Rights has been presenting the Paweł Włodkowic award to people demonstrating an uncompromising attitude towards fundamental values and truths, even against the opinions and views of the majority. In 2022, the award was presented to two married couples who provided assistance to refugees. The award went to **Maria and Wojciech Radwański** who established and coordinated a Crisis Intervention Point near the border between Poland and Belarus, in the municipality of Gródek in the Białystok district of the Podlaskie Voivodeship; and **Mirosława and Zbigniew Warzecha** who transformed their fitness club in the centre of the town of Chrzanów in the Małopolskie Voivodeship into a home providing shelter to people arriving from war-stricken Ukraine.



Since 2009, the CHR has presented the CHR's Medal of Honour "For achievements in the field of human rights protection". In 2022 the medal was presented to:

- **The Prophet Elijah Hospice Foundation** that carries out activities to eliminate medical exclusion of people in rural areas;
- **Prof. Roman Hauser** – for his achievements in the development of Polish administrative courts system;

- **Zofia Romaszewska**, an outstanding social activist and human rights defender;
- **Prof. Marian Grzybowski** – for his achievements in the development of Polish constitutional law and science regarding human rights, a retired judge of the Constitutional Tribunal.



Presentation of the CHR's Medal of Honour "For achievements in the field of human rights protection" to the representatives of the Prophet Elijah Hospice Foundation



Presentation of the CHR's Medal of Honour "For achievements in the field of human rights protection" to Roman Hauser



Presentation of the CHR's Medal of Honour "For achievements in the field of human rights protection" to Zofia Romaszewska



CHR's Medal of Honour "For achievements in the field of human rights protection"



Presentation of the CHR's Medal of Honour "For achievements in the field of human rights protection" to Prof. Marian Grzybowski

Since 2016, the CHR has presented Dr. Maciej Lis award in appreciation of special achievements in protecting the rights and interests of people with disabilities. In 2022, the winner of the award was **Krzysztof Kurowski**, a lawyer, Chairman of the Polish Forum of People with Disabilities.



Presentation of the Dr. Maciej Lis Award to Dr. Krzysztof Kurowski

Human rights education

The Commissioner for Human Rights carries out activities disseminating knowledge about human and civil rights and freedoms as well as equal treatment. A lot of attention is paid to shaping people's attitudes towards groups at risk of discrimination and exclusion, in particular seniors, people with disabilities, people who have experienced a mental crisis, migrants and national, ethnic and religious minorities.

As every year, conferences, trainings and workshops dedicated to specific issues were held. Their participants included refugees from Ukraine, organisations providing assistance to refugees, autism spectrum self-advocacy groups and representatives of organisations that provide support to them, school youth and students. The latter group members could take part in summer internships at the CHR Office during which they found out about the work of the Office and the types of incoming complaints. In addition thematic meetings were organised on subjects such as sustainable development, bioethics, the rule of law and exclusionary language in the public space.

During the Pol'and'Rock Festival, for the thirteenth time representatives of the CHR Office spoke to young people about human rights at a special stand called the "Human rights tent". It offered workshops, debates and educational meetings as well as a reception point where people could receive legal information or consult about their problems.



During the Pol'and'Rock festival the Commissioner spoke to young people about the participation of women in public life



Every year a mock trial is held in the human rights tent

The CHR Office continued, throughout 2022, to work with a group of people with experience of mental illness. The participants jointly analysed the subject of the implementation of the UN Convention on the Rights of Persons with Disabilities. A workshop was also held on the Commissioner for Human Rights' competences, possibilities to intervene in cases reported by citizens as well as methods of seeking legal aid from the Commissioner or other institutions.



Meetings with autism spectrum self-advocacy groups are an opportunity for CHR Office staff to better understand problems faced by these people in their daily lives

The problems of people with the autism spectrum disorder have been brought to the Commissioner's attention by autism spectrum self-advocacy groups during regular meetings. The group members raised, in particular, the need to create conditions in which autistic persons would be an integral and important part of society. In addition to the meetings at the CHR Office in Warsaw, six meetings were held in various cities in Poland. Their aim was to better understand the barriers faced by these people in their daily lives. The meetings made self-advocates believe that their voice is heard and their opinions matter and that it is worth to carry out self-advocacy activities. The meetings were organised by the Centre for Social Projects operating within the CHR Office, in cooperation with social partners providing support to people with the autism spectrum disorder.

Expert Committees

The CHR Expert Committees provide support and liaison to the CHR Office in its contacts with organisations and groups active in specific areas.

Expert Committee for Counteracting Homelessness – the subject areas dealt with by the members of the committee include: state housing policy, access to healthcare services for people in crisis of homelessness, homelessness of very young people and youth, procedures of seeking assistance in housing-related cases and housing situation of war refugees from Ukraine. As a result of the Committee's discussions the Commissioner wrote intervention letters: to the Minister of Labour and Social Policy concerning the need to ratify the Revised European Social Charter as soon as possible (letter ref. no. III.7040.39.2022 of 16 February 2022); to the Ministry of Health regarding legal solutions in the area of diagnosing people, in particular those in crisis of homelessness, with the SARS-CoV-2 virus infection; to the Prime Minister, summarising the fulfilment by the state of its obligation to prevent homelessness and to provide support to citizens – both Poles and war refugees from Ukraine – in finding housing; to the Minister of Labour and Social Policy, raising the need to carry out a national-level survey to determine the number of homeless people including refugees from Ukraine by way of conducting an action to count the number of such people in 2023. The CHR, supported by the Expert Committee, continued the efforts to support and popularise the city charters on the rights of people experiencing homelessness.

Expert Committee of the National Mechanism for the Prevention of Torture – in 2022, the Committee's meeting was attended by Professor Mykola Gnatovski, Professor of International Law at Kiev's Taras Shevchenko National University, who from 2009 to 2021 was a member of the European Committee for the Prevention of Torture (CPT) and served as its Chair from 2015 to 2021.

Expert Committee on Older People – the subjects dealt with by the members of the Committee in its meetings included: the situation of Third Age University communities during the pandemic; educational programmes for seniors; the availability of health care to older people during the pandemic, the need for the development of care services; proper communication with older people – exclusion of so-called "elderspeak" discrimination in the labour market of people 50+ on the grounds of age; dementia – support for patients and their relatives at the last stage of the disease.

Expert Committee on Healthcare – the Committee's activities in 2022 focused on the challenges faced by the Polish health care system due to the refugee crisis caused by the armed conflict in Ukraine. The system, apart from the influx of large numbers of refugees from Ukraine, struggled with the medical debt caused by the COVID-19 pandemic. Problems were also noted in the following areas: rare diseases, related refund of the treatment of children and the state's omissions in this area; insufficient funding for hospice care; primary health care (PHC), night and holiday

health care, including the implementation of a coordinated health care system by PHC entities; and the emergency medical services system. As a result of the conducted activities the CHR wrote intervention letters to: the Minister of Health about the problems faced by Ukrainian citizens arriving in Poland, as well as medical establishments and medical professions' representatives in connection with the conflict in Ukraine; to the Minister of Health about rare diseases and refund of their treatment, in particular in children; to the Minister of Health and to the National Health Fund about the situation of oncology patients, their difficulties in access to treatment; long waiting time for admission to hospices and their insufficient financing.

Expert Committee for Deaf People – in 2022, the Committee's activities focused e.g. on: accessibility of television programmes for deaf people; the introduction of a certification system for interpreters and translators of Polish sign language; the organisation of support for deaf people who found themselves in Poland as a result of the war in Ukraine; issues related to the education of deaf children and the accessibility of public bodies' offices for deaf people.

Expert Committee on Mental Health – at the meetings of the Committee the following issues were addressed: the situation in child and adolescent psychiatry and the increasing number of suicides in this age group; the use of coercive measures in medical establishments; the needs of mentally ill people in the territory of war-stricken Ukraine and of refugees from the country. As a result of the work of the Committee, the CHR wrote intervention letters to: the Prime Minister about the principle of assistance provision to war victims, with particular attention paid to mentally ill persons; to the Minister of Health on the need to amend the Act on Mental Health Protection within the scope of the provisions on the use of coercion in psychiatric hospitals; to the Prime Minister on the need to strengthen the implemented reform of child and adolescent psychiatry.

Expert Committee on Climate and Spatial Development – in 2022, the members of the Committee focused on: drawing up the objectives of the Planning and Spatial Development Act and its rationale; taking into account current issues, including environmental protection and climate protection, during the conducted works; taking account of the principle that climate protection requirements should take precedence when decisions on spatial development are taken. They also considered methods to increase the involvement of local residents in the spatial planning processes. The Committee is composed of 36 members including academics representing the fields of law, economics, public administration, sociology, landscape planning and urbanisation, economic policy, architecture, spatial development, environmental protection, climatology and political science, as well as representatives of municipal authorities from cities and villages, and activists.

International-level activities

■ Cooperation with international organisations

One of the elements of the Commissioner's work at the international level in 2022 was cooperation with human rights organisations: the International Ombudsman Institute (I.O.I), the European Network of National Human Rights Institutions (ENNHRI), the European Network of Equal Treatment Bodies (EQUINET) and the Global Alliance of National Human Rights Institutions (GANHRI).

In 2022, the leading topic in the discussion at meetings and conferences organised by these organisations was the problem of the war in Ukraine and the related situation of refugees from the country. Representatives of the CHR Office took part, among others, in the following events:

- conference of the European Chapter of the International Ombudsman Institute and its General Assembly in Sounio, Greece;
- ENNHRI Board meeting in Warsaw;
- ENNHRI activities' annual summary during the General Assembly in Brussels;
- meeting organised by the EU Agency for Fundamental Rights (FRA) in Vienna;
- ENNHRI consultation meeting in Sofia.

One of the subjects addressed by the international organisations in 2022 was ageing. A representative of the CHR Office, in cooperation with GANHRI, attended the 12th session of the UN Working Group on Ageing in New York and a conference in Geneva co-organised by the Office of the United Nations High Commissioner for Human Rights. The protection of the rights of older persons was also the subject of discussions during an international conference in Tbilisi.

Representatives of the Commissioner's Office took part in seminars, trainings and thematic meetings of EQUINET working groups.

An important partner of the Commissioner is the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe – ODIHR/OSCE. In particular, the Commissioner took part in a conference of the heads of national human rights institutions from the OSCE region, held in Warsaw. The Commissioner also met with the Public Defender of Georgia, the Chief Commissioner of the National Human Rights Commission of Mongolia, and the Ombudsman of Uzbekistan.



Conference of Heads of National Human Rights Institutions (NHRIs) of the OSCE region, held in Warsaw

A representative of the CHR took part in the subsequent edition of the Human Rights Academy project organised by the ODIHR/OSCE, the leading topic of which was the impact of artificial intelligence on human rights.

■ Regional cooperation of Ombudsmen

During the ongoing war in Ukraine, cooperation between the Commissioner for Human Rights and the Parliamentary Commissioner for Human Rights of Ukraine is of particular importance. Marcin Wiącek and Dmytro Lubinets jointly visited the reception centre for foreigners in Nadarzyn.

An important element of regional cooperation are annual meetings of Ombudsmen from the Visegrad Group countries. The 2022 meeting was hosted by the Public Defender of Rights of the Czech Republic Stanislav Křeček. During the meeting, Ombudsmen from the Czech Republic, Poland, Slovakia and Hungary discussed issues concerning assistance provision to people fleeing the war in Ukraine, described the situation in their countries and the forms of action taken by the Ombudsman institutions.

The conference ended with signing the Ombudsmen's statement that called for the engagement of human rights institutions in improving the situation of refugees from Ukraine and set out priorities in this area. The Ombudsmen also stressed the importance of maintaining the independent status of the Ombudsman institution that often plays an important role as a mediator and liaison between society and state authorities.



Visegrad Group countries' ombudsmen summit in Kroměříž, the Czech Republic



Commissioner for Human Rights Marcin Wiącek and Public Defender of Rights of the Czech Republic Stanislav Křeček sign the joint statement

■ Relations with European Union institutions

In 2022, the Commissioner for Human Rights met with European Commission Vice-President for Democracy and Demography Dubravka Šuica. The meeting focused on the humanitarian crisis caused by the war in Ukraine. Deputy CHR Hanna Machińska met with European Union Commissioner for Home Affairs Ylva Johans-

son. The subject of discussion was the situation of foreigners crossing the Polish border with Belarus.



CHR Marcin Wiącek and European Commission Vice-President for Democracy and Demography Dubravka Šuica

Representatives of the CHR Office took part in a conference of the European Parliament joint delegation of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) and the Committee on Constitutional Affairs (AFCO).

The CHR Office maintains regular contacts with the Office of the European Ombudsman. One of the forms of cooperation is the Polish Commissioner's membership in the European Network of Ombudsmen and the participation in cyclical meetings of representatives of the Ombudsman Offices. The 2022 meeting of the network was held in Strasbourg and concerned the role of Ombudsman in times of crisis.

■ European Court of Human Rights in Strasbourg and the Court of Justice of the European Union

In 2022, the Commissioner for Human Rights took part in the seminar "Human rights protection in the time of the pandemic: new challenges and new perspectives" that opened the new judicial year of the European Court of Human Rights in Strasbourg.

Representatives of the CHR represented the Commissioner before the European Court of Human Rights in the case of *Pietrzak v. Poland* (application no. 72038/17)

and *Bychawska-Siniarska and Others v. Poland* (application no. 25237/18), and took part in proceedings in two cases before the Court of Justice of the European Union: the preliminary ruling proceedings in cases C-181/21 and C-269/21 G. (*Nomination des juges de droit commun en Pologne*) and *Others* and the proceedings concerning the resolution of the issue of non-contractual use of capital where a credit agreement linked to the Swiss franc exchange rate is declared invalid by a court.

■ Meetings with international guests at the Office of the Commissioner for Human Rights

The Commissioner and his Deputies held dozens of meetings with representatives of international organisations and human rights institutions from other countries. The meetings included e.g.:

- Visit of European Commission Vice-President for Democracy and Demography Dubravka Šuica, responsible for the development of the European Union strategy on the rights of the child;
- Visit of the Vice-President of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe;
- Meeting with a delegation of the Current Affairs Committee of the Congress of Local and Regional Authorities;
- Meeting with Gillian Triggs – Assistant High Commissioner for Protection of the United Nations High Commissioner for Refugees (UNHCR);
- Meeting with a delegation of the European Parliament Committee of Inquiry to investigate the use of Pegasus & equivalent surveillance spyware;
- CHR's meeting with President of the International Ombudsman Institute Chris Field who is also the Ombudsman of Western Australia.

In the first days after the outbreak of the war in Ukraine employees of the CHR Office jointly with representatives of the European Network of National Human Rights Institutions, the Council of Europe and European Union institutions as well as activists of non-governmental organisations from other countries visited border crossing points between Poland and Ukraine and reception centres and centres for foreigners established in Poland.

The Commissioner's activities were also of interest to representatives of government agencies from other countries. Visits to the CHR Office were paid e.g. by: Anna Lührmann, Minister of State for Europe and Climate of the Federal Republic of Germany; Luise Amtsberg, Federal Government Commissioner for Human Rights Policy and Humanitarian Assistance; Sandra McCardell, Assistant Deputy Minister, International Affairs Branch, Environment and Climate Change, Canada; Minna Hulkkonen, Director General of the Migration Department at the Ministry of the Interior, Finland; and a delegation of civil service officers from the Netherlands.

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

1. General principles

Article 30 – Dignity of the person

- Need to amend the law allowing handcuffing of persons with mental disorders (II.574.1.2022);
- Need to amend the definition of the crime of rape (XI.518.88.2020);
- Epidemic situation of people in crisis of homelessness (V.7018.141.2022);
- Content of the textbook for the subject History and the Presence (VII.7037.18.2022);
- Reform of the system of legal incapacitation (IV.7024.26.2014);
- Use of coercive measures in persons in closed psychiatric institutions (IX.517.36.2020).

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

- Right of relatives to telephone contact with remand prisoners (IX.517.1357.2019).

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

- National Action Programme for Equal Treatment 2022-2030 (XI.070.8.2020);
- Treatment of persons born with diverse gender characteristics (XI.573.1.2021).

Article 32(2) – Prohibition of discrimination

- Upper age limit for legal apprenticeship candidates (VII.561.7.2019);
- Age limit for jurors (VII.801.1.2019);
- The need to counteract discrimination on the grounds of age (XI.503.2.2016);
- Resolutions „against LGBT ideology“ (XI.505.10.2020).

Article 33 – Equal treatment of men and women

- Equal treatment of women and men in employment (XI.022.1.2022).

Article 34 – Right to Polish citizenship

- Act on passport documents (XI.534.4.2016).

Article 35 – Rights of national and ethnic minorities

- Limitation of teaching hours and funds for German minority's education (XI.813.18.2021).

Article 36 – Right to diplomatic and consular protection

- In 2022, the Commissioner repeatedly requested Polish consulates to provide explanations regarding cases initiated by applications from Polish citizens residing abroad. The main cases concerned proceedings pending before the authorities of other countries, including criminal or child custody proceedings. The largest number of applications concerned the impossibility to make an appointment at the consulate to obtain a new passport, caused by malfunctioning of the “e-konsulat” electronic registration system.

Article 37 – Jurisdiction of the Polish state

- Following the Russian aggression against Ukraine, a wave of refugees came to Poland seeking refuge from the danger caused by the war. These refugees found themselves under the jurisdiction of the Polish state, and their rights were regulated in detail in a special Act of Parliament that set out the rules of legalisation of their stay on the Polish territory and the rules for providing them with social assistance, employment, business and education for their children. In many areas of life, the act granted to war refugees from Ukraine the same rights as those enjoyed by Polish citizens.

2. Personal freedoms and rights

Article 38 – Right to life

- Need to regulate the construction of shelters and provide protection for citizens (IV.7006.71.2022).

Article 39 – Prohibition of scientific experiments

- Scientific experiments using stem cells, offered to patients in return for a fee (VII.5002.4.2022).

Article 40 – Prohibition of torture and inhuman or degrading treatment

- Non-existence of a separate crime of torture in the Criminal Code (KMP.570.3.2017);
- Implementation of the Mendez Principles (KMP.570.9.2021);
- Prevention of torture (KMP.071.4.2021);
- Use of non-standard forms of mechanical restraint in residents of care facilities (KMP.573.9.2022);
- Use of coercive measures in persons placed in closed psychiatric institutions (IX.517.36.2020).

Article 41(1) – Personal inviolability and liberty

- Use of coercive measures in health care establishments (V.7016.50.2022);
- Practice of application and extension of pre-trial detention (II.510.1292.2015).

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

- Providing detainees with access to a lawyer (KMP.570.3.2017).

Article 41(4) – Right to humane treatment

- Protection of persons deprived of their liberty from tobacco smoke (IX.517.2397.2018);
- Lack of food products for persons with special dietary requirements in prison canteens (KMP.071.1.2022);
- Restoring visits to penitentiary establishments (IX.517.1642.2020);
- Living conditions of people with physical disabilities in prisons (IX.517.562.2022);
- Sanitary conditions in penitentiary establishments (IX.517.593.2022).

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

- In 2022, no general problems were noted regarding the right to compensation for unlawful deprivation of liberty. In numerous individual cases proceeded by the Commissioner and concerning detention by police officers (e.g. in connection with the exercise of the right to spontaneous assembly), the courts found detention to be unjustified and inexpedient, and sometimes unlawful. As a result, the detained persons applied to the courts for compensation.

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

- In 2022, the Commissioner filed with the Supreme Court cassation appeals e.g. against final court judgments imposing penalties for failure to comply with restrictions and prohibitions imposed by way of ordinances during the state of epidemic. The opinion that regulations at the level of ordinance may not effectively introduce such restrictions or prohibitions was shared in numerous judgments of the Supreme Court (e.g. judgments of: 15 February 2022, ref. no. V KK 28/22; 23 February 2022, ref. no. V KK 34/22; 24 February 2022, ref. no. V KK 65/22). The Supreme Court, guided by the principle that a judge is answerable only before the Constitution and acts of parliament, held that the provisions of the ordinances (often issued beyond the powers granted by an Act of Parliament) could not constitute a basis for holding people liable under criminal law for non-compliance with such provisions.

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

- Extended access to a lawyer in accordance with European Union law (II.5150.2.2022);

- Possibility to annul a fine (II.510.642.2022);
- Ensuring that detained persons have access to a lawyer (KMP.570.3.2017).

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

- Insufficient protection of teachers’ rights in disciplinary proceedings (III.7040.90.2022).

Article 43 – Prohibition of statutes of limitation

- The Commissioner for Human Rights did not receive any complaints in 2022 regarding statutes of limitations concerning war crimes and crimes against humanity.

Article 44. – Suspension of the limitation period

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

Article 45 – Right to a court

- Act amending the Act on the Supreme Court and certain other acts (VII.510.49.2022);
- „Amnesty act” concerning voting by correspondence (II.519.1146.2022);
- Unconstitutionality of a provision of the Rules of Procedure of common courts (VII.511.41.2020);
- Need for a comprehensive parliamentary Act on court expert witnesses (VII.510.20.2015);
- Collegial composition of the court (VII.510.131.2021);
- Problems with delivering court letters (VII.501.36.2022);
- Making it possible to use the ePUAP platform to communicate with courts and prosecutors’ offices (II.511.260.2022);
- Conducting remote hearings if a party lives abroad (VII.510.69.2022);
- Need to take measures to ensure citizens’ access to courts during and after the epidemic (VII.510.13.2022);
- Membership of a bar association dependent on the location of the place of exercising the profession or of the place of residence (VII.561.6.2022);
- Bill amending the Act on court fees in civil cases and certain other acts (IV.512.218.2021);
- Remuneration of ex officio attorneys (IV.510.15.2022);
- Need to amend the provisions on dealing with perpetrators of domestic violence (IX.517.3085.2016);
- Recording of hearings and hearings (II.519.1039.2017);
- Transfer of judges to other courts (VII.510.55.2022);

- Committee for investigating Russian influence on the internal security of the Republic of Poland from 2007 to 2022 (II.510.1126.2022).

Article 46 – Forfeiture of objects

- In 2022 the Commissioner for Human Rights was not informed of any problems regarding judgments on the forfeiture of objects.

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

- Practices of sports federations with regard to athletes not vaccinated against COVID-19 (VII.715.87.2021);
- Publicly accessible register of contracts concluded by public sector entities (VII.520.14.2021);
- Tax law and protection of privacy (VII.501.41.2022);
- Leakage of personal data of soldiers of the Territorial Defence Forces (VII.501.142.2022).

Article 48 – Right to raise children in accordance with one’s convictions

- The Commissioner for Human Rights did not receive any complaints from parents regarding violation of their right to raise their children according to their own beliefs.

Article 49 – Freedom of communication

- Admissibility of the use of Pegasus spyware (VII.501.306.2021).

Article 50 – Right of inviolability of the home

- In 2022 the Commissioner for Human Rights did not receive complaints concerning violation of the right of inviolability of the home.

Article 51 – Right to information autonomy

- Draft regulation on the list of public registers and information and communication systems (VII.501.51.2022);
- Act amending the Act on assistance to citizens of Ukraine in connection with the armed conflict on the territory of the country and the Act on digitisation of activities of entities performing public tasks (VII.501.78.2022);
- Draft Act on Central Database on Pensions (VII.501.93.2022).

Article 52 – Freedom of movement within the territory of Poland

- In 2022, the Supreme Court examined cassation appeals filed by the CHR in cases concerning non-compliance with the prohibition to move within the territory of Poland, which was introduced by epidemic-related regulations

at the level of ordinance. It follows from the related jurisprudence of the Supreme Court (e.g. judgment of 3 March 2022, ref. no. II KK 552/21) that legislative acts with a status lower than an Act of Parliament may not limit the freedom of movement.

- Of significance for the freedom of movement is the judgment of the Supreme Court issued following the Commissioner's cassation appeal (judgment of 18 January 2022, ref. no. I KK 171/21). The Supreme Court stated that the Regulation of the Council of Ministers restricting freedoms and rights in connection with the declared state of emergency – in the part introducing the prohibition to stay in the area covered by the state of emergency and the prohibition for journalists to stay in the area in connection with their profession – clearly went beyond the statutory powers and failed the proportionality test.

Article 53 – Freedom of conscience and religion

- Freedom of religion in the context of the employment relationship (VII.5601.2.2022).

Article 54 – Freedom of speech

- Changing the standard of terrestrial broadcasting of TVP channels (VII.564.23.2022);
- Pluralism of the media (VII.716.26.2020);
- Publishing of local press by local governments (VII.564.28.2022).

Article 55 – Prohibition of extradition of Polish citizens

- In 2022, no problems related to the extradition of Polish citizens were reported. However, the Commissioner filed cassation appeals to the Supreme Court regarding individual cases concerning e.g. extradition to Belarus and pointed out that deportation to that country could lead to violations of human rights and freedoms.

Article 56 – Right to asylum and refugee status

- Poland's preparations for receiving migrants after the aggression of the Russian Federation against Ukraine (XI.543.54.2022);
- Act on assistance to citizens of Ukraine in connection with the armed conflict on the territory of that country (XI.543.104.2022) and its amendments (V.7010.62.2022, XI.543.104.2022);
- Protection of the rights of vulnerable groups arriving in Poland in connection with the war in Ukraine (XI.518.9.2022);
- Residence permits for persons covered by the special Act (XI.540.32.2022);
- Rules of payment of financial allowance for accommodation and meals provided to citizens of Ukraine (III.7065.87.2022);

- Practice of turning migrants back to the state border line (XI.543.238.2022);
- Extradition to Belarus (II.516.1.2022);
- Adjustment of the value of the allowance for foreigners applying for protection (XI.543.282.2022);
- Lack of psychological support for foreigners detained in guarded centres (XI.540.45.2022);
- Situation of foreigners after their release from guarded centres (XI.543.201.2022);
- Complaint concerning turning back a group of foreigners under the so-called border regulation (XI.543.10.2022).

3. Political freedoms and rights

Article 57 – Freedom of peaceful assembly

- Restriction of freedom of assembly in the Copernicus Academy Act (VII.613.2.2022);
- Need to change the rules on police officer uniforms (KMP.570.12.2020).

Article 58 – Freedom of association

- Repayment of financial assistance for events organised by Rural Women's Associations (VII.612.30.2022, VII.612.31.2022).

Article 59 – Freedoms of trade unions

- Obligation for candidates for ethics officers in ORLEN-ENERGA to suspend their trade union membership (III.7044.61.2022).

Article 60 – Right of equal access to public services

- Changed rules of access to the position of judge (VII.510.50.2022);
- Recruitment process at the Office of General Counsel to the Republic of Poland (III.603.2.2021).

Article 61 – Right of access to public information

- Application to the Constitutional Tribunal concerning the Act on access to public information – Case K 1/21 (VII.6060.15.2021);
- Legal basis for State Protection Service officers' actions and the protection of journalists' rights (VII.564.82.2021).

Article 62 – Electoral rights

- Application to the CT regarding amendments to the Electoral Code (II.561.1.2022);
- Need to amend the law on changes of local election dates (VII.602.3.2021).

Article 63 – Right to file petitions, requests and complaints

- Non-harmonised practice of proceeding with petitions (VII.604.18.2022).

4. Economic, social and cultural freedoms and rights

Article 64 – Right to property

- Prohibition of eviction during the pandemic (IV.512.42.2022);
- Rules on determining compensation for expropriation of real estate needed for the Central Transport Hub (IV.7003.4.2021).

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

- Possibility of restoring a certificate of due professional conduct (VII.561.15.2021);
- Impossibility for persons employed at the Office of General Counsel to the Republic of Poland to apply for entry in the list of attorneys (VII.511.63.2019).

Article 65(2-5) – Employee rights

- Rules for determining remuneration of court registrars (III.7040.116.2021).

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

- Rights of persons employed under civil law contracts (III.7041.9.2022);
- Compensation for overtime work (III.7040.73.2014).

Article 67 – Right to social security

- Rules of payment of interest on late payment of benefits after lifting the state of epidemic (III.7060.438.2022);
- Adjustment of the value of KRUS agricultural benefits (III.7060.260.2022);
- Rules of remission of social security contributions (III.7060.214.2022);
- Colliding entitlements to care benefit and care allowance for persons with disabilities and the elderly (III.7064.186.2017);
- ‘June’ retirement pensions (III.7060.417.2022);
- Reduction of retirement benefits in connection with the entry into force of the Polish Deal (V.511.77.2022).

Article 68(1) – Right to health protection

- Alarming number of deaths due to COVID-19 (V.7018.38.2022);
- Challenges for the Polish health care system in the face of the refugee crisis caused by the war in Ukraine (V.7010.74.2022);
- Future of the mental health care system in Poland (V.7016.42.2022);

- Implementation process of the reform of child and adolescent psychiatry (V.7016.73.2022).

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

- State of palliative care in rural areas (V.7010.140.2019);
- Rare diseases and reimbursement of their treatment (V.7010.128.2022);
- Reimbursement of a drug for spinal muscular atrophy (SMA) (V.7013.61.2022);
- Access to treatment for oncology patients and the problem of hospice waiting time (V.7010.162.2022).

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

- Health resort treatment of children and the costs of stay of their parents (guardians) (V.7010.124.2022);
- Support for Ukrainian citizens in mental crisis (V.7016.24.2022).

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

- Making the possibility to continue medical education conditional on receiving COVID-19 vaccination (VII.7033.12.2022);
- Epidemic situation in the country in the COVID-19 pandemic (V.7018.250.2022);
- Epidemic situation of people in crisis of homelessness (V.7018.141.2022).

Article 68(5) – Development of physical culture

- The Commissioner did not receive any complaints regarding Article 68(5) of the Constitution.

Article 69 – Support for people with disabilities

- Need to ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities (XI.516.1.2015);
- Personal assistance for persons with disabilities (XI.503.4.2016);
- Need to regulate the rules of admission to private care homes of persons not capable of expressing their will (KMP.573.1.2022);
- Rules of the programme “Personal assistant of a disabled person” (XI.7061.6.2022);
- Support for persons with disabilities leaving the territory of Ukraine (XI.811.1.2022);
- Support for students with disabilities arriving in Poland as a result of the war in Ukraine (XI.811.1.2022);
- Problems of refugees from Ukraine with obtaining disability certificates (XI.811.2.2022);

- Draft regulation on adaptations for persons with disabilities in television programmes (XI.815.22.2022);
- Reform of the system of disability assessment (III.7060.1037.2015);
- Activation of persons with disabilities (III.7047.26.2022).

Article 70(1) – Right to education

- The right of children and youth from Ukraine to education (VII.7030.14.2022);
- Act amending the Act on Education and certain other acts (VII.7037.73.2021);
- Staff shortages in educational institutions (VII.7037.106.2021);
- Transport of a child with a disability to an educational institution (XI.7036.31.2021).

Article 70(2) – Free learning

- The Commissioner did not receive any complaints regarding violation of the right to free education in public schools.

Article 70(3) – Right to operate private schools

- Act amending the Act on Education and certain other acts (VII.7037.73.2021).

Article 70(4) – Equal access to education

- Prohibition of joint classes for full-time students and part-time students (VII.7033.3.2022);
- Doubts regarding the organisation of matriculation examinations (VII.7031.5.2022);
- Organisation of external examinations for students - citizens of Ukraine (VII.7031.13.2022);
- Situation of students with disabilities during the COVID-19 pandemic (XI.402.1.2022).

Article 70(5) – Autonomy of universities

- Enabling Ukrainian students of medical universities to continue their studies in Poland (VII.7033.333.2022, VII.7033.105.2022);
- Difficulties in obtaining documents confirming education by Ukrainian university students (VII.7033.84.2022);
- Rights of parties to disciplinary proceedings concerning academic teachers, students and doctoral students (VII.7033.115.2022);
- Necessity to extend the duration of doctoral studies started before the academic year 2019/2020 (VII.7033.113.2022);
- Untimely drafting of opinions in employee promotion proceedings (VII.7033.125.2022).

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

- Contacts of family members with an adult legally incapacitated person (IV.7024.22.2018);
- Inadequacy of benefits for people most in need (III.7065.165.2022);
- Divergent court rulings regarding the right to nursing benefit (III.7064.45.2022);
- Making entitlement to nursing benefit conditional on resignation from employment (III.7064.82.2022);
- Alternate custody (IV.7021.125.2018);
- Deterioration of the situation of single parents due to regulations introduced by the Polish Deal (V.511.5.2022);
- Support for households affected by heating price increases (IV.7215.81.2022, IV.7215.108.2022).

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

- Delays in processing applications for family care capital (III.7064.138.2022).

Article 72 – Children’s rights

- Rights of children with disabilities living in social care homes (III.554.2.2021);
- Operation of the foster care system (III.552.3.2022);
- Legal status of civil registry records from other countries (XI.501.11.2022).

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

- In 2022, no complaints filed with the Commissioner related to significant problems in the exercise of the freedoms set out in Article 73 of the Constitution.

Article 74 – Environmental safety and environmental protection

- Noise during mass events (V.7200.8.2015);
- Pollution with light (V.7203.30.2020);
- Increase in heating prices (V.7215.13.2022).

Article 75 – Housing policy and protection of tenants’ rights

- Need to take action to meet the housing needs of citizens (IV.7210.15.2022);
- Need to regulate evictions conducted by way of administrative enforcement (IV.7214.48.2019, IV.7214.40.2022);
- Support for households affected by heating price increases (IV.7215.81.2022);
- Need to support households affected by heating price increases if heat is supplied by companies using gas-fired boilers (IV.7215.108.2022);
- Coal allowance – a gap in the transitional provisions (IV.7215.902.2022);

- Use by electricity providers of the G11o tariff for common spaces in buildings of housing cooperatives and communities (IV.7215.768.2022);
- Lack of protection against electricity price increases for developers of residential buildings – so-called building power (IV.7215.911.2022);
- Problems for housing communities caused by the impossibility to sign contracts to buy electricity for commonly owned property (IV.7215.853.2022);
- No higher-value inflation allowance for certain tenants (IV.7215.47.2022);
- Need to regulate short-term lease to tourists in multi-apartment buildings (IV.7215.152.2021).

Article 76 – Protection of consumer rights

- Activities of so-called compensation law firms (V.7108.126.2022).

5. Means of protection of rights and freedoms

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

- Recognition as invalid of judgments concerning persons repressed for activities in support of the independent Polish State (II.513.3.2022).

Article 77(2) – Right to a court

- Possibility to reopen proceedings on the basis of a CJEU judgment (V.511.746.2022).

Article 78 – Right to two-instance proceedings

- No possibility to appeal against a court's decision to exclude the public from the proceedings (VII.510.32.2022);
- No possibility to challenge prosecutor's actions taken in the course of operational control (II.511.493.2022).

Article 79(1) – Right to a constitutional appeal

- In 2022, the Commissioner for Human Rights joined 13 constitutional complaints and supported the arguments put forward by the complainants.

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

- Throughout 2022, the number of applications for assistance submitted to the Commissioner for Human Rights remained very high and reached 75 239, the most in the history of the Commissioner's office. The significant increase in the number of applications filed between 2020 and 2022 was caused by problems in the functioning of public administration bodies and courts during the state of epidemic (state of epidemic threat) and

the restriction of fundamental freedoms or individual rights under these states. Moreover, in 2022 the Russian armed aggression against Ukraine resulted in an increased inflow of applications filed by Ukrainian citizens seeking refuge in Poland and by Polish citizens who provided shelter to them. Also, the changes in income tax law applicable to individuals (the Polish Deal), introduced hastily and without appropriate consultations, caused an increased inflow of applications from taxpayers requesting the Commissioner to defend their rights. Another wave of applications from prisoners and remand prisoners resulted from changes introduced by the legislator in penal execution law.

6. Other standards

Article 2 – Rule of law

- Suspension of limitation period due to the state of epidemic (II.510.735.2021);
- Doubts regarding the system of penalty points for drivers (II.565.3.2021);
- Need to regulate the activities of currency exchange e-offices (V.7106.178.2014);
- Amendment of the Criminal Code (II.510.1043.2021);
- Constitutionality of the provisions of so-called Shield 4.0 (II.511.178.2022, II.511.180.2022, II.511.181.2022, II.510.592.2022);
- Allowance for assistance provision to citizens of Ukraine (III.7065.58.2022);
- Blocking of websites (VII.564.25.2022);
- The need to regulate the procedure of excluding of a Member of Parliament from its proceedings (VII.600.10.2022);
- The need to reform the protective measures (II.510.1061.2019);
- Cases of simultaneous existence of several court rulings regarding inheritance from the same person (IV.511.221.2020).

Article 5 – Security of citizens

- The need to regulate the construction of shelters and provide protection for citizens (IV.7006.71.2022);
- Organisation of civil defence (VII.7215.1.2022);
- Protection of the civilian population (VII.501.158.2022).

Article 22 – Freedom of establishment

- Problems faced by Podlasie region's entrepreneurs as a result of the prohibition to stay in the border zone (V.7108.32.2022).

Article 24 – Labour protection

- Impact of the war in Ukraine on business activities conducted in Poland with the use of Russian capital (III.7040.52.2022);
- Termination of employment contracts of persons who have disclosed connections with the security services of the People’s Republic of Poland (III.7044.95.2019).

Article 85 – General duty to defend the Fatherland

- Procedure of paying benefits compensating lost earnings due to military training in 2022 (WZF.7043.92.2022);
- Calling persons with disabilities to appear for military category assignment (WZF.7043.56.2022).

Article 217 – Rules for the levying of taxes

- Suspension of the limitation period for tax liability due to the commencement of criminal tax proceedings (II.501.1.2022);
- Exemption of closest relatives from inheritance tax and tax on donations (V.511.391.2022);
- Right of heirs to tax relief and tax exemptions (V.511.718.2022);
- Public notaries’ practice of increasing notarial fees by VAT (V.511.612.2020);
- Need to amend the Tax Ordinance (V.511.659.2022);
- Capital gains tax (V.511.719.2022);
- Conditions for tax exemption of closest relatives from tax on cash donations (V.511.869.2022);
- Method of certifying, by way of a document, the receipt of a cash donation by closest relatives when seeking tax exemption (V.511.953.2022);
- Problem of tax on outstanding benefit payment (V.511.936.2022);
- Reduction of pension benefits as a result of the Polish Deal (V.511.77.2022);
- Deterioration of the situation of single parents due to the regulations introduced by the Polish Deal (V.511.5.2022);
- Extension of deadlines for paying tax advance by certain payers (V.511.221.2022);
- Effects of the Polish Deal on beneficiaries receiving 1% of tax transferred to public benefit organisations (V.511.214.2022);
- Tax on health insurance contribution (V.511.392.2022);
- Impossibility for recipients of social security benefits to use so-called middle class relief (V.511.134.2022);
- Polish Deal 2.0 (V.511.760.2022);

- Systemic problems regarding public radio and television broadcast receiving fee (V.7220.243.2022).

Tables

Table 1 (see Figure 1) **Inflow of applications to the CHR Office in the last ten years (2013-2022)**

Year	New cases	Total cases
2013	35 310	70 002
2014	26 470	57 127
2015	27 376	57 627
2016	24 360	52 551
2017	22 800	52 836
2018	25 266	57 546
2019	27 113	59 524
2020	31 100	72 428
2021	25 379	74 279
2022	24 418	75 239

Table 2 (see Figure 2) **Main addressees of the Commissioner’s general intervention letters and case-specific legal remedies in 2022**

Addressee	Numbers
Supreme Court	119
Ministry of Justice	45
Administrative Courts	34
Minister/Ministry of Health	31
Prime Minister	26
Ministry of Family and Social Policy	26

Table 3. CHR's intervention letters in 2022

The Commissioner for Human Rights sent:	Number
problem-specific intervention letters	153
problem-specific intervention letters calling for taking legislative initiative	101
applications to the Constitutional Tribunal to declare laws and regulations inconsistent with higher-level legislation	3
notifications to the Constitutional Tribunal about joining proceedings initiated by a constitutional appeal	13
notifications to the Constitutional Tribunal about joining proceedings initiated by a question of law	7
notifications to the Constitutional Tribunal about joining proceedings initiated by a motion	1
questions of law to the Supreme Court	1
notifications to the Supreme Court about joining proceedings initiated by a question of law	2
extraordinary complaints to the Supreme Court	26
cassation appeals in criminal cases	84
cassation appeals to the Supreme Court in civil cases	3
cassation appeals to the Supreme Court in labour law cases	1
cassation appeals to the Supreme Administrative Court	16
applications to the Supreme Administrative Court for interpretation of law	2
complaints to Voivodeship Administrative Courts	23
court proceedings joined	33
administrative proceedings joined	2
joined proceedings before international courts	8
motions to commence administrative proceedings	7
motions to commence civil proceedings	7
Total	493

Table 4. (see Figure 3) CHR's 493 general intervention letters and case-specific legal remedies by problem area in 2022

CHR's general intervention letters by type	Number	% share
Constitutional, international and European law	102	20.7%
Criminal law	103	20.9%
Administrative and commercial law	101	20.5%
Equal treatment	51	10.3%
Civil law	58	11.8%
Labour and social security law	34	6.9%
Other	44	8.9%

Table 5. (see Figure 4) Applications filed by the CHR with the Constitutional Tribunal and constitutional appeals, motions and question of law to the Tribunal, joined by the CHR

Year	TKZ – applications to the Constitutional Tribunal to find laws and regulations inconsistent with higher-level legislation	SK – notifications to the Constitutional Tribunal about joining proceedings initiated by a constitutional appeal	TKP – notifications to the Constitutional Tribunal about joining proceedings initiated by a question of law	WTK – notifications to the Constitutional Tribunal about joining proceedings initiated by a motion	Total
2013	27	13	0	0	40
2014	19	13	0	0	32
2015	21	12	5	4	42
2016	24	12	13	6	55
2017	6	10	4	6	26
2018	2	3	4	4	13
2019	1	8	6	4	19
2020	1	13	5	8	27
2021	1	14	3	8	26
2022	3	13	7	1	24

Table 6. (see Figure 5) Applications examined by the Constitutional Tribunal to find laws and regulations inconsistent with the Constitution; and constitutional appeals, motions and questions of law to the Tribunal, joined by the CHR

Year	accepted	rejected	discontinued	pending
2013	22	7	11	0
2014	15	8	8	1
2015	18	6	18	0
2016	12	9	28	6
2017	8	4	9	3
2018	2	3	3	5
2019	3	3	7	6
2020	1	4	4	18
2021	1	3	2	20
2022	1	0	2	21

Table 7. (see Figure 6) **Inflow of cases to Regional Representative Offices in 2022**

Inflow of cases	Wrocław	Gdańsk	Katowice
Total number of cases	2851	2246	3964
New cases	1333	809	1337

Table 8. (see Figure 7) **Main problem areas dealt with by Regional Representative Offices in 2022**

Main problem area	Number	%
Penal execution law	898	25.8%
Civil law	809	23.3%
Equal treatment	623	17.9%
Criminal law	421	12.1%
Administrative and commercial law	334	9.6%
Labour and social security law	274	7.9%
Constitutional, international and European law	84	2.4%
Other	21	0.6%
Protection of the rights of soldiers and other uniformed service officers	8	0.2%
National Mechanism for the Prevention of Torture	7	0.2%

Table 9. (see Figure 8) **Cases examined by CHR Regional Representative Offices in 2022**

Cases examined	Number	%
Cases accepted for further proceeding	1233	35.8%
Cases accepted for further proceeding by way of a general intervention letter	84	2.4%
Cases accepted for further proceeding – total	1317	38.2%
Others - Complaint referred to a competent authority	24	0.7%
Complaint returned to the complainant for adding necessary information	199	5.8%
Others - rejected	148	4.3%
Others – total	371	10.8%
Provision of information, indication of measures the complainant may take	1756	51.0%
Total	3444	100.0%

Table 10. (see Figure 9) **Outcome of case examination by CHR Regional Representative Offices in 2022**

Outcome of case examination	Number	%
Outcome expected by the applicant achieved – applicant's allegations confirmed	208	18.3%
Outcome expected by the applicant achieved – general intervention letter of the CHR taken into account	36	3.1%
Outcome expected by the applicant achieved – total	244	21.4%
Proceedings discontinued – while pending (procedure not completed)	10	0.9%
Proceedings discontinued – discontinuation by the CHR (for objective reasons)	47	4.1%
Proceedings discontinued – total	57	5.0%
Outcome expected by the applicant not achieved – applicant's allegations not confirmed	828	72.8%
Outcome expected by the applicant not achieved – general intervention letter of the CHR not taken into account	2	0.2%
Outcome expected by the applicant not achieved – exhausted possibilities of action by the CHR	7	0.6%
Outcome expected by the applicant not achieved – total	837	73.6%
Total	1138	100.0%

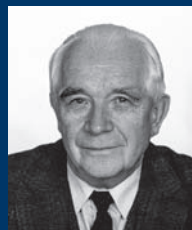
Commissioners for Human Rights



Ewa Łętowska
1987–1992



Tadeusz Zieliński
1992–1996



Adam Zieliński
1996–2000



Andrzej Zoll
2000–2006



Janusz Kochanowski
2006–2010



Irena Lipowicz
2010–2015



Adam Bodnar
2015–2021



Marcin Wiącek
since 2021



From 11 April to 20 July 2010 and from 16 July to 22 July 2021 the Office of the Commissioner for Human Rights was managed by **Deputy Commissioner Stanisław Trociuk**

On 15 July 1987 Sejm passed the Act on the Commissioner for Human Rights

On 1 January 1988 the Commissioner for Human Rights was established

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