



Permanent Mission
of the Republic of Poland
to the United Nations Office
at Geneva

4200/53-1/2019

The Permanent Mission of the Republic of Poland to the United Nations Office at Geneva presents its compliments to the Office of the UN High Commissioner for Human Rights.

With reference to a joint communication of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders the Permanent Mission of the Republic of Poland has the honour to transmit to the Office of the High Commissioner for Human Rights its observations.

The Permanent Mission of the Republic of Poland to the United Nations Office at Geneva avails itself of this opportunity to renew to the Office of the UN High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 17 April 2019

**Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression,
Special Rapporteur on the situation of human rights defenders,
Office of the UN High Commissioner for Human Rights**

Geneva

Ref: AL POL 1/2019

1. Please provide any additional information and comments you may have on the above-mentioned allegations.

The immunity of the Commissioner for Human Rights (Commissioner) is regulated by Art. 211 of the Polish Constitution and the Commissioner for Human Rights Act of 15 July 1987 (O. J. of 2018, item 2179).

The Polish Constitution grants the Commissioner formal immunities: immunity from prosecution and inviolability. These immunities remain in a functional relation with constitutional features of the Commissioner's work as specified in Art. 210 of the Polish Constitution. They guarantee independence and autonomy during the exercise of this office. They cover punishable acts committed by the person who holds the position of Commissioner during the exercise of his/her office and during the period preceding appointment or assumption of office. The Commissioner enjoys immunity from the time he/she is appointed to this post until the expiry of his/her mandate. The Polish Constitution directly limits the Commissioner's immunity to criminal liability.

The provision that grants this immunity does not extend it (as it does, for instance, under Art. 105 of the Constitution, with regard to Deputies and Senators) to include all – including civil – liability for acts committed during the exercise of office. As a result, *a contrario*, the immunity of the Commissioner does not cover civil liability. The Polish Constitution defines the Commissioner's immunity with the same expressions it uses to define the immunity of judges of the Supreme Court, common courts, the Supreme Administrative Court (Art. 181), the Constitutional Court (Art. 196), the State Tribunal (Art. 200), and the immunity of the President of the Supreme Audit Office (Art. 206). Given the standardized regulation of immunity and the difference, referred to above, between this immunity and the immunity of Deputies and Senators, it is doubtful whether the constitutional lawmaker's intention was to extend the Commissioner's immunity to include civil liability. Interpretation of its purpose would warrant assuming that civil immunity should be enjoyed by the Commissioner, provided that such immunity was necessary in order for this body to exercise its constitutional competencies. However, a systemic and grammatical interpretation forces to assume that the Commissioner's immunity should be limited to criminal liability. If that is the case then extending the Commissioner's immunity to include civil liability would require an amendment to the Polish Constitution.

Immunities exercised by the national ombudsman in international law and in the Paris Principles adopted in UN General Assembly Resolution no. 48/134 of 29 December 1993 *relating to the status and functioning of national institutions for the*

promotion and protection of human rights (NHRI) do not provide for granting the Commissioner a formal immunity, leaving to the discretion of the national lawmaker the choice of measures that will guarantee that the ombudsman exercises his/ her mandate in an independent and autonomous way. It could even be argued that the immunity exercised by the Commissioner is a fuller implementation of the features of this body's independence provided for in Art. 210 of the Polish Constitution. The Paris Principles provide a description of NHRIs' main obligations as well as common norms that determine how NHRIs should operate. They point to general standards that should be adhered to in order to guarantee this institution's independence and impartiality. They emphasize, among others, the need to guarantee a broad mandate to act, independence from the executive branch, as well as adequate measures and powers to examine cases. Thus, independence and impartiality, recognized in both the institutional, functional and financial dimensions, should represent the fundamental feature of national institutions.

2. Please provide factual information about factual grounds that have justified the charges brought against Mr. Adam Bodnar.

The case (file no. II C 81/19) is currently pending before the Regional Court in Warsaw in an action brought by the public broadcaster "Telewizja Polska SA" against Mr Adam Bodnar for the protection of personal interests. The first hearing in the case is scheduled to take place on 17 May 2019 at 1.40 p.m.

3. Please provide information regarding strategies, action plans or programmes, aimed at ensuring that the office of the national commissioner for human rights is able to carry out its mandate in full independence, without any fear of legal sanctions or other repercussions, including budget cuts.

The Commissioner for Human Rights is an independent organ of the State as described in the provisions of the Polish Constitution:

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.

It should be noted that during ca. thirty years of the Commissioner's work, there have been no calls to extend his/her immunity to include civil liability or motions indicating that the regulations applicable to the Commissioner prevent him/her from exercising his/her mandate.

Therefore, no legislative initiatives are pending that would aim to change the status of the Commissioner because it is fully consistent with the applicable laws and standards stemming from international law.

It should be stressed that in the past the Commissioner was sued many times for violating personal interests. However, no cases that were pending then had stirred so much interest of the international bodies in connection with charges of violating the right to freedom of expression and independence of the Commissioner.