

PERMANENT MISSION
OF THE REPUBLIC OF POLAND
TO THE UNITED NATIONS OFFICE
AT GENEVA



MISSION PERMANENTE
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A GENEVE

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The Permanent Mission of the Republic of Poland to the United Nations Office at Geneva presents its compliments to the Secretariat of the Subcommittee on the Prevention of Torture and has the honour to notify the Commissioner for Civil Rights Protection (Ombudsman) as the national preventive mechanism (NPM) and to transmit herewith all relevant information concerning his designation and work as NPM.

The Permanent Mission of the Republic of Poland avails itself of this opportunity to renew to the Subcommittee on the Prevention of Torture assurances of its highest consideration. AM

Geneva, 14 January 2009.

Secretariat of the Subcommittee on the Prevention of Torture

Attachment: information on the work and designation of the Commissioner for Civil Rights Protection (Ombudsman) as the national preventive mechanism.

THE COMMISSIONER FOR CIVIL RIGHTS PROTECTION AS THE NATIONAL PREVENTIVE MECHANISM

Pursuant to the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT), whereby States must ensure that designated national preventive mechanisms (NPMs) are functionally independent, professional and compliant with the Paris Principles, on January 18 2008 the Polish Government assigned the fulfillment of NPM functions to the Commissioner for Civil Rights Protection – Ombudsman (abr. CCRP).

1. CCRP as an independent body empowered to fulfill NPM functions

The CCRP is a constitutional body established in 1987 under the *Law of 15 July 1987 on the Commissioner for Civil Rights Protection* (extract from the *Constitution of the Republic of Poland and the Law on the CCRP* – enclosed herewith). In accordance with the *Constitution* of 1997 and the cited law, the CCRP "shall safeguard the freedoms and rights of persons and citizens" and "investigate potential infringement of the law, community life and social justice standards by actions or neglect on the part of authorities, organizations and institutions responsible for the observance and enforcement of these freedoms and rights."

The CCRP meets the requirements elaborated in the Paris Principles.

The Constitution of the Republic of Poland ensures the CCRP's independence from the executive branch. The right to appoint the CCRP rests with to the Lower House of Parliament (Sejm) subject to approval by the Upper House (Senate). The Parliament also holds the exclusive right to dismiss the CCRP, though only in the event of the CCRP's resignation, permanent inability to fulfill his/her duties or betrayal of the oath of office.

The CCRP must be a person possessing outstanding legal knowledge, professional experience, and integrity rooted in his/her high moral standards and social sensitivity, who is not involved in any activity irreconcilable with the dignity of the Office of the CCRP. These provisions guarantee reliable, professional and independent fulfillment of the CCRP's duties and those of his/her staff.

Since the establishment of the office in 1987, the CCRP has regularly conducted visits to penitentiaries and remand jails to monitor the observance of human rights of inmates and detainees. That fact was among important arguments for designating the CCRP as the NPM.

2. Activity of the NPM

The CCRP, acting in his/her capacity as the NPM, implements tasks laid down in Articles 19, 20, 22 and 23 of OPCAT.

In Poland, there are about 1000 facilities of different types that meet the criteria of places of detention specified in Article 4, paragraph 1 of OPCAT. From January 18 to November 24 2008 representatives of the CCRP, fulfilling NPM tasks, conducted 67 preventive visits at various types of places of detention. The number of such visits is to increase in 2009.

A report is prepared within 2-3 weeks of each visit, with an attached opinion by a psychologist, psychiatrist or other external expert.

Based on the findings of such visits, the NPM submits – pursuant to Article 22 of OPCAT – recommendations for analysis by the competent authorities. The recommendations have the primary goal of improving the treatment and conditions of detention and preventing torture and other cruel, inhuman or degrading treatment or punishment of persons deprived of their liberty. With that in mind, CCRP Office experts analyze and assess existing or draft legislation (Article 19 paragraphs (b) and (c), OPCAT).

The Polish State vests the NPM with the powers specified in Article 20 of OPCAT and ensures the implementation of Article 21.

An annual report on NPM activity will be published and disseminated, consistent with Article 23 of OPCAT. The first such report will appear by the end of the first quarter of 2009; a copy of the report will also be forwarded to the Subcommittee on Prevention.

As part of measures undertaken since the establishment of the CCRP to protect detainees against torture, the CCRP published in April 2008 a *Report on the activity of the CCRP Office in 2007 concerning protection against torture and other cruel, inhuman or degrading treatment or punishment*. It is available on the CCRP Web Site (www.rpo.gov.pl).

Moreover, the CCRP Web Site provides systematic updates on all activities by the NPM.

3. CCRP Office staff implementing tasks of the National Preventive Mechanism

Some thirty staff members of the CCRP Office are involved in the discharge of NPM tasks, including visits to places of detention. In June 2008 the CCRP appointed a National Preventive Mechanism Visiting Team to implement OPCAT tasks. Following the designation of the CCRP for NPM functions in 2008, the number of CCRP Office staff increased by 4 persons. Moreover, two staff members in each of the CCRP branch offices across the country were assigned to permanent cooperation with the NPM. In compliance with Article 18 paragraph 2 of OPCAT, the composition of the team responsible for NPM activity and the groups that visit places of detention is balanced in terms of gender and professional qualifications. At present, the team involved in the implementation of NPM tasks consists of 12 women and 18 men.

Depending on the type of place of detention being visited, the visiting groups - in line with ATP guidelines - are augmented with physicians, psychologists, psychiatrists or addiction treatment specialists. In the period from January to the end of November 2008, external professionals (substance abuse treatment specialists, psychiatrists and psychologists) participated in visits to 7 places of detention.

3 a. Training

Seeking to ensure that NPM task team members have the appropriate qualifications, the CCRP Office provided in-house training on the rules of preventive monitoring visits. All the training participants got instruction in the relevant APT recommendations. Also prepared were rules on visit reporting and a new questionnaire, tailored to NPM needs, used during interviews with persons deprived of liberty in places of detention.

4. Financial resources allocated to the CCRP acting in NPM capacity

426,000 PLN was allocated to the implementation of NPM tasks in the latter half of 2008. The total allocation for 2009 is 1.4 million PLN.

5. Cooperation of the NPM with the civil society

Acting as the NPM, the CCRP meets every 2-3 months with representatives of the "Covenant for the Application of OPCAT". The Covenant is composed of NGOs concerned with human rights, including the Helsinki Foundation for Human Rights, the Association for Legal Interventions and *Amnesty International* (Poland) as well as representatives of the Ministry of Justice. The purpose of the meetings is to share opinions on NPM activities in Poland and proper implementation of OPCAT. Thanks to regular contacts with Covenant members, the NPM acquires information about penitentiaries visited by NGOs, which helps the NPM in scheduling its own activities.

Enclosures:

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THE CONSTITUTION OF THE REPUBLIC OF POLAND
OF 2nd APRIL, 1997

THE COMMISSIONER FOR CITIZENS' RIGHTS

Article 208

1. The Commissioner for Citizens' Rights shall safeguard the freedoms and rights of persons and citizens specified in the Constitution and other normative acts.
2. The scope and mode of work of the Commissioner for Citizens' Rights shall be specified by statute.

Article 209

1. The Commissioner for Citizens' Rights shall be appointed by the Sejm, with the consent of the Senate, for a period of 5 years.
2. The Commissioner for Citizens' Rights shall not hold any other post, except for a professorship in an institute of higher education, nor perform any other professional activities.
3. The Commissioner for Citizens' Rights shall not belong to a political party, a trade union or perform other public activities incompatible with the dignity of his office.

Article 210

The Commissioner for Citizens' Rights shall be independent in his activities, independent of other State organs and shall be accountable only to the Sejm in accordance with principles specified by statute.

Article 211

The Commissioner for Citizens' Rights shall not be held criminally responsible nor deprived of liberty without prior consent granted by the Sejm. The Commissioner for Citizens' Rights shall be neither detained nor arrested, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. The Marshal of the Sejm shall be notified forthwith of any such detention and may order an immediate release of the person detained.

Article 212

The Commissioner for Citizens' Rights shall annually inform the Sejm and the Senate about his activities and report on the degree of respect accorded to the freedoms and rights of persons and citizens.

The Ombudsman Act

Act of 15 July 1987 on the Commissioner for Civil Rights Protection

Article 1. 1. The Commissioner for Civil Rights Protection is hereby established.

2. The Commissioner for Civil Rights Protection, hereinafter referred to as "the Commissioner" shall safeguard the liberties and rights of citizens as set forth in the Constitution and in other legal acts

2a. On matters concerning children the Commissioner shall co-operate with the Commissioner for Children's Rights.

3. In cases involving protection of the rights and liberties of the human being and of the citizen, the Commissioner shall investigate whether, due to any action or abstaining on the part of organs, organisations or institutions responsible for the observance and implementation of those rights and liberties, the law and principles of community life and social justice have been infringed.

Article 2. The Commissioner must be a Polish citizen of outstanding legal knowledge, professional experience and high prestige due to the individual's moral values and social sensitivity.

Article 3. 1. The Commissioner shall be appointed by the Sejm upon approval of the Senate on a motion expressed by the Speaker of the Sejm or by a group of 35 deputies.

2. Detailed procedure of nomination for the office of Commissioner for Citizen's Rights shall be determined by the resolution of the Sejm.

3. The resolution of the Sejm appointing the Commissioner for Civil Rights Protection shall be immediately conveyed by the Speaker of the Sejm to the Speaker of the Senate.

4. The Senate shall adopt resolution on the approval of the appointment of the Commissioner within one month of receipt of the Sejm's resolution referred to in section 3. The Senate's failure to adopt such a resolution within one month shall be tantamount to approval.

5. Should the Senate refuse to approve the Commissioner, the Sejm shall appoint another person the Commissioner. Provisions of sections 1-4 shall apply respectively.

6. The outgoing Commissioner shall perform his duties until the office is taken over by the new Commissioner.

Article 4. Prior to assumption of duties, the Commissioner shall make the following oath before the Sejm:

"I solemnly do swear that in performing the duties entrusted to me as the Commissioner for Civil Rights Protection I shall keep faith with the Constitution of the Republic of Poland, safeguard the liberties and rights of the human being and the citizen, being guided by the Law and the principles of community life and social justice.

I pledge to perform the duties entrusted to me impartially, with the greatest of diligence and care, to safeguard the dignity of the office and to keep the State and office matters in strict confidence."

The oath may be taken with the sentence added "So help me God".

Article 5.1. The Commissioner's term of office shall be five years starting from the date the oath is made before the Sejm.

2. The same person may not act as the Commissioner for more than two terms of office.

Article 6. After completion of his duties, the Commissioner has the right to resume the position occupied before or to be offered a position equal to the previous one, should there be no legal obstacles.

Article 7.1. The Sejm may discharge the Commissioner prior to the end of his term of office in the case if:

1) the Commissioner has refused to perform his function,
2) has become permanently incapable to perform the office due to medically certified ailment, disability or decline of strength.

2. The Sejm may also discharge the Commissioner before the end of the term of his appointment, should he act against his oath.

3. In the case mentioned under section 1 point 1 the Sejm, upon the motion of the Speaker, takes the resolution on discharging the Commissioner.

4. The Sejm takes the resolution on discharging the Commissioner in cases mentioned in section 1 point 2 and section 2 on the motion of the Speaker or a group of at least 35 deputies, and by the majority of at least 3/5 of votes with at least the half of the regular number of deputies present.

Article 8. The Commissioner shall take measures under the present Act having acquired information indicating that liberties and rights of a human and a citizen have been violated.

Article 9. Measures shall be taken by the Commissioner:

- 1) on a request of citizens or their organisations,
- 2) on a request of self-government organs,
- 3) on the Commissioner's own initiative.

Article 10. An application addressed to the Commissioner shall be exempt from charges, and no special form shall be required; however, the identity must be indicated of the applicant and the person whose liberty and right is involved in the case, and the subject of the case must be defined.

Article 11. Having become acquainted with each application received, The Commissioner may:

- 1) take up the case,
- 2) instruct the applicant as to whatever action the person is entitled to take,
- 3) convey the case according to competence,
- 4) abandon the case, against notification thereof the applicant and the person involved.

Article 12. Having taken up a case, the Commissioner may:

- 1) carry out his own explanatory proceedings,
- 2) request that the case or a part thereof be explained by relevant agencies, especially agencies involved in the supervision, prosecution and State, professional or public control,
- 3) request the Sejm to commission the Supreme Chamber of Control with investigating the

specific case or a part thereof.

Article 13.1. In the course of the proceedings referred to in art. 12 section 1, the Commissioner has the right to:

- 1) examine each case on the spot even without any prior warning.
- 2) demand explanation or presentation of files of any case handled by superior and central authorities of State administration, government administration agencies, agencies of co-operative, civic, professional or socio-professional organisations, as well as agencies of corporate organisational units, communes and organisational units of local government,
- 3) demand information on the status of a case dealt with by courts or prosecutor's office or other law enforcement agencies, and to demand that court and prosecutor files be made available to the Office of the Commissioner for Civil Rights Protection, as well as files from other law enforcement bodies after proceedings have been completed and judgement issued,
- 4) order expertise and opinion.

2. In cases involving classified information, providing the Commissioner with information or access to files shall be subject to the principles and procedures set forth in relevant regulations on the protection of classified information.

Article 14. Having examined a case, the Commissioner may:

- 1) explain to applicant that no infringement of liberties and rights of a human and a citizen has been found,
- 2) refer to the agency, organisation or institution whose activity has been found to have caused an infringement of the liberties and right of a human and a citizen; such motion may not, however, infringe upon independence of the judiciary,
- 3) request an agency superior to the one referred to in point 2 to apply measures provided by law,
- 4) demand that proceedings be instituted in civil cases, and participate in any ongoing proceedings with the rights enjoyed by the prosecutor,
- 5) demand that preparatory proceedings be instituted by a competent prosecutor in cases involving offences prosecuted ex officio,
- 6) ask for instituting administration proceedings, lodge complaints against decisions to administrative court and participate in such proceedings with the rights enjoyed by the prosecutor,
- 7) move for punishment as well as for reversal of a valid decision in proceedings involving misdemeanour, under rules and procedures set forth elsewhere,
- 8) lodge cassation or extraordinary appeal against each final and valid sentence, under rules and procedures set forth elsewhere.

Article 15.1) In the motion mentioned in art. 14 point 2, the Commissioner shall present opinions and conclusions as to how the case could be settled, and may also demand that disciplinary proceedings be instituted or official sanctions imposed.

2) The agency, organisation or institution to which such motion has been addressed must, without unreasonable delay and no later than within 30 days, inform the Commissioner of whatever action or view has been taken. Should the Commissioner disagree with such a view, he can approach the relevant superior entity for necessary actions.

Article 16.1. In connection with the cases examined, the Commissioner can present to the relevant agencies, organisations and institutions opinions and conclusions aimed at ensuring efficient protection of the liberties and rights of a human and a citizen and facilitating the procedures such cases may involve.

2. The Commissioner may also:

- 1) approach the relevant agencies with proposals for legislative initiative, or for issuing or amending other legal acts concerning the liberties and rights of a human and a citizen,
- 2) approach the Constitutional Tribunal with motions mentioned in Art. 188 of the Constitution,
- 3) report participation in the proceedings before the Constitutional Tribunal in the cases of constitutional complaints and take part in those proceedings,
- 4) request the Supreme Court to issue a resolution aimed at explaining legal provisions that raise doubts in practice, or application of has resulted in conflicting judicial decisions.

Article 17.1. When approached by the Commissioner, an agency, organisation or institution is obliged to co-operate and provide to the Commissioner due assistance, and in particular:

- 1) provide with an access to files and documents under provisions set forth in art. 13,
- 2) providing the Commissioner with required information and explanations,
- 3) give explanation concerning the factual and legal grounds for its decisions,
- 4) take its attitude to the Commissioner's general appraisal, comments and opinions,

2. The Commissioner may specify the period within which measures mentioned under section 1 have to be accomplished.

Article 17a. The Commissioner collaborates with associations, civic movements or other good-will societies for the protection of the liberties and rights of a human and a citizen.

Article 18. Provisions of this Act regarding protection of the liberties and rights of a human and a citizen shall also apply, respectively, to persons of non-Polish citizenship being under the authority of the Republic of Poland in the scope of the liberties and rights they enjoy.

Article 19.1. The Commissioner shall annually inform the Sejm and the Senate on the his activities and on the observance of the liberties and rights of a human and a citizen.

2. The Commissioner's information shall be made public.
3. The Commissioner may submit to the Sejm and the Senate specific matters resulting from the Commissioner's activities.
4. If so requested by the Sejm Speaker, the Commissioner shall provide information or take action in specific cases.

Article 20.1. The Commissioner shall perform the Commissioner's duties with the assistance of the Office of the Commissioner for Civil Rights Protection.

2. The tasks and organisation of the Office shall be set forth by its statute to be conferred, on the Commissioner's motion, by the Speaker of the Sejm.
3. On the motion of the Commissioner, the Speaker of the Sejm may appoint up to three Commissioner's deputies, including a deputy for soldiers. The same procedure shall apply in the event of recall.
4. The Commissioner shall determine the scope of responsibilities of the Commissioner's deputy (deputies).

5. Respective regulations on the employees of government offices shall apply to the Deputy Commissioner and employees of the Office of the Commissioner for Civil Rights Protection.

Article 21. Disbursements involved in the operations of the Commissioner for Civil Rights Protection shall be covered by the central budget.

Article 22. The Commissioner may, upon the Sejm's approval, establish the his local representatives.