Act on the Commissioner for Human Rights

Journal of Laws Dz.U. of 2014, item 1648

The Act of 15 July 1987 on the Commissioner for Human Rights

Article 1

1. The Commissioner for Human Rights is hereby established.
2. The Commissioner for Human Rights, hereinafter referred to as "the Commissioner", shall safeguard the liberties and human and citizen’s rights as set forth in the Constitution and other normative acts, including the guard of implementation of the principle of equal treatment.
2a. In any case concerning children, the Commissioner shall cooperate with the Ombudsman for Children.
3. In any case concerning safeguarding the freedom and human's and citizen's rights, the Commissioner examines whether as a result of acts or omissions of authorities, organisations and institutions obliged to comply with and implement these freedoms and rights, there has not occurred violation of the law as well as the principles of coexistence and social justice.
4. The Commissioner shall perform the function of a visiting authority in any case against tortures and another inhuman or degrading treatment or punishment (National Preventive Mechanism) as defined by the facultative Protocol to the Convention against torture and another cruel, inhuman or degrading treatment or punishment, adopted by the United Nations General Assembly in New York on 18 December 2002 (Journal of Laws Dz.U. of 2007, No 30, item 192).

Article 2.

A Commissioner may be a citizen of Poland having legal knowledge, professional experience and high authority owing to their moral qualities and social sensitivity.

Article 3.

1. The Commissioner is appointed by the Sejm with prior approval of the Senate on the application of the Marshal of the Sejm or a group of 35 deputies.
2. Detailed procedure of reporting candidates for the Commissioner for Human Rights is specified in a resolution of the Sejm.
3. The Marshal of the Sejm sends the Resolution of the Sejm on appointing the Commissioner immediately to the Marshal of the Senate.
4. The Senate adopts a resolution concerning expressing consent to appoint the Commissioner within one month after the day of transferring the resolution of the Sejm to the Senate referred to in passage 3. Failure to adopt the resolution by the Senate within one month means consent.
5. In the case the Senate refuses expressing consent to appointing the Commissioner, the Sejm appoints to the position of the Commissioner another person. The provisions of passage 1-4 shall apply accordingly.
6. The previous Commissioner fulfils their obligations until taking up the position by the new Commissioner.
Article 4.
Prior to commencing the performance of obligations, the Commissioner shall make the following oath before the Polish Parliament:

"I solemnly do swear that in performing the duties entrusted to me as the Commissioner for Human Rights 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 diligence and care, to safeguard the dignity of the office and to keep the legally protected matters in strict confidence"

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

Article 5.
1. Term of office of the Commissioner lasts five years, counting from the date the oath is made before the Sejm.
2. The same person cannot be a Commissioner for more than two terms of office.

Article 6.
After termination of performing the duties the Commissioner has the right to return to the position held previously or receive a position equivalent to the previously occupied without legal obstacles.

Article 7.
1. The Sejm removes the Commissioner before the end of the term of office, if he or she:

   1) renounced performing the duties,
   2) became permanently incapable to perform obligations as a result of illness, disability or lower strength – observed with a medical certificate,
   3) made an untrue lustration statement, observed with a final and binding court decision.

2. The Sejm removes the Commissioner before the end of the term of office also if the Commissioner defected from the oath made.
3. The Sejm shall adopt a resolution on removal of the Commissioner in the case specified in passage 1, item 1, at the request of the Marshal of the Sejm.
4. The Sejm shall adopt a resolution on removal of the Commissioner in cases specified in passage 1, item 2, and in passage 2, at the request of the Marshal of the Sejm or a group of at least 35 deputies with a majority of at least 3/5 votes in the presence of at least half of the statutory number of deputies.

Article 8.
1. The Commissioner undertakes activities provided for in the Act if they become aware of any news indicating breach of human and citizen's freedoms and rights, including the principles of equal treatment.
2. The Commissioner regularly checks the manner of treating detained persons.
Article 9.

Undertaking activities by the Commissioner takes place:

1) at the request of citizens or their organisations,
2) at the request of local government bodies,
3) at the request of the Ombudsman for Children,
4) on his or her own initiative.

Article 10.

Motions directed to the Commissioner are free from fees, do not require a special form but should contain the indication of the applicant and the person to whose freedoms and rights the case applies, it should also define the subject matter of the case.

Article 11.

1. The Commissioner, having become familiar with each motion addressed to him, may:

   1) take the case,
   2) indicate measures of action attributed to the applicant,
   3) transfer the case as appropriate,
   4) do not take the case

   – informing the applicant and the person to whom the case applies about this fact.

2. With regard to the principle of equal treatment for private entities, the Commissioner may take action referred to in passage 1, item 2.

Article 12.

Taking the case, the Commissioner may:

1) conduct an investigation on his own,
2) apply to examine the case or its part to competent authorities, in particular to supervision authorities, the prosecutor's office, state, professional or social control,
3) apply to the Polish Sejm to order the Supreme Audit Office to conduct an inspection to examine a specific case or its part.

Article 13.

1. Conducting the proceedings referred to in Article 12, item 1 the Commissioner is entitled to:
1) examine, even without prior notification, each case on site,
2) request a hearing or presentation of files of each case conducted by the supreme and
central state administration bodies, government bodies, bodies of cooperative organizations,
social, professional and socio-professional and the bodies of organizational units with legal
personality as well as local government bodies and local government organizational units,
3) request information about the status of the case conducted by courts, as well as the
prosecutor's office and other prosecution authorities as well as request court files and public
prosecutor's files as well as files from other prosecution authorities for inspection in the
Commissioner's Office after the end of the proceedings and a decision,
4) order the preparation of experts' studies and opinions.

1a. When performing the task referred to in Article 8, passage 2, the Commissioner is also entitled
to:

1) record sound or image in places in which persons deprived of their liberty are present,
with prior approval of the persons who shall recorded,
2) meet with persons deprived of their liberty, without the presence of other persons as well
as with other persons who he believes may provide essential information.

1b. The recorded sound and image:

1) is stored in the Commissioner's Office, in rooms protected against the access of
unauthorized persons, for the period necessary in a given case, but no longer than for 10
years,
2) is made available to the person who was recorded, as well as to this person's legal
representative or attorney.

2. In any cases constituting confidential information with the clause "secret" or "top secret"
providing information or allowing the Commissioner to inspect files is done on the terms and in the
mode specified in regulations on the protection of secret information.
3. The Commissioner may refuse to disclose the full name and other personal data of the
complainant, also to public authorities, if he believes it is necessary to protect the individual's
freedom, rights and interest.

**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, organization or institution whose activity has been found to have
caused an infringement of the liberties and rights 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 misdemeanor, 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, organization 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, organizations 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 which has resulted in conflicting judicial decisions.

3. In the case of the Commissioner approaching the Constitutional Tribunal with motions, referred to in Paragraph 2 point 2, he informs the Children's Ombudsman about this fact, if the motions relate to the children's rights.

Article 17.
1. When approached by the Commissioner, an agency, organization or institution is obliged to cooperate 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) provide 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 goodwill societies for the protection of the liberties and rights of a human and a citizen.

**Article 17b.**
The scope of activities of the Commissioner, relating to the realization of the principles of equal treatment, shall also include:

1) analysis, monitoring and support of equal treatment of all persons,
2) conducting independent research relating to discrimination, developing and issuing independent reports and issuing recommendations with regard to problems related to discrimination.

**Article 17c.**
The Commissioner may process all information, including personal data referred to in Article 27 (1) of the Act of 29 August 1997 on Personal Data Protection (Journal of Laws Dz.U. of 2002, No. 101, item 926, as amended), necessary for the realization of his statutory tasks.

**Article 18.**
Provisions of this Act regarding protection of the liberties and rights of a human and a citizen shall also apply, respectively, to:

1) persons of non-Polish citizenship being under the authority of the Republic of Poland in the scope of the liberties and rights they enjoy,
2) legal persons and organizational units not being legal persons, to whom the Act grants legal capacity in the scope specified in regulations of the Act of 3 December 2010 on implementation of some EU regulations regarding equal treatment (Journal of Laws Dz.U. No.254, item 1700).

**Article 19.**
1. The Commissioner shall annually inform the Sejm and the Senate on his activities and on the observance of the liberties and rights of a human and a citizen, including:

1) information on the conducted operations in the field of equal treatment and on the results of these operations,
2) information on observing the principles of equal treatment in the Republic of Poland, prepared in particular on the basis of research referred to in Article 17b (2),
3) conclusions and recommendations concerning actions, which should be undertaken to ensure compliance with the principles of equal treatment.
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 Marshal of the Sejm, 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 Human Rights.
2. The tasks and organization of the Office shall be set forth by its statute to be conferred by the Commissioner.
3. The Commissioner may appoint up to three Commissioner’s deputies. The Commissioner may recall the Commissioner's deputies.
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 Human Rights.
6. (deleted).
7. (deleted).

Article 21.
The expenses related to the functioning of the Commissioner for Human Rights are financed from the central budget.

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