

WORKING GROUP ON BUSINESS AND HUMAN RIGHTS

**SUBMISSION ON THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS ON FACILITATING ACCESS TO EFFECTIVE REMEDY FOR BUSINESS-RELATED HUMAN RIGHTS ABUSES**

Information provided by the

Commissioner for Human Rights of the Republic of Poland

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**INTRODUCTION**

1. The Commissioner for Human Rights of the Republic of Poland (the “**Commissioner**”) is the constitutionally established authority responsible for protection of rights and freedoms guaranteed in the Constitution of the Republic of Poland, and in the ratified international human rights’ treaties. In his activities, the Commissioner is independent from other state authorities. The Commissioner is a national human rights institution with an A-status according to Paris Principles. The Commissioner is also entrusted with the function of the National Preventive Mechanism, in the meaning of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and is the monitoring body under the Convention on the Rights of Persons with Disabilities.

2. The Commissioner acts pursuant to the Constitution of the Republic of Poland and the Commissioner for Human Rights Act of 15 July 1987. The Commissioner is appointed by the lower chamber of the Parliament (Sejm) and approved by the higher chamber of the Parliament (Senate) for a 5-year term of office.

**ROLE OF NATIONAL HUMAN RIGHTS INSTITUTION IN FASCILITATING ACCESS TO EFFECTIVE REMEDY**

I. **The role and mandate of NHRIs in facilitating access to effective remedy for business-related human rights abuses**

1. *Does your NHRI have an explicit or implicit mandate to handle complaints concerning alleged business-related human rights abuses? If yes, what methods (e.g. mediation or conciliation) can be used to facilitate access to remedy for human rights abuses?*

There is no explicit mandate to handle complaints concerning alleged business-related human rights abuses. The Commissioner undertakes actions if it obtains information indicating that human rights or freedoms were abused, provided that such an abuse was done by a public entity. Accordingly, the Commissioner cannot directly intervene in horizontal disputes between private entities. The Commissioner has neither implicit competence to conduct mediation or conciliation.

The Commissioner interprets the prerequisite of the “public entity” broadly e.g. the Commissioner initiated a civil court action on behalf of a blind citizen whose doctor’s appointment was cancelled because of the guide dog. The claim was brought against a private entrepreneur, however, the treatment was financed from the national health system.

In each case the Commissioner may direct a request to the relevant authorities, including police or prosecutor’s office, to investigate the case. It may also ask the Labor Inspectorate or administrative bodies to deal with the case. In such a case, the Commissioner is monitoring activities / negligence of public bodies vis-à-vis a business entity. But it cannot refer directly requests to such body.

1. *What types of remedies can your NHRI offer to individuals or communities affected by business-related human rights abuses? Do you consider those remedies to be effective?*

The Commissioner’s mandate does not provide for granting a direct remedy for business-related human rights abuses. However, the Commissioner may hand over the individual complaint to the relevant regulatory bodies for investigation and review, e.g. to the Energy Regulatory Office, Office of Electronic Communications, Office for the Protection of Consumers and Competition or the Office for Data Protection. Those bodies have a power to impose sanctions.

As stated above, the Commissioner may undertake action in case of human rights abuses involving public entity. In such a case, the Commissioner may:

* join the civil or administrative court proceedings
* lodge a cassation appeal (or extraordinary appeal) to the Supreme Court in criminal matters
* request the court or prosecutor’s file for review
* demand information on the status of the case, conducted by the court, police or prosecutor
* address the public authority or institution with the so-called general statement indicating what human or civic rights and freedoms were infringed.
1. *Does your NHRI have a mandate to investigate, conduct inquiry and adjudicate individual cases of alleged human rights abuses by businesses? If yes, please provide relevant statistics in relation to complaints received and adjudicated*.

The Commissioner does not have such competences. As stated above, the Commissioner may only monitor activities of other state bodies and their actions in accordance with their statutory powers.

1. *Does your NHRI give any special attention to facilitate access to your complaint mechanisms by vulnerable or marginalised groups? If yes, what measures have been taken in this regard?*

The complaint mechanism is very simple to facilitate access to all groups in need. There are almost no formal requirements. The complaint is free of charge. Commissioner’s website provides for possibility of filing the complaint in the sign language as well as by blind. There are 15 contact points in Poland where citizens can file their complaint in person with the Office’s employee.

The Commissioner is an equal treatment monitoring body and therefore it has a special mandate in that respect:

* prepares and issues independent reports and recommendations regarding discrimination-related problems;
* cooperates with associations, civic movements and other voluntary associations and foundations in the area of equal treatment;
* can apply to another control body for examination of the case if establishes that the principle of equal treatment has been violated;
* applies to competent authorities for elimination of violation and subsequently monitors the implementation of recommendations;
* in cases where only private entities are involved, can indicate legal measures to which a given person is entitled;
* does not have legislative initiative, but can apply to competent authorities for undertaking a legislative initiative, issuing or amending legal acts.

With respect to discrimination, the Commissioner undertakes proactive measures to enhance the protection of human rights: regularly meets with marginalized groups (e.g. Roma minority, LGBTQ groups), cooperates with non-governmental organizations; or commissions antidiscrimination studies.

1. *What gender-sensitive and gender-responsive measures your NHRI take in dealing with cases of alleged business-related human rights abuses?*

The Commissioner cannot engage in individual cases between private entities. Nonetheless, the Commissioner undertakes systemic measures with respect to gender-sensitive issues. Most recently, the Commissioner published reports on work-life balance, discrimination due to religion and conscience in workplace or sexual harassment at higher education institutions. It has also addressed the issue of the gender pay gap in his general statement to the Minister of Family, Labor and Social Policy.

1. *What other measures does your NHRI undertake to facilitate access to remedy indirectly for business-related human rights abuses (e.g. raising awareness about rights and remedial mechanisms, providing legal assistance, building capacity of communities or businesses, assessing effectiveness of other grievance mechanisms, and recommending reform of the national legal system to strengthen access to remedy)?*

The Commissioner is devoted to raise awareness about rights and remedial mechanisms. One of the most recent and best examples is an information campaign, run by the Commissioner together with the Financial Ombudsman and the Office of the Competition and Consumer Protection, on remedies available to citizens suffering from abusive lending in foreign currencies. Within a year, 17 meetings took place in 14 cities. Each meeting was attended by 200-300 persons.

The Commissioner organizes informational meetings for particularly vulnerable groups like seniors or people with disabilities, to increase the awareness about their consumer rights. Currently, the Commissioner establishes a group of professionals (lawyers, bankers, academics) to discuss methods of enhancing consumer protection in Poland.

The Commissioner also cooperates with the relevant regulatory bodies: the Energy Regulatory Office, Office of Electronic Communications, Financial Ombudsman as well as the business self-organizations like the Polish Bank Association.

As regards legal remedies, the Commissioner submitted general statements calling for extension of class action measures in Poland. Under current legislation the class action is not applicable to labor cases.

1. *How does your NHRI collaborate with other judicial or non-judicial remedial mechanisms (e.g. courts, labour tribunals, National Contact Points, and operational level grievance mechanisms) in dealing with complaints concerning business-related human rights abuses?*

The Commissioner may refer any individual complaint to the relevant regulatory bodies for investigation and review, e.g. to the Energy Regulatory Office, Office of Electronic Communications, Financial Ombudsman.

The Commissioner may also join as the third-party different civil court cases. This power is reserved only to strategic cases, mostly with involvement of public bodies (e.g. the State Treasury), concerning non-discrimination cases or examples of significant abuse (e.g. in the banking sector). But it may happen that the Commissioner participates in civil proceedings between two private parties.

The Commissioner cooperates also with local ombudsmen for protection of consumer rights. For the last year of Adam Bodnar’s term there is a plan to increase the cooperation in strategic cases. Local consumer ombudsmen might be active in litigating consumer cases involving violation of EU laws. The Commissioner would serve as a legal guidance point for them.

1. *Can your NHRI deal with alleged business-related human rights abuses with a transnational or cross-border dimension (e.g. through informal visits and exchange of information or a cooperation arrangement with counterparts in other States)?*

There is no such explicit competence with respect to individual cases. Nonetheless, the Commissioner is engaged in reporting the systemic threats towards the protection of human rights in Poland e.g. to the United Nations’ treaty bodies. The Commissioner’s Office also participates in the multi-national seminars on combating the abusive lending, organized by the Open Society Foundation. There is also a general cooperation with other ombudsman institutions, within such networks like the European Network of National Human Rights Institutions.

1. *Is your NHRI involved in any initiatives to stimulate effective multi-stakeholder grievance mechanisms to strengthen access to remedy for business-related human rights abuses?*

The Commissioner can neither initiate or join multi-stakeholder proceedings. Nonetheless, the Commissioner monitors the multi-stakeholder proceedings involving human rights abuses. Most recently, the Commissioner asked the Minister of Justice to comply with the law by making the list of all pending class actions public.

1. *Where a National Action Plan on Business and Human Rights exists (or is under development), does it provide for a role for NHRIs in relation to access to remedy in case of business-related human rights abuses?*

Poland’s NAP, entitled [*Krajowy Plan Działania (KPD) na rzecz wdrażania Wytycznych ONZ dotyczących biznesu i praw człowieka na lata 2017-2020*](https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2017/11/poland-nap-polski.pdf), was adopted by the Council of Ministers on 29 May 2017. There is no special role prescribed therein for the Commissioner for Human Rights.

**II. Challenges and limitations faced by NHRIs in facilitating access to effective remedy for business-related human rights abuses**

1. *What are the most critical challenges and limitations (e.g., legal, practical, or financial) that your NHRI has experienced in facilitating access to effective remedy in business-related human rights abuses? How could these challenges or limitations be overcome?*

The challenges faced by the Commissioner for Human Rights refer to the Office itself and to the general situation in Poland.

Constraints relating to the Office

Since 2016 the Commissioner observes a tendency to cut the current expenditures in the budget assigned to the Office of the Commissioner for Human Rights by the Parliament. Financial resources are not sufficient to effectively fulfill of statutory obligations of the Commissioner. This situation continues, despite numerous international recommendations to provide the Office of the Commissioner with the appropriate funds:

1. Committee on Economic, Social and Cultural Rights in the concluding observations of 26 October 2016, E/C.12/POL/CO/6: *The Committee recommends that the Office of the Commissioner for Human Rights be provided with the human and technical resources necessary to fulfil its mandate fully and effectively, especially with respect to economic, social and cultural rights. It also recommends that the independence of the Office be ensured.*
2. Human Rights Committee in the concluding observations of 23 November 2016, CCPR/C/POL/CO/7: *The State party should provide the necessary resources to the Office of the Commissioner for Human Rights to ensure that it can effectively, independently and fully implement its mandate;*
3. Universal Periodic Review’s recommendations, adopted at the Thirty-sixth session of the Human Rights Council between 11-29 September 2017, A/HRC/36/14:

*120.27 Allocate the resources necessary to the Office of the Human Rights Commissioner (Timor-Leste);*

*120.28 Provide the Office of the Human Rights Commissioner with sufficient financing to fulfil its obligations (Norway);*

*120.29 Provide the Office of the Human Rights Commissioner with all the support necessary for it to exercise effectively its mandate (Serbia);*

*120.30 Provide the Office of the Human Rights Commissioner with the means necessary to enable it to carry out its mandate in a full, efficient and independent manner (Guatemala);*

*120.31 Enable the Office of the Human Rights Commissioner to receive and deal with complaints of victims of discrimination (Honduras);*

*120.32 Implement the recommendations made by the International Ombudsman Institute on its fact-finding mission to Poland with regard to the Human Rights Commissioner (Austria).*

Constraints relating to the general situation in Poland

Since the elections in October 2015 the ruling majority introduced numerous legislative reforms which were dubious from the constitutional point of view and the rule of law perspective. Legal changes caused strong reactions, both internally and internationally, resulting in, *inter alia,* critical opinions from theVenice Commission (on the National Council for Judiciary, Public Prosecutor’s office, Constitutional Tribunal, Police Act), infringement procedure initiated twice within one year by the European Commission against Poland and referral of two cases to the Court of Justice of the European Union (regarding act on ordinary courts and on the Supreme Court).[[1]](#footnote-1) Special Rapporteur on the Independence of Judges and Lawyers in his end of mission statement of 27 October 2017 indicated that the independence of Poland’s judicial system and other crucial democratic standards like the separation of powers are under threat.[[2]](#footnote-2) As the effect of the legislative reforms, public prosecutor’s office is dependent on the executive authority – the Minister of Justice. The changes to the administration of common courts and harassment of judges created a chilling effect, resulting in the infringement of judicial independence. This constitutes a great challenge for the business-related human rights abuses, especially when public entities are involved.

1. *What additional challenges has your NHRI faced in dealing with complaints with a transnational dimension (e.g., exploitation of migrant workers, or cross-border environmental pollution)?*

No special challenges were faced.

1. *How has your NHRI dealt with complaints involving multiple victims?*

In case of multiple victims (like abusive practices of Polish banks) the Commissioner might only be responsible to verify whether other respective ombudsman institutions work properly. But it may also provide the support to them, e.g. by information campaigns or by making general statement addressed to authorities. In such a situation, the Commissioner may also contemplate to make strategic litigation of selected cases.

1. *What has been the experience of your NHRI in dealing with complaints concerning parent and subsidiary companies or the supply chain of a company?*

The Commissioner has no such experience. But please note that the Commissioner may ask for the explanation of the case by the Labor Inspectorate, other executive agendas or the prosecutor’s office.

**III. Good practices, innovations and recommendations to strengthen the role of NHRIs in facilitating access to effective remedy for business-related human rights abuses**

1. *Can you share any good practice examples in which your NHRI was able to facilitate, directly or indirectly, effective remedies for business-related human rights abuses?*

A good practice example is the issue of the abusive lending practices in Poland, esp. loans denominated in Swiss francs, which was approached by the Commissioner from different angles. Firstly, the Commissioner run an information campaign on remedies available to citizens suffering from abusive lending. The campaign was coordinated by the Commissioner together with the Financial Ombudsman and the Office of the Competition and Consumer Protection. Within a year, 17 meetings took place in 14 cities. As a result, the Financial Ombudsman noted a major increase of citizens’ motions for intervention in their individual cases. Secondly, the Commissioner joined one court proceedings relating to the issue of the abusive clauses in loan agreement and made his argumentation public, in order to enable citizens in similar situation take advantage of legal arguments rooted both in Polish and European law and jurisprudence. Thirdly, a number of multi-stakeholders meetings took place to discuss the situation of abusive lending in Poland, including meetings with the civil society organizations and lawyers engaged in defending consumers’ rights in courts.

1. *Are there good practice examples of your NHRI supporting the work of civil society and human rights defenders (including women human rights defenders) working to secure access to effective remedy for business-related human rights abuses*?

The Commissioner regularly holds a roundtable discussions, also with the civil society representatives and the human rights defenders. Examples include recent meetings with lawyers representing consumers in abusive lending court cases against banks, the biggest business organization representing employers and the labor union of security guards.

1. *Can you identify any innovative steps taken by your NHRI in overcoming various challenges and limitations faced in dealing with complaints concerning business-related human rights abuses?*

The cooperation with the Financial Ombudsman on information campaign concerning loans in a foreign currency was a good example of such step. As a result of this campaign number of cases pending before Polish courts against banks has significantly grown.

1. *What measures should be taken to strengthen the mandate, role and capacity of NHRIs in facilitating access to remedy for business-related human rights abuses?*

There is a growing involvement of the state in the operation of the economy. In Poland there are many state-owned companies that have a significant impact on banking, insurance or energy sector. But their operation might be interconnected with regulatory activities of the state. In such a case there is a need to strengthen the mandate of the NHRI, because this proximity of state-owned companies to state interests (in terms of regulation, tax or environmental aspects) might have impact on situation of consumers and their access to remedies. The growing role of the state in running of different businesses should be followed by growing role of different independent institutions, such as NHRIs.

1. *How could NHRIs collaborate with regional and international human rights monitoring mechanisms (including the Universal Periodic Review) to facilitate access to remedy for business-related human rights abuses?*

NHRIs as well as NGOs should be trained how to submit their shadow reports to different UN bodies. Moreover, there should be more cooperation on the follow-up of different recommendations and statements adopted within UPR or by treaty bodies or special procedures’ mandate holders. Lack of follow up dilutes effectiveness of the whole mechanism. International procedures should be embedded into domestic practices of different institutions and stakeholders.

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1. ##  Please see the Venice Commission’s opinion on the Public Prosecutor's office, as amended, adopted by the Venice Commission at its 113th Plenary Session (Venice, 8-9 December 2017): <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)028-e>

 [↑](#footnote-ref-1)
2. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23258&LangID=E> [↑](#footnote-ref-2)