

Dz. U. [Journal of Laws] of 1987 no. 21, item 123

ACT

of 15 July 1987

on the Commissioner for Human Rights¹

Article 1

1. The position of Commissioner for Human Rights is hereby established.
2. The Commissioner for Human Rights, hereinafter referred to as “the Commissioner”, shall safeguard human and civil freedoms and rights, including the implementation of the principle of equal treatment, as set forth in the Constitution of the Republic of Poland and in other legislative acts.
- 2a. In matters relating to children, the Commissioner shall cooperate with the Ombudsman for Children.
- 2b. In matters relating to micro enterprises and small and medium enterprises within the meaning of the Act of 6 March 2018 – Law on Enterprises (Dz. U. of 2019, items 1292 and 1495; and Dz. U. of 2020, item 424) the Commissioner shall cooperate with the Ombudsman for Small and Medium Enterprises.
3. In matters concerning the safeguarding of human and civil freedoms and rights, the Commissioner shall examine whether the law or the principles of social conduct and social justice have not been violated as a result of acts or omissions of authorities, organizations or institutions required to respect and implement these freedoms and rights.
4. The Commissioner shall perform the role of a visiting body responsible for the prevention of torture and other inhuman or degrading treatment or punishment (National Preventive Mechanism) within the meaning of the Optional Protocol to the Convention against torture and other cruel, inhuman or degrading treatment or punishment, adopted by the United Nations General Assembly in New York on 18 December 2002 (Dz. U. of 2007, item 192).

Article 2

The office of the Commissioner may be held by a Polish citizen who has outstanding knowledge of the law and professional experience and, owing to his/her moral attributes and sensitivity to social issues, is a respected authority.

Article 3

1. The Commissioner shall be appointed by the Sejm at the request of the Marshal of the Sejm or a group of 35 deputies, and shall be approved by the Senate.

¹ This Act, within the scope of its regulations, implements the following Directives of the European Communities:

- 1) Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.07.2000, p. 22; OJ Special Edition in Polish: Chapter 20, Volume 1, p. 23);
- 2) Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37);
- 3) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ L 204, 26.7.2006, p. 23).

2. The procedure of nominating candidates for the position of Commissioner for Human Rights shall be determined by resolution of the Sejm.
3. The Sejm's resolution on appointment of the Commissioner shall be immediately forwarded by the Marshal of the Sejm to the Marshal of the Senate.
4. The Senate, within one month of receiving the Sejm's resolution referred to in paragraph 3, shall adopt a resolution approving the appointment of the Commissioner. The Senate's failure to adopt such resolution within one month shall be considered as approval of the appointment.
5. In the case the Senate does not approve the appointment of the Commissioner the Sejm shall appoint another person to the position of the Commissioner. The provisions of paragraphs 1 to 4 shall apply accordingly.
- 6². The Commissioner shall hold the position until it is taken over by a newly appointed Commissioner.

Article 4

Prior to the commencement of his/her duties the Commissioner shall take the following oath before the Sejm:

I solemnly swear that in performing my duties as Commissioner for Human Rights I will faithfully follow the Constitution of the Republic of Poland, I will safeguard human and civil freedoms and rights and will comply with the law and the principles of social conduct and social justice. I pledge to perform my duties impartially, with utmost conscientiousness and diligence, to protect the dignity of the office I hold and to maintain confidentiality as required under the law.

The oath may be followed by the sentence *So help me God.*

Article 5

1. The term of office of the Commissioner shall be five years starting from the date on which the oath before the Sejm is taken.
2. The office of the Commissioner may not be held by the same person for more than two terms.

Article 6

Upon completion of performance of his/her duties, the Commissioner may return to the position previously held or take a new position, equivalent to the one previously held, unless legal obstacles exist.

Article 7

1. The Sejm shall dismiss the Commissioner before the expiry of his/her term of office, if he or she:
 - 1) has resigned from the office,
 - 2) has become permanently incapable of performing his/her duties due to illness, disability or deteriorated health, as confirmed by a medical certificate,
 - 3) has submitted a false vetting declaration, as confirmed by a final judgment of a court.

² The provision shall cease to be effective on 16 July 2021 pursuant to the judgment of the Constitutional Tribunal of 15 April 2021, ref. no. K 20/20 (Dz. U. of 2021, item 696)

2. The Sejm shall dismiss the Commissioner before the expiry of his/her term of office also in the case he or she has violated the oath.
3. In the case referred to in paragraph 1(1), the Sejm's resolution to dismiss the Commissioner shall be adopted at the request of the Marshal of the Sejm.
4. In the cases referred to in paragraph 1(2) and paragraph 2, the Sejm's resolution to dismiss the Commissioner shall be adopted at the request of the Marshal of the Sejm or a group of at least 35 deputies, by three fifths majority vote in the Sejm, provided that at least 50% of the legally required number of deputies are present.

Article 7a

Without prior consent of the Sejm, the Commissioner may not be held criminally liable and may not be deprived of liberty. The Commissioner may not be arrested or detained, except when caught in the act of committing an offense, and if his/her arrest is necessary to ensure proper course of the proceedings. Such arrest shall be immediately notified to the Marshal of the Sejm who may demand immediate release of the arrested Commissioner.

Article 7b

In the case of a criminal proceeding, the limitation period applicable to the offence covered by immunity shall remain suspended throughout the immunity period.

Article 7c

1. A motion for consent to hold the Commissioner criminally liable for an offence prosecuted by public indictment shall be submitted through Prosecutor General.
2. A motion for consent to hold the Commissioner criminally liable for an offence prosecuted pursuant to a private claim shall be submitted by a private plaintiff after bringing the case to court.
3. A motion referred to in paragraph 2 shall be drawn up and signed by a lawyer, with the exception of motions of judges, prosecutors, lawyers, public notaries or professors or habilitated doctors in law, filed in their cases.
4. Motions referred to in paragraphs 1 and 2 should indicate:
 - 1) name of the applicant and name of the proxy, if any;
 - 2) full name, date of birth and place of birth of the Commissioner;
 - 3) legal basis for the motion;
 - 4) precise description of the offence to which the motion relates, including the time, place, manner and circumstances of its commitment, as well as its effects, in particular the nature of the resulting damage;
 - 5) reasoning.

Article 7d

1. A motion for consent to hold the Commissioner criminally liable shall be submitted to the Marshal of the Sejm.
2. If the motion fails to meet the formal requirements referred to in Article 7c(3) or Article 7c(4), the Marshal of the Sejm shall request the applicant to correct or supplement the motion within 14 days, indicating the necessary scope of the correction or supplementation thereof. If the motion is not

corrected or supplemented within the said time limit, the Marshal of the Sejm shall take a decision not to start the procedure of examining the motion.

3. If the motion meets the formal requirements referred to in Article 7c(3) and Article 7c(4), the Marshal of the Sejm shall forward it to the body which, under the Rules of Procedure of the Sejm, is competent to examine the motion and shall notify the Commissioner of the content thereof.
4. The body competent to examine the motion shall notify the Commissioner of the date on which the motion will be examined. The period between the delivery of the notification and the date of examining the motion shall be at least 7 days, unless an emergency situation occurs.
5. At the request of the body competent to examine the motion, the court or competent authority conducting the proceeding relating to the Commissioner shall provide access to the case files.
6. The Commissioner shall provide his/her explanations and conclusions regarding the case, verbally or in writing, to the body competent to examine the motion.
7. After considering the case, the body competent to examine the motion shall adopt a report containing a proposal to accept or to reject the motion.
8. During the examination by the Sejm of the report referred to in paragraph 7, the Commissioner shall have the right to take the floor .
9. The Sejm's consent to hold the Commissioner criminally liable shall have the form of a resolution adopted by an absolute majority of votes cast by the legally required number of deputies. Failure to achieve the required majority shall mean that the Sejm does not consent to hold the Commissioner criminally liable.

Article 7e

1. The prohibition of arrest, referred to in Article 7a, shall apply to all forms of deprivation or restriction of the Commissioner's liberty by the authorities empowered to use coercive measures.
2. A motion for consent to arrest or detain the Commissioner shall be submitted through Prosecutor General.
3. The motion referred to in paragraph 2 should include:
 - 1) name of the applicant;
 - 2) full name, date of birth and place of birth of the Commissioner;
 - 3) precise description of the offence and its legal classification;
 - 4) legal basis for applying a given measure;
 - 5) justification indicating, in particular, the necessity to apply a given measure.
4. To the examination of motions for consent to arrest or detain the Commissioner, the provisions of Article 7d(1) to (8) shall apply accordingly.
5. The Sejm's consent to arrest or detain the Commissioner shall have the form of a resolution adopted by an absolute majority of votes cast by the legally required number of deputies. Failure to achieve the required majority shall mean that the Sejm does not consent to the arrest or detention of the Commissioner.
6. The requirement to obtain the Sejm's consent shall not apply to deprivation of liberty pursuant to a final judgement of a court.

Article 7f

1. The Marshal of the Sejm shall immediately forward to the applicant the resolution referred to in Article 7d(9) and Article 7e(5).

2. Resolutions referred to in paragraph 1 shall be published in Monitor Polski [the Official Gazette of the Republic of Poland].

Article 7g

The provisions on criminal liability of the Commissioner, contained herein, shall apply accordingly to liability for other offences.

Article 7h

The procedure to be followed in cases referred to in Articles 7a to 7g shall be set out in the Rules of Procedure of the Sejm.

Article 8

1. The Commissioner shall take measures provided for in this Act if he/she has become aware of any violation of human or civil freedoms or rights, including of the principle of equal treatment.
2. The Commissioner shall, on regular basis, monitor the treatment of persons deprived of liberty.

Article 9

The Commissioner shall take action:

- 1) upon a motion of a citizen or citizens' organization,
- 2) upon a motion of a local government,
- 2a) upon a motion of the Ombudsman for Children,
- 2b) upon a motion of the Ombudsman for Small and Medium Enterprises,
- 4) on his/her own initiative.

Article 10

Motions filed with the Commissioner shall be free of charge and no particular form shall be required to file them. Every motion shall be required to indicate the name of the applicant, the name of the person to whose freedoms and rights the motion relates and the subject matter of the case.

Article 11

1. The Commissioner, having examined every motion filed with him/her, may in a given case:
 - 1) accept the case for further proceeding,
 - 2) indicate measures the applicant may take himself/herself,
 - 3) forward the motion to the competent authority,
 - 4) reject the motion,
– and shall forward the information thereof to the applicant and the person to whom the motion relates.
2. With regard to the principle of equal treatment between private entities, the Commissioner may take the steps referred to in paragraph 1(2).

Article 12

Having accepted a case for further proceeding, the Commissioner may:

- 1) carry out an explanatory procedure independently,
- 2) request the examination of the case, in whole or in part, by competent authorities, in particular by supervisory authorities, public prosecutors, state audit authorities, professional supervision bodies or social oversight bodies,
- 3) request the Sejm of the Republic of Poland to order the Supreme Audit Office to examine the case in whole or in part.

Article 13

1. When carrying out the explanatory procedure referred to in Article 12(1) the Commissioner may:

- 1) examine every case on site, even without prior notification,
- 2) request explanations; request access to files on every case examined by national-level state administration authorities, government administration authorities, bodies of cooperative, social, professional and socio-occupational organizations, bodies of organizational units which have legal personality, as well as local government entities and their organizational units,
- 3) request information on the status of proceedings conducted by courts, prosecutor's offices and other law enforcement authorities, and request that court files, public prosecutors' files and files of other law enforcement authorities are made available for review at the Office of the Commissioner for Human Rights after the proceedings covered by those files have been closed and decisions on the cases have been issued,
- 4) order the development of expert reports and opinions.

1a. When performing the task referred to in Article 8(2), the Commissioner may also:

- 1) make audio and video recordings in places where persons deprived of liberty are detained, with prior approval of those persons,
- 2) meet with persons deprived of liberty, without the presence of other persons, and meet with other persons who, in the Commissioner's opinion, may provide useful information.

1b. The video and audio recordings:

- 1) shall be stored in the Office of the Commissioner for Human Rights, in rooms protected against access by unauthorized persons, for a period necessary in a given case but no longer than 10 years,
- 2) shall be made available to the person whose image has been recorded and to his/her legal representative or proxy.

2. In the case of confidential information classified as "secret" or "top secret", access to such information and files shall be provided to the Commissioner under the rules and procedures laid down in legal regulations on the protection of confidential information.

3. The Commissioner may refuse to disclose the name and other personal data of the complainant, also to public authorities if, in the Commissioner's opinion, the refusal is necessary to protect the person's freedoms, rights and interest.

Article 14

Having examined the case, the Commissioner may:

- 1) inform the complainant that no violation of human and civil freedoms and rights has been found,

- 2) submit an intervention to the authority, organization or institution whose activity has been found to have violated human and civil freedoms and rights; such intervention may not, however, violate the independence of the judiciary,
- 3) request the authority superior to the one referred to in paragraph 2 to take measures provided for under the law,
- 4) demand the initiation of a civil proceeding, and take part in any such ongoing proceeding - in which the Commissioner shall have the same rights as the prosecutor,
- 5) demand the initiation, by a competent prosecutor, of a preparatory proceeding regarding an offence prosecuted ex officio,
- 6) request the initiation of an administrative proceeding, lodge a complaint with an administrative court and take part in those proceedings - in which the Commissioner shall have the same rights as the prosecutor,
- 7) demand adjudication of penalty or annulment of a valid decision in a proceeding regarding an offence, under the rules and procedures laid down in separate regulations,
- 8) file a cassation appeal or extraordinary appeal against a valid judgment, under the rules and procedures laid down in separate regulations.

Article 15

1. In an intervention referred to in Article 14(2), the Commissioner shall present his/her opinions and conclusions as to how the matter should be resolved and may demand the initiation of a disciplinary proceeding or the imposition of professional sanctions.
2. The authority, organization or institution to which such intervention has been addressed shall, without unreasonable delay and no later than within 30 days, inform the Commissioner of the taken action or position on the matter. Should the Commissioner disagree with such a position, he/she may request the competent superior entity to take relevant action.

Article 16

1. In connection with the examined cases the Commissioner may present to competent authorities, organizations and institutions his/her opinions and conclusions with the aim to ensure efficient protection of human and civil freedoms and rights and to streamline the related procedures.
2. The Commissioner may also:
 - 1) request competent authorities to take legislative action or to issue or amend other legal acts relating to human and civil freedoms and rights,
 - 2) submit motions to the Constitutional Tribunal with regard to matters referred to Article 188 of the Constitution,
 - 3) join, and take part in, proceedings before the Constitutional Tribunal,
 - 4) submit motions to the Supreme Court for adopting resolutions to explain legal provisions which, in practice, raise doubts or whose application has resulted in conflicting judicial decisions.
3. In the case the Commissioner has submitted to the Constitutional Tribunal a motion with regard to children's rights, as provided for under paragraph 2(2), he/she shall notify the Ombudsman for Children thereof.

Article 17

1. Any authority, organization or institution approached by the Commissioner shall cooperate with and provide assistance to him/her, in particular by:
 - 1) providing access to files and documents under the rules laid down in Article 13,
 - 2) providing information and explanations requested by the Commissioner,
 - 3) providing explanations regarding factual and legal basis for their decisions,
 - 4) expressing its positions on the Commissioner's assessments, comments and opinions.
2. The Commissioner may set time limits for the actions referred to in paragraph 1.

Article 17a

The Commissioner shall cooperate with associations, civic movements, other voluntary groupings, foundations, foreign and international authorities and organizations for the protection of human and civil freedoms and rights, including in the area of equal treatment.

Article 17b

The Commissioner's scope of activity regarding the implementation of the principle of equal treatment shall also include:

- 1) analysing, monitoring and fostering equal treatment of all persons;
- 2) conducting independent surveys relating to discrimination;
- 3) developing and issuing independent reports and recommendations on issues relating to discrimination.

Article 17c

1. The Commissioner may process any information, including personal data, necessary for the implementation of the Commissioner's statutory tasks.
2. The Commissioner may process personal data referred to in Article 9(1) and Article 10 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ EU L 119 of 4 May 2016, p. 1, as amended³) solely for the purpose of protecting human and civil freedoms and rights in the performance of his/her statutory duties.
3. The Commissioner shall permit personal data processing by persons who hold a written authorisation to process personal data. The authorisation shall be granted on the condition that the authorised person undertakes the obligation to keep the processed personal data confidential.

Article 18

The provisions hereof relating to the protection of human and civil freedoms and rights shall apply accordingly to:

- 1) persons of non-Polish citizenship, remaining under the jurisdiction of the Republic of Poland – with regard to their freedoms and rights,
- 2) legal persons and organizational entities without legal personality, which, under the Act of 3 December 2010 Implementing Certain European Union Regulations on Equal Treatment

³ The amendment of the said Regulation has been announced in OJ L 127, 23.05.2018, p. 2.

(Dz. U. of 2016, item 1219 and Dz. U. of 2020, item 284), have legal capacity within the scope determined in that Act.

Article 19

1. The Commissioner shall report to the Sejm and the Senate, on annual basis, on his/her activity and on the observance of human and civil freedoms and rights, including by submitting:
 - 1) a report on his/her activity in the field of equal treatment and on the results thereof,
 - 2) a report on the observance of the principle of equal treatment in the Republic of Poland, drawn up, in particular, based on surveys referred to in Article 17b(2),
 - 3) conclusions and recommendations on activities required to ensure the observance of the principle of equal treatment.
2. The reports of the Commissioner shall be made public.
3. The Commissioner may bring before the Sejm and the Senate specific matters arising from his/her activity.
4. At the request of the Marshal of the Sejm, the Commissioner shall provide information on specific matters or take action in them.

Article 20

1. The Commissioner's tasks shall be carried out with the support of the Office of the Commissioner for Human Rights.
2. The responsibilities and organization of the Office shall be laid down in its statutes drawn up by the Commissioner.
3. The Commissioner may appoint up to three Deputy Commissioners. The Commissioner may recall Deputy Commissioners.
4. The Commissioner shall determine the scope of responsibilities of Deputy Commissioner (Commissioners).
5. Regulations applicable to public administration officials shall apply accordingly to the Deputy Commissioners and employees of the Office of the Commissioner for Human Rights.
6. (repealed).
7. (repealed).

Article 21

Expenses related to the work of the Commissioner for Human Rights shall be covered by the state budget.

Article 22

The Commissioner may, upon approval of the Sejm, appoint the Commissioner's regional representatives.

Articles 23 – 27 (deleted)

Article 28

This Act shall enter into force on 1 January 1988 except for Article 18(2) and Article 27 which shall enter into force on the date of publication thereof.⁴

⁴ The Act was published on 25 July 1987.