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National Human Rights Systems: Poland

- **ABSTRACT:** *Poland has an extensive system of human rights protection. In addition to domestic (internal) regulations, international regulations, including those of the European Union (EU), are also sanctioned. It is worth emphasising that internal Polish law frequently guarantees a wider range of human rights than international law. Thus, this paper will discuss internal regulations and institutions (based on the Polish Constitution, which expresses sovereignty and international subjectivity, also in terms of human rights), with only a brief reference to international law.*

The discussion of the national human rights system should begin with an indication of the hierarchical position of legal regulations on this issue. This will make it possible to illustrate the system of values shaping this system and indicate the special position of constitutional regulations. It is primarily on the regulations of the Basic Law that the system of guarantees of human and civil freedoms and rights has been formed. As the source of these freedoms and rights, the inherent and inalienable dignity of man has been indicated, which is a clear nod by the legislator to natural law. This further impinges on the following indicated in the study: the internal systematics of freedoms and rights; their guarantee system; the admissibility of restrictions on constitutional human rights and the basic principles governing them (including, for example, the principles of proportionality and legalism).

A sort of summary of the analysis is a presentation of the basic measures and institutions of human rights protection, among them: the right to a court of law and the prohibition against closing the judicial route to asserting violated freedoms or rights; the right to compensation for damage that has been caused to the subject of law by the illegal acts of a public authority; the constitutional complaint to the Polish Constitutional Court; the right to apply to the Polish Ombudsman for assistance in protecting one's freedoms or rights violated by public authorities; and the protection provided by the Ombudsman for Children.

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- **KEYWORDS:** *hierarchy of sources of human rights, human dignity, constitutional human rights, guarantees of human rights, limitations on human rights*

1. Introductory Issues

The system of human rights (*system praw człowieka*), which includes human and civil freedoms and rights, in Poland is based on two – possibly three – pillars, grounded in: 1) Polish law *sensu stricto* (state law/domestic law/internal law); 2) international law (including so-called supranational law): (a) public international law *sensu largo*; (b) European Union law (EU law/European law).

The main element shaping the Polish system of human rights in the independent and sovereign Republic of Poland is undoubtedly Polish law *sensu stricto*, based primarily on the Constitution on the Republic of Poland of 2 April 1997. At the same time, it is absolutely necessary to bear in mind that the system of Polish law is also shaped by public international law, including the law of the European Union (which is not specified in the Polish Constitution as distinct from public international law as such). These issues are reflected in the system of generally applicable law in Poland, which will be briefly presented below (to the extent necessary to define the human rights system). International agreements do not appear in the first place in it – this is unconditionally a position reserved for the Constitution, although by their nature, they often take precedence over domestic acts of law, even of statutory rank¹.

Because the dependence of Polish law (Polish domestic law) on international law *sensu largo* and the law of the European Union does not in principle deviate from universally recognised standards, it seems that the main emphasis should be placed on internal legal conditions.

Nevertheless, it is necessary to point out the main acts of public international law, including the law of the European Union, having a particular impact on the Polish system of (protection of) human rights. These are primarily: the Convention for the Protection of Human Rights and Fundamental Freedoms (also known as the European Convention on Human Rights) and the International Covenant on Civil and Political Rights.

2. Hierarchy of Human Rights Law Universally (Generally) Applicable

In principle, every legal system is structured hierarchically. This makes it possible to carry out the proper interpretation of the law and its implementation.

1 Walczuk, 2012b, p. 74.

This also applies to the system of human rights and is directly related to the practical guarantees of compliance with human rights.

With regard to human rights, the sources of universally binding law, that is, statute law (positive law), containing (defined by) ordered and interrelated (legal) norms of a general and abstract nature, valid in a given territory at a certain time, are of primary importance. In the case of Poland, the sources of universally binding law are defined in Article 87 of the Polish Constitution. According to this provision:

- (1) The sources of universally binding law of the Republic of Poland shall be the Constitution, statutes, ratified international agreements, and regulations.
- (2) Enactments of local law issued by the operation of organs shall be a source of universally binding law of the Republic of Poland in the territory of the organ issuing such enactments.

By interpreting the provisions of the Polish Constitution and taking into account the international legal environment,² it should be considered that the hierarchy of sources of generally applicable law in Poland, which also relates to human rights, looks as follows:

The aforesaid findings indicate that broadly speaking, and referring specifically to EU legal acts, the hierarchy of the sources of law generally applicable in Poland is as follows: 1) The Constitution of the Republic of Poland; 2) International agreements ratified with a pre-approval for their ratification expressed in the form of a statute (in Polish legal doctrine, the so-called “large ratification”) or on the basis of a nationwide referendum carried out pursuant to article 125 of the Constitution of The Republic of Poland and agreements deemed to be such under article 241 point 1 of the Constitution of The Republic of Poland, and also European Union primary legislation and (only those that are generally applicable) derivative law made before 1 May 2004; 3) Law made by an international organisation ratified by the Republic of Poland if it derives from the treaty founding that organisation; 4) Statutes (*ustawy*) and statutory instruments; 5) Ratified international agreements that do not require a pre-approval for their ratification in the form of a statute (in Polish legal doctrine, the so-called “small ratification”); 6) Orders (*rozporządzenia*); 7) Local legislation (*akty prawa miejscowego*).

2 See more: Walczuk, 2023, pp. 185–211.

3. Human Dignity as the Basis of the Polish Human Rights System

In the case of human rights, there seems to be a general consensus in legal doctrine that they are derived (or that they should be, or that they can be derived) from natural law. Although it should be remembered that they require, or in any case are subject to positivisation, both in the form of acts of public international law (generally speaking, this is primarily so-called human rights law), as well as in systems of domestic law (primarily constitutions and acts of law)³. At the same time, state law is supposed to strive to realise natural law, which *lex naturalis nihil aliud est quam participatio legis aeternae in rationali creatura*. Which does not change the fact that the core of human rights was not created by positive legislators but is only reproduced by them.⁴

The founders of the Polish Constitution undoubtedly recognised the natural-law origin of human rights. This is evidenced by Article 30 of the Constitution, according to which:

The inherent and inalienable dignity of the person (*przypadzona i niezbywalna godność człowieka*) shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.

For the functioning of the entire system of human rights, it is essential not only to recognize human dignity as their source, but also to indicate *expressis verbis* the qualities that define it: inherent nature and inalienability.

The very concept of dignity – being a “central category”⁵ – eludes attempts at formal definition, and this is true both under national and international law. However, it finds its explanation primarily in the entirety of European culture (including legal culture) shaped by Greek philosophy, Roman law and drawing primarily on Christianity – as expressed in the preamble to the Polish Constitution, referring to “culture rooted in the Christian heritage of the Nation.” Such a foundation of understanding of human dignity was not altered by, for example, the disputes in 2003-2005 around the preamble of the ultimately unratified Constitutional Treaty of the European Union, during which some differences in the understanding of European culture and its foundations became apparent⁶.

3 On the relationship between natural law and positive law (*ius positum*) see, for example: Łączkowski, 1999, pp. 173–182.

4 Walczuk, 2012b, p. 113.

5 Piechowiak, 1997, p. 19.

6 Walczuk, 2005, pp. 43–49.

From the perspective of the regulation of Article 30 of the Polish Constitution, it can be said that due to the fact of the aforementioned “centrality” of the concept of dignity, it should be assumed that

human rights derive, among other things, from this concept. Little - it can be argued that it is human dignity itself that is the source of law as such, and all rights and freedoms (identified with *ius*) and all legislation (*lex*) should be interpreted through the prism of human dignity.⁷

When discussing the human rights system, it may be helpful to note that “recognition of the principle of the dignity of the human person as a source of fundamental rights and freedoms creates a certain bridge between positive law and natural law in the process of creating a catalogue of human rights.”⁸

Of fundamental importance here in Polish law (but not only) will also be a clear indication of the inherent nature of human dignity – that is, the recognition that a person becomes the subject of freedoms and rights by virtue of being human. It should be assumed that the moment of “becoming human” is the moment of conception⁹. If only for the reason that, in case of doubt, it is better to grant (someone) rights to which they are not entitled than to deprive someone to whom they do belong. Nevertheless, some consider that human dignity belongs to a person only from the moment of birth.

With regard to the human rights system, it may not be irrelevant to observe that the inherent nature of human rights

points to the ontic dependence – human rights are inseparable from man (the person). Thus, they cannot exist as a specific entity on their own, unlike natural law, from which they can be derived. The existence of the human person is the *raison d'être* for the existence of human rights, or as some want, recognizing the distinction between human rights as such and fundamental rights, which are positive human rights - the *raison d'être* for the existence of fundamental rights¹⁰.

At the same time, it should be clearly reiterated that human rights cannot be reduced to positive law alone, and it should be added that their recognition cannot be made conditional on the conclusion of a social contract or left to the discretion of the sovereign – according to Article 4 of the Polish Constitution: ‘Supreme power

7 Walczuk, 2012a, pp. 121–122.

8 Krukowski, 1999, p. 191; Syryt, 2024, pp. 140–142.

9 See also, e.g.: Dudek, 2010, p. 27.

10 Walczuk, 2012a, pp. 115–116.

in the Republic of Poland shall be vested in the Nation¹¹ and ‘The Nation shall exercise such power directly or through their representatives’.¹²

4. Admissibility of Restrictions on Constitutional Human Rights

The functioning of a community, especially one that is organised into state structures, by its very nature requires various types of interference by the state (or *de facto* representatives of the state), necessary for the good of the “whole” or “majority,” among other things, in the sphere of behavior of subjects against whom it has *imperium*. The fundamental legal regulation on this issue under Polish law is Article 31 paragraph 3 of the Constitution, according to which

Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.

This provision indicates the general principles of admissibility of restrictions on constitutional freedoms and rights of human beings and citizens (human rights), and on the one hand – after taking into account the formal requirement that a restriction must be introduced by a legal act of the rank of statute – is directly applied in cases in which there are no individuals, that is, relating to a given freedom or a given right, constitutional regulations defining the individual conditions of material admissibility of restrictions, and on the other hand provides a point of reference, especially in a situation where specific regulations are not sufficiently precise¹³.

In addition, it should be borne in mind that the delimitation of the scope of restrictions is also made in international agreements and human rights treaties, of course, with the appropriate hierarchy in place.¹⁴ However, their concretisation occurs primarily in separate statutes and in jurisprudence reflected in the constitutional provisions¹⁵. Nevertheless, neither states acting in the public international sphere, that is, contracting in the form of primarily international agreements and European Community law, nor national legislators, that is, constitutional drafters and so-called ordinary legislators, can impose restrictions

11 Art. 4 para. 1 of the Polish Constitution.

12 Art. 4 para. 2 of the Polish Constitution.

13 Walczuk, 2018, p. 93.

14 Walczuk, 2015, pp. 247–255.

15 Garlicki, 2009, p. 96.

on constitutional human rights without limit. For since the fundamental nature of these rights and freedoms is ascribed a natural-law character, the role of the positive legislator is primarily only 'to affirm the existence of this freedom, to define its fundamental aspects and to establish the necessary guarantees and the necessary limitations.'¹⁶

In this context, it is worth noting that in the jurisprudence of the Polish Constitutional Court:

It is a well-established view that, although the freedom of the legislator is limited by constitutional norms and principles and the obligation to respect the values protected by them, but in cases of doubt the presumption should speak in favor of the compatibility of statutory decisions with the Constitution, and the rebuttal of this presumption requires an indisputable demonstration of incompatibility occurring between the statute and the Constitution¹⁷.

Although it seems the more appropriate approach is that in the case of regulations that restrict human rights, the presumption is to the contrary, the state body must demonstrate the compatibility of the restrictions with the Constitution¹⁸.

Particularly noteworthy is the aforementioned formal requirement to introduce restrictions on constitutional human rights - by means of a statute. Thus, the participation of directly elected representatives of the sovereign - deputies and senators (members of the Polish Parliament - the Sejm and Senate, respectively), representatives of the legislature - is essential, taking into account that Poland adheres to the classical separation of powers. According to Article 10 of the Polish Constitution

- (1) The system of government of the Republic of Poland shall be based on the separation of and balance between the legislative, executive and judicial powers.
- (2) Legislative power shall be vested in the Sejm and the Senate, executive power shall be vested in the President of the Republic of Poland and the Council of Ministers, and the judicial power shall be vested in courts and tribunals.

However, it would be going too far to conclude that entities belonging to the executive branch are completely excluded from the process of restricting freedoms and rights. Indeed, it is permissible for Parliament to statutorily define the scope of

16 Resolution of the Polish Constitutional Tribunal of 2 March 1994, file reference W. 3/93.

17 Judgment of the Polish Constitutional Tribunal of 30 October 2006, file reference P. 10/06.

18 Wojtyczek, 2001, p. 312.

restrictions and impose on the executive branch the obligation to issue executive acts – primarily regulations that

shall be issued on the basis of specific authorisation contained in, and for the purpose of implementation of, statutes by the organs specified in the Constitution. The authorisation shall specify the organ appropriate to issue a regulation and the scope of matters to be regulated as well as guidelines concerning the provisions of such act.¹⁹

Under certain circumstances, it is even permissible to involve local (municipal) government bodies, which are authorised to issue local laws to implement statutory provisions.

On the other hand, the main substantive requirement for the introduction of restrictions on constitutional freedoms and rights of a human being and citizen is the necessity of such restrictions in a democratic state (as *expressis verbis* indicated in Article 31 paragraph 3 of the Polish Constitution. It is worth noting that, according to Article 2 of the Constitution, The Republic of Poland shall be a democratic state ruled by law. Whereas

part of the doctrine notes that modern standards of freedom and human rights, which are an indispensable element of a democratic state (and a democratic state of law), have their reference not so much to the state - for it is recognized that the state, by respecting the fundamental freedoms and rights of the individual, meets the minimum requirements of a democratic state - but precisely to society, which is the real subject, whose interests must prevail over the freedoms and rights of the individual in the event that the conflict between these two values cannot be resolved in any other way²⁰.

The requirement that the introduction of a given restriction on a constitutional freedom or right be necessary also needs to be emphasised. This requirement can be traced back to the principle of proportionality, consisting of the prohibition of excessive state interference in the sphere of human and civil liberties and rights, that is, the recognition that if the establishment of restrictions on human rights is really needed, it can be done only to the minimum extent that is truly necessary, and the basic measure for determining what is necessary is to compare the importance of the public interest that the restriction is designed to serve and

¹⁹ Art. 92 para. 1 of the Polish Constitution.

²⁰ Walczuk, 2012c, p. 90.

the right or freedom that the restriction is supposed to affect²¹. The principle of proportionality is a tool for resolving conflicts between legal norms, including principles of law, particularly those involving human rights. However, it is not applicable to all human rights issues. For example, human dignity is not subject to balancing.²²

Another material condition required for the introduction of restrictions on constitutional human rights is the aim of protecting state security (*bezpieczeństwa państwa*) or public order (*porządku publicznego*), as well as to protect the natural environment (*ochrony środowiska*), health or public morals (*zdrowia i moralności publicznej*), or the freedoms and rights of other persons. The need for protection may concern all values together, but only a few at the same time, or each one individually. It is natural that, at times there must be a weighing of the value (right, freedom) that is to be restricted against the value that is to be protected. In resolving these dilemmas, state bodies – belonging to each of the three authorities indicated in Article 10 of the Constitution

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- (2) Legislative power shall be vested in the Sejm and the Senate, executive power shall be vested in the President of the Republic of Poland and the Council of Ministers, and the judicial power shall be vested in courts and tribunals.

will have a decisive role. Proceedings in this regard are directly related to the organisation of the human rights protection system. However, it must be remembered that ‘in all situations of doubt or ambiguity, including any extreme situation, an indelible interpretative guideline will also be the general principle of humanity [...] as closely related as possible to the interpretation of *pro homine et pro humanitate*’²³.

Important is the proviso contained in Article 31 paragraph 3 *in fine* of the Polish Constitution, according to which restrictions on constitutional human rights must not violate their essence. This provision demonstrates that Polish constitutional law pays homage to the concept of the essence of rights and freedoms derived from German constitutionalism. It is based on the assumption that within each specific right and freedom it is possible to distinguish certain basic, essential elements – their core or, in other words, nucleus – without which such

21 Walczuk, 2018, pp. 98–99; see also extensive considerations on this topic in Judgment of the Polish Constitutional Tribunal of 22 March 2018, file reference K 17/18.

22 Granat, 2021, pp. 175–176.

23 Jasudowicz, 1997, p. 49.

a right or freedom will not be able to exist, as they would lose their meaning²⁴. At the same time, such rights or freedoms also contain additional elements that can be viewed from different angles and modified in different ways without destroying the identity of the right or freedom in question.²⁵

In the context of the general regulations of Article 31 paragraph 3 of the Polish Constitution – which can often have the character of *lex generalis* – it should be remembered that the Constitution indicates specific cases when exceptional conditions for the introduction of restrictions on human rights are permitted (*lex specialis*). This applies, for example, to expropriation, which, on the one hand, is permissible, although it is the most radical restriction of property rights (Everyone shall have the right to ownership, other property rights and the right of succession – Article 64 paragraph 1 of the Constitution), but on the other hand, “expropriation may be allowed solely for public purposes and for just compensation” (Article 21 paragraph 2 of the Constitution)²⁶.

To sum up, as a rule, permissible by the Constitution – and therefore generally permissible in the Polish system of human rights – the restriction of freedoms or rights of a person and citizen is allowed only when it: 1) is established by statute; 2) does not violate the essence of the freedom or right in question; 3) is necessary in a democratic state due to: (a) state security;²⁷ (b) public order;²⁸ (c) environmental protection;²⁹ (d) (public) health;³⁰ (e) public morals;³¹ (f) freedoms and rights of others.

A separate category of restrictions on human rights is those permitted under extraordinary measures (*stany nadzwyczajne*). According to Article 228 paragraph 1 of the Polish Constitution, in situations of particular danger, if ordinary constitutional measures are inadequate, any of the following appropriate extraordinary measures may be introduced:

1) Martial law (*stan wojenny*) –

In the case of external threats to the State, acts of armed aggression against the territory of the Republic of Poland or when an obligation of common defence against aggression arises by virtue of international agreement, the President of the Republic may, on request of the Council of Ministers, declare a state of martial law in a part of or upon the whole territory of the State³²,

24 Walczuk, 2018, pp. 111–112.

25 See: Garlicki, 2009, pp. 98–99.

26 Syryt, 2022, pp. 367–378.

27 Walczuk, 2013b, pp. 293–306.

28 Walczuk, 2013a, pp. 11–22.

29 Walczuk, 2012d, pp. 381–394.

30 Compare Czarnik, 2022, pp. 3–12.

31 See: Garlicki, 2001, p. 17; see also: Brzozowski, 2010, *passim*.

32 Art. 229 of the Polish Constitution.

- 2) A state of emergency (*stan wyjątkowy*) –
In the case of threats to the constitutional order of the State, to security of the citizenry or public order, the President of the Republic may, on request of the Council of Ministers, introduce for a definite period (...) a state of emergency in a part of or upon the whole territory of the State³³
- 3) A state of natural disaster (*stan klęski żywiołowej*) –
In order to prevent or remove the consequences of a natural catastrophe or a technological accident exhibiting characteristics of a natural disaster, the Council of Ministers may introduce, for a definite period (...), a state of natural disaster in a part of or upon the whole territory of the State (...).³⁴

According to further constitutional regulations contained in Article 233, the statute specifying the scope of limitation of the freedoms and rights of persons and citizens in times of martial law and states of emergency shall not limit the freedoms and rights specified in: (a) Article 30 – the dignity of the person; (b) Article 34 and Article 36 – citizenship; (c) Article 38 – protection of life; (d) Article 39, Article 40 and Article 41, paragraph 4 – humane treatment; (e) Article 42 – ascription of criminal responsibility; (f) Article 45 – access to a court; (g) Article 47 – personal rights; (h) Article 53 – conscience and religion; (i) Article 63 – petitions; (j) Article 48 and Article 72 – family and children (para.1).

In contrast, in the case of the state of natural disaster, there are no express exclusions of values that may not be restricted; rather, there is an enumeration of freedoms and rights that may be restricted. The statute specifying the scope of limitations of the freedoms and rights of persons and citizens during states of natural disasters may limit the freedoms and rights specified in: (a) Article 22 – freedom of economic activity; (b) Article 41 paragraphs 1, 3 and 5 – personal freedom; (c) Article 50 – inviolability of the home; (d) Article 52 paragraph 1 – freedom of movement and sojourn on the territory of the Republic of Poland; (e) Article 59 paragraph 3 – the right to strike; (f) Article 64 – the right of ownership; (g) Article 65 paragraph 1 – freedom to work; (h) Article 66 paragraph 1 – the right to safe and hygienic conditions of work; (i) Article 66 paragraph 2 – the right to rest (Article 233 paragraph 3).

In the case of any extraordinary measure, a limitation of the freedoms and rights of persons and citizens solely by reason of race, gender, language, faith or lack of it, social origin, ancestry or property shall be prohibited (Article 233 paragraph 2).

³³ Art. 230 para. 1 of the Polish Constitution.

³⁴ Art. 232 of the Polish Constitution.

5. The Principle of Legalism

From the point of view of the functioning of the human rights protection system, the principle of legalism (also referred to in Polish legal doctrine as the principle of the rule of law) is of fundamental importance. It has been given the character of one of the main constitutional principles and is expressed in Article 7 of the Polish Constitution, according to which “The organs of public authority shall function on the basis of, and within the limits of, the law.” A correct view has been expressed in Polish legal doctrine, according to which “legalism, identified with the rule of law in its formal aspect, falls implicitly within the formula of the rule of law.”³⁵

From this regulation, it is clear that without an explicit indication in the law (in regulations), state bodies – or even more broadly, public bodies – cannot act. Thus, they are only allowed to do what is expressly ordered or permitted for them by law, from the various levels of the above-mentioned hierarchy of generally applicable acts, but also internal law (whereby no legal consequences can be drawn from internal, non- generally applicable acts against entities not in a broadly defined official relationship or organisational subordination). Unlike in the case of citizens – or even more broadly, individuals, people – they can do anything that is not forbidden to them or commanded (in the latter case, in principle, they also have no discretion): ‘Everyone shall observe the law of the Republic of Poland’.³⁶

In principle, the principle of legalism is formal. Substantive issues, on the other hand, are regulated primarily from the previously mentioned principle that statutes Poland as a democratic state under the rule of law. As a result, public authorities face special restrictions on their human rights activities. This also follows directly from the constitutional regulations discussed above, including, first of all, those concerning the permissibility of restrictions on constitutional freedoms and rights of man and citizen. Although also, as was mentioned, they are entitled to special powers in this regard.

At the same time, it should be clearly emphasised that these powers cannot be presumed. They must be clearly indicated in the provisions of the law, and these provisions may be of different natures – constitutional, substantive, procedural. Consequently, the actions of public bodies without express authorization or in excess of it will be unlawful, and as such may result in constitutional and criminal liability of the specific persons taking these actions, as well as the State’s liability for damages³⁷ (or that of specific individuals taking these actions): ‘Everyone shall

35 Zubik and Sokolewicz, 2016; Morawska, 2003, pp. 27–28.

36 Art. 83 of the Polish Constitution.

37 Florczak-Wątor, 2023a, p. 49.

have the right to compensation for any harm done to him by any action of an organ of public authority contrary to law'.³⁸

6. Categories of Freedom and Rights

■ 6.1. Personal Freedoms and Rights

Human rights include various categories of freedoms and rights. The doctrine of law recognises many methods of classifying them, while in the Polish system of human rights based on the Constitution, freedoms and rights are specified as follows: personal; political; economic, social and cultural.

Personal freedoms and rights can be considered the most immanent to the human being, among which the Polish Constitution includes:

- 1) The right to protection of life³⁹ – “The Republic of Poland shall ensure the legal protection of the life of every human being” – here, it is necessary to emphasise the consistent line of judgments of the Polish Constitutional Court limiting the permissibility of abortion⁴⁰;
- 2) The right to personal integrity and to personal freedom – Personal inviolability and security shall be ensured to everyone. Any deprivation or limitation of liberty may be imposed only in accordance with principles and under procedures specified by statute⁴¹. Anyone deprived of liberty, except by sentence of a court, shall have the right to appeal to a court for immediate decision upon the lawfulness of such deprivation. Any deprivation of liberty shall be immediately made known to the family of, or a person indicated by, the person deprived of liberty⁴². Every detained person shall be informed, immediately and in a manner comprehensible to him, of the reasons for such detention. The person shall, within 48 hours of detention, be given over to a court for consideration of the case. The detained person shall be set free unless a warrant of temporary arrest issued by a court, along with specification of the charges laid, has been served on him within 24 hours of the time of being given over to the court’s disposal⁴³. Anyone deprived of liberty shall be treated in a humane manner⁴⁴. Anyone who has been unlawfully deprived of liberty shall have a right to compensation⁴⁵;

38 Art. 77 para. 1 of the Polish Constitution.

39 Art. 38 of the Polish Constitution.

40 Judgment of the Polish Constitutional Court of 22 October 2020, file reference K. 1/20 and 28 May 1997, file reference K. 26/96

41 Art. 41 para 1 of the Polish Constitution.

42 Ibid., Art. 41 para 2.

43 Ibid., Art. 41 para 3.

44 Ibid., Art. 41 para 4.

45 Ibid., Art. 41 para 5.

- 3) The right to the presumption of innocence until guilt is established by a final court judgment⁴⁶;
- 4) The right to a court of law, including: the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court⁴⁷; openness of judicial proceedings⁴⁸
 Exceptions to the public nature of hearings may be made for reasons of morality, State security, public order or protection of the private life of a party, or other important private interest. Judgments shall be announced publicly;
- 5) The right to defence in all stages of the proceedings⁴⁹
 Anyone against whom criminal proceedings have been brought shall have the right to defence at all stages of such proceedings. He may, in particular, choose counsel or avail himself – in accordance with principles specified by statute – of counsel appointed by the court;
- 6) The right to protection of private life, family life, honor and good name, and to decide on one's personal life⁵⁰;
- 7) The right of parents to raise their children according to their own beliefs⁵¹
 Parents shall have the right to rear their children in accordance with their own convictions. Such upbringing shall respect the degree of maturity of a child as well as his freedom of conscience and belief and also his convictions⁵². Limitation or deprivation of parental rights may be effected only in the instances specified by statute and only on the basis of a final court judgment⁵³;
- 8) Freedom of conscience and religion⁵⁴
 Freedom of religion shall include the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching. Freedom of religion shall also include possession of sanctuaries and other places of worship for the satisfaction of the needs of believers as well as the right of individuals, wherever they may be, to benefit from religious services⁵⁵. Parents shall have the right to ensure their children a moral and religious upbringing and teaching in

46 Ibid., Art. 42 para. 3.

47 Ibid., Art. 45 para. 1.

48 Ibid., Art. 45 para. 2.

49 Ibid., Art. 42 para. 2.

50 Ibid., Art. 47.

51 Ibid., Art. 48.

52 Ibid., Art. 48 para. 1.

53 Ibid., Art. 48 para. 2.

54 Ibid., Art. 53.

55 Ibid., Art. 53 para. 2.

accordance with their convictions. (...) ⁵⁶. The religion of a church or other legally recognized religious organization may be taught in schools, but other peoples' freedom of religion and conscience shall not be infringed thereby ⁵⁷. The freedom to publicly express religion may be limited only by means of statute and only where this is necessary for the defence of State security, public order, health, morals or the freedoms and rights of others ⁵⁸. No one shall be compelled to participate or not participate in religious practices ⁵⁹. No one may be compelled by organs of public authority to disclose his philosophy of life, religious convictions or belief ⁶⁰;

- 9) Freedom of speech ⁶¹ – freedom to express one's views and to obtain and disseminate information;
- 10) The right of a person to have access to official documents and datasets concerning himself ⁶²;
- 11) Prohibition of extradition of a Polish citizen ⁶³;
- 12) The right of asylum ⁶⁴

Foreigners shall have a right of asylum in the Republic of Poland in accordance with principles specified by statute ⁶⁵. Foreigners who, in the Republic of Poland, seek protection from persecution, may be granted the status of a refugee in accordance with international agreements to which the Republic of Poland is a party. ⁶⁶

From the perspective of of the Polish system of human rights, it is worth noting that the right to a court as defined in the Polish Constitution and confirmed in the jurisprudence of the Polish Constitutional Court is broader than the “right to a fair trial” resulting from Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms European Convention on Human Rights). ⁶⁷

■ 6.2. *Political Freedoms and Rights*

Another category detailed in the Polish Constitution is political freedoms and rights, which include:

56 Ibid., Art. 53 para. 3.

57 Ibid., Art. 53 para. 4.

58 Ibid., Art. 53 para. 5.

59 Ibid., Art. 53 para. 6.

60 Ibid., Art. 53 para. 7.

61 Ibid., Art. 54 para. 1.

62 Ibid., Art. 51 para. 3.

63 Ibid., Art. 55.

64 Ibid., Art. 56.

65 Ibid., Art. 56 para. 1.

66 Ibid., Art. 56 para. 2.

67 Granat, 2021, p. 186.

- 1) Freedom to organise and participate in peaceful assemblies – ‘The freedom of peaceful assembly and participation in such assemblies shall be ensured to everyone. Limitations upon such freedoms may be imposed by statute’⁶⁸;
- 2) Freedom of association⁶⁹, including in trade unions, socio-occupational organizations of farmers, and in employers’ organisations⁷⁰. But “associations whose purposes or activities are contrary to the Constitution or statutes shall be prohibited”⁷¹. What is important: “the courts shall adjudicate whether to permit an association to register or to prohibit an association from such activities”⁷²;
- 3) The right to vote in elections and referendums⁷³;
- 4) The right to access the public service on an equal basis – ‘Polish citizens enjoying full public rights shall have a right of access to the public service based on the principle of equality’⁷⁴;
- 5) The right to information about the activities of the authorities: organs of public authority, persons discharging public functions, self-governing economic or professional organs and other persons or organisational units relating to the field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury⁷⁵;
- 6) The right to legislative initiative⁷⁶ – the right to introduce legislation shall belong to a group of at least 100,000 Polish citizens having the right to vote in elections to the Sejm;
- 7) The right to submit petitions – everyone (not only Polish citizens – *sic!*) shall have the right to submit: a) petitions, b) proposals and c) complaints in a) the public interest, b) his own interest, c) the interests of another person – with his consent – to organs of public authority, as well as to organisations and social institutions in connection with the performance of their prescribed duties within the field of public administration⁷⁷.

■ 6.3. Economic, Social and Cultural Freedoms and Rights

However, in the case of constitutional human rights of an economic, social and cultural nature, a division can be made into those that

- 1) can be enforced directly under the Constitution. This category can include:

68 Art. 57 of the Polish Constitution.

69 Ibid., Art. 58.

70 Ibid., Art. 59 para. 1.

71 Ibid., Art. 58 para. 2.

72 Ibid., Art. 58 para. 2.

73 Ibid., Art. 62.

74 Ibid., Art. 60.

75 Ibid., Art. 61.

76 Ibid., Art. 118 para. 2.

77 Ibid., Art. 63.

- a) freedom to conduct business⁷⁸ ‘Limitations upon the freedom of economic activity may be imposed only by means of statute and only for important public reasons’;
- b) the right to ownership, to other property rights and the right of inheritance⁷⁹;
- c) freedom of choice and exercise of profession and choice of place of work
An obligation to work may be imposed only by statute⁸⁰. The permanent employment of children under 16 years of age shall be prohibited. The types and nature of admissible employment shall be specified by statute⁸¹. A minimum level of remuneration for work, or the manner of setting its levels shall be specified by statute⁸². Public authorities shall pursue policies aiming at full, productive employment by implementing programmes to combat unemployment, including the organisation of and support for occupational advice and training, as well as public works and economic intervention⁸³;
- d) the right to education
 - (1) Everyone shall have the right to education. Education to 18 years of age shall be compulsory. The manner of fulfilment of schooling obligations shall be specified by statute.
 - (2) Education in public schools shall be without payment. Statutes may allow for payments for certain services provided by public institutions of higher education.
 - (3) Parents shall have the right to choose schools other than public for their children. Citizens and institutions shall have the right to establish primary and secondary schools and institutions of higher education and educational development institutions. The conditions for establishing and operating non-public schools, the participation of public authorities in their financing, as well as the principles of educational supervision of such schools and educational development institutions, shall be specified by statute.
 - (4) Public authorities shall ensure universal and equal access to education for citizens. To this end, they shall establish and support systems for individual financial and organizational assistance to pupils and students.
 - (5) The conditions for providing of such assistance shall be specified by statute.

78 Ibid., Art. 22.

79 Ibid., Art. 64.

80 Ibid., Art. 65 para. 2.

81 Ibid., Art. 65 para. 3.

82 Ibid., Art. 65 para. 4.

83 Ibid., Art. 65 para. 5.

- (6) The autonomy of the institutions of higher education shall be ensured in accordance with principles specified by statute⁸⁴;
- e) the right to social security in case of incapacity due to illness and disability and upon reaching retirement age⁸⁵;
- f) the right to health care
 - (1) Everyone shall have the right to have his health protected.
 - (2) Equal access to health care services, financed from public funds, shall be ensured by public authorities to citizens, irrespective of their material situation. The conditions for, and scope of, the provision of services shall be established by statute.
 - (3) Public authorities shall ensure special health care to children, pregnant women, handicapped people and persons of advanced age.
 - (4) Public authorities shall combat epidemic illnesses and prevent the negative health consequences of degradation of the environment.
 - (5) Public authorities shall support the development of physical culture, particularly amongst children and young persons⁸⁶;
- 2) an be enforced within the limits set by statutes (as follows directly from Article 81 of the Polish Constitution). This category includes: claiming the minimum wage⁸⁷; the right to safe and healthy working conditions and the right to leave⁸⁸; the obligation of public authorities to provide assistance to persons with disabilities⁸⁹; the obligation of the state to take into account the welfare of the family in its social and economic policies, including the provision of assistance by public authorities to the mother before and after the birth of the child⁹⁰; the obligation of public authorities to pursue policies that ensure environmental safety⁹¹; the pursuit by public authorities of policies conducive to the satisfaction of citizens' housing needs, the protection of consumers, users and tenants from activities that threaten their health, privacy and safety, and from unfair market practices⁹².

In the case of economic, social and cultural freedoms and rights, it can be noted that some of them have been expressed in the form of rules for the conduct of specific policies by the state, only aimed at the goals indicated in these rights.

84 Ibid., Art. 70.

85 Ibid., Art. 67 para. 1.

86 Ibid., Art. 68.

87 Ibid., Art. 65 para. 4.

88 Ibid., Art. 66.

89 Ibid., Art. 69.

90 Ibid., Art. 71.

91 Ibid., Art. 74 para. 1.

92 Ibid., Arts. 75–76.

7. Human Rights Protection Measures

The Polish Constitution provides for a number of institutions guaranteeing the observance of human rights⁹³ – primarily in the vertical dimension (in the relationship between man and the state). These include: the right to a court of law⁹⁴ and the prohibition of closing the court to seek redress for violated freedoms or rights⁹⁵; the right to compensation for damage caused to a legal entity by an unlawful action of a public authority⁹⁶; a constitutional complaint to the Polish Constitutional Court⁹⁷; the right to apply to the Polish Ombudsman for assistance in protecting its freedoms or rights violated by public authorities⁹⁸; protection provided by the Ombudsman for Children's Rights.

■ 7.1. *The Right to a Court of Law*

The right to a court of law – closely related to the principle of a democratic rule of law⁹⁹ – consists primarily in the following: 1) that everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court¹⁰⁰. It is a general guarantee that applies to all rights guaranteed by law, regardless of its position in the hierarchy of sources of law, and 2) that a constitutional prohibition on closing the judicial route has been established; thus, statutes shall not bar the recourse by any person to the courts in pursuit of claims alleging infringement of freedoms or rights¹⁰¹ -this is a specific guarantee concerning the freedoms and rights of man and citizen constitutionally guaranteed.

The content of the right to a court – which is both a personal public subjective right and a fundamental means of protecting constitutional freedoms and rights¹⁰² – has been clarified in the jurisprudence of the Polish Constitutional Court. It is characteristic that the judgments of the Constitutional Court have universally binding force and are final¹⁰³, what distinguishes them from other judgments of Polish judicial authorities, which are binding in a specific case.

This right includes: access to the court, that is, the right to initiate the procedure in the court (the cognisance of the court is to be shaped in such a way that

93 Vide Lis-Staranowicz, 2016, pp. 239–270.

94 Art. 45 of the Polish Constitution.

95 Ibid., Art. 77 para. 2.

96 Ibid., Art. 77 para. 1.

97 Ibid., Art. 79 para. 1.

98 Ibid., Art. 80.

99 Ibid., Art. 2.

100 Ibid., Art. 45 para. 1.

101 Ibid., Art. 77 para. 2.

102 Tuleja, 2023, p. 160.

103 Art. 190 para. 1 of the Polish Constitution.

none of the matters affecting the individual are excluded from it); the formation of the judicial procedure in accordance with the requirements of fairness and openness (it is to enable the individual to actually assert his rights); obtaining a court judgment, that is, a binding settlement of the case; the right to appropriate formation of the court system¹⁰⁴.

The last of the elements mentioned above is particularly highlighted during the disputes that have taken place in recent years, partly legal but mostly political in nature¹⁰⁵.

■ 7.2. *Compensatory Liability of a Public Authority*

The Polish Constitution, in Article 77 paragraph 1, creates a constitutional principle encompassing the subjective right of everyone to compensation in the event of unlawful action by an organ of the broader public authority (this is primarily about a public official¹⁰⁶ – *funkcjonariusz publiczny* – although not only) and defines the prerequisites necessary to enforce this responsibility. Such State responsibility is a necessary element of the idea of a democratic state of law and at the same time an institutional guarantee of the principle of legalism¹⁰⁷.

It should be clearly stated that this concerns compensation for damages (*wynagrodzenie szkody*), which need not necessarily be of a (purely) financial nature. The purpose (intention) of the actions of state representatives is also irrelevant; what matters is the effect.

A special type of right to compensation for unlawful action of a public authority is compensation for unlawful deprivation of liberty, which, due to the special importance of the violated good, namely personal liberty, is separately regulated in the aforementioned (*lex specialis*) Article 41 paragraph 5 of the Constitution.

According to the jurisprudence of the Polish Constitutional Court and, as it seems, the majority of representatives of the legal doctrine, Article 77 paragraph 1 has two basic functions: performs a guarantee function in the event of unlawful conduct by a public authority¹⁰⁸; enforces respect for the principle of legalism in the actions of public authorities, and is a means of forcing authorities to behave in accordance with the law¹⁰⁹.

104 Granat, 2021, p. 196.

105 See e.g.: Resolution of the Polish Supreme Court of 23 January 2020, file reference BSA I-4110-1/20. See also: Hyżorek, 2024, pp. 6–7.

106 Taczowska-Olszewska, 2020, pp. 1–34.

107 See: Judgment of the Polish Constitutional Tribunal of 20 January 2004, file reference SK 26/03; Wronkowska, 2006, p. 106.

108 Judgment of the Polish Constitutional Tribunal of 4 December 2001, file reference SK 18/00.

109 Judgment of the Polish Constitutional Tribunal of 20 January 2004, file reference SK 26/03; Granat, 2021, p. 194.

■ 7.3. *Constitutional Complaint to the Polish Constitutional Court*

A constitutional complaint filed with the Polish Constitutional Court (Constitutional Tribunal – *Trybunał Konstytucyjny*) constitutes an extraordinary (subsidiary, auxiliary to the right to a court specified in Article 45 of the Polish Constitution) legal remedy available to “everyone,” which can be used only after the relevant state body has issued a final ruling on the human rights of the complainant to protect some subjective right guaranteed by the Constitution. The Polish Constitution in Article 79 paragraph 1 clearly states that

in accordance with principles specified by statute, everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution.

At the same time, the constitutional complaint may not concern the right to asylum¹¹⁰.

As stated by the Polish Constitutional Court, in order to speak of a “final decision”, which is required for a constitutional complaint to be admissible,

the action of judicial and public administrative bodies should assume a decision-making character and determine the legal situation of an individually defined subject. It should be stated that the constitutional concept of a “ruling” on the freedoms, rights or duties of an individual includes rulings that impose, modify or abrogate obligations or grant, modify or abolish rights. Rulings on freedoms, rights or duties should also include rulings that establish the existence of an obligation or entitlement, if these rulings are relevant to the realization of certain rights or duties of the individual. Rulings on freedoms, rights or duties may also include rulings, which, it should be emphasized, involve the denial of one of the previously mentioned rulings. It should be added that the specific duties or rights of the individual affected by the said rulings must be within the scope of the freedoms, rights or duties set forth in the Constitution. The essence of a “ruling on the freedoms, rights or duties” of an individual always includes its binding nature¹¹¹.

110 Art. 79 para. 2 of the Polish Constitution.

111 Resolution of the Polish Constitutional Tribunal of 19 June 2012, file reference SK 37/08.

Thus, a constitutional complaint is admissible in the situation of a violation of a specific right indicated in the Polish Constitution as a result of a ruling by a court or a relatively broad public administration body. At the same time, the complainant must specify, not only which constitutional freedom or right has been violated but also indicate the manner of this violation¹¹². The violation should be current at the time of filing the complaint but need not remain current at the time the Court decides the complaint (the decision of the Constitutional Court *de facto* exceeds in its significance the decision in a particular case). Nevertheless, the complainant must act in defense of his own constitutional right, not the right of another person.¹¹³

Importantly, the subject of the complaint is the provision of law¹¹⁴ – primarily a statute, but also another normative act (containing general and abstract norms, although not necessarily universally binding, such as the Code of Medical Ethics)¹¹⁵, on the basis of which a court or other State (public) body has finally ruled on the human rights belonging to the applicant, as defined in the Constitution.

The subject of the complaint may not be a final judgment, final administrative decision or other final decision of a court or other body. The subject is the normative basis on which the decision was made, provided that the provisions of this act violate the provisions of the Constitution on freedoms or rights¹¹⁶.

In Polish legal doctrine and jurisprudence (case law)¹¹⁷, it is rightly argued that the subject of a constitutional complaint can be an act of European law – for example, in a situation where Polish law guarantees a wider range of protection of human rights than European law does. It is only debatable whether it is appropriate to limit the admissibility of the complaint only to acts of derived law of the European Union. At this point, it should be emphasised that the standard of review (that is, the indication of which constitutional freedom or right of the complainant was violated and in what way) in the complaint procedure cannot be acts of international law, including the Convention for the Protection of Human Rights and Fundamental Freedoms and International Covenant on Civil and Political Rights.

112 At it seems otherwise Więcek, 2011, pp. 30–32.

113 Syryt, 2021, pp. 36–58.

114 Judgment of the Polish Constitutional Tribunal of 24 June 2008, file reference SK 16/06.

115 Florczak-Wątor, 2023b, pp. 260–261.

116 Granat, 2021, p. 651.

117 Granat, 2021, p. 652; Judgment of the Polish Constitutional Tribunal of 16 November 2011, file reference SK 45/09.

The procedure before the Constitutional Court, including the constitutional complaint, was regulated in the Act of 30 November 2016 on the organisation and procedure before the Constitutional Tribunal. An important caveat is that

within the scope of the preparation and submission of a constitutional complaint and an appeal against a decision on refusal to proceed with the complaint as well as with regard to the legal representation of the complainant in proceedings before the Tribunal, there is a requirement that the complainant shall be represented before the Tribunal by an advocate or a legal adviser, unless the complainant is a judge, a public prosecutor, an advocate, a legal adviser, a notary public, a professor of law, or a doctor habilitowany [in Poland scholar with a post-PhD degree] of law¹¹⁸.

This is intended to eliminate cases that are not suitable for a complaint to the Constitutional Court. In addition, the complaint must be filed with the Constitutional Court within three months from the date of delivery to the complainant of a final judgment, final decision or other final ruling, and must meet the requirements of a pleading (which, among other things, is to ensure that the complainant is represented by a professional lawyer). At the same time, it is free of court fees – the costs of proceedings before the Constitutional Tribunal shall be covered by the State Treasury.

A negative judgment issued as a result of a complaint results in the exclusion of the defective provision from the legal system, with *erga omnes* effect. However, the judgment or decision itself issued on the basis of a provision that has been declared unconstitutional by the Constitutional Court is not abolished or invalidated. Although the Court's ruling provides a basis for any interested party to request the resumption of the relevant legal proceedings.

The Constitutional Court has at its disposal the means of an interim order to suspend or suspend the execution of a ruling on the case to which the constitutional complaint relates. It can be issued, first of all, in a situation where the execution of a judgment, decision or other ruling could cause irreversible consequences involving great harm to the complainant, but also when it is supported by other important interests of the complainant or important public interests. Importantly, this is the only situation where the Constitutional Court may interfere – due to statutorily specified special circumstances – in other individual proceedings in progress.

118 Art. 44 para. 1 of the Act of 30 November 2016 on the organization and procedure before the Constitutional Tribunal.

■ 7.4. *Application to the Polish Commissioner for Citizens' Rights (Ombudsman)*

What is not irrelevant from the point of view of the formation and functioning of the human rights system in Poland, the Commissioner for Citizens' Rights (*Rzecznik Praw Obywatelskich*) – the Ombudsman – was established even before the political changes, in 1987, but already at a time when the communist authorities anticipated the collapse of communism. The Ombudsman began its activities in 1988 and became a constitutionally empowered body in 1989.

It should be emphasised that, contrary to his name, the Commissioner for Citizens' Rights does not guard only this category of human rights. His activities are precisely related to human rights in the broadest sense and are directed not only towards citizens, but to people in general, to everyone under the authority of the Republic of Poland. This is why English translations and, for example, English-language versions of the websites of Polish human rights institutions use the informal term “Commissioner for Human Rights.” In addition, the Commissioner protects human and civil freedoms and rights shall apply accordingly to legal persons and organizational entities without legal personality, which, under the Act of 3 December 2010 on Implementing Certain European Union Regulations on Equal Treatment, have legal capacity within the scope determined in the Act.

In accordance with Article 208 paragraph 1 of the current Polish Constitution, ‘the Commissioner for Citizens' Rights shall safeguard the freedoms and rights of persons and citizens specified in the Constitution and other normative acts.’ However, Article 209 indicates that he is appointed by the Sejm (lower house of the Parliament), with the consent of the Senate (upper house of the Parliament), for a period of 5 years (whereas the term of Parliament is 4 years; and the office of the Commissioner may not be held by the same person for more than two terms). The Ombudsman shall not hold any other post, except for a professorship in an institute of higher education, nor perform any other professional activities, and he shall not belong to a political party, a trade union or perform other public activities incompatible with the dignity of his office. As the practice of recent years indicates, the requirement for political impartiality is not always preserved. There is a well-known case in which an Ombudsman who was still in office began preparations to enter active politics, culminating in assuming the political post of Minister of Justice.

In the Constitution, it is indicated *expressis verbis* that the „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”¹¹⁹. As a guarantee, immunity was granted to the Ombudsman, according to which he shall not be held criminally responsible nor deprived of liberty without prior consent granted by the Sejm, and shall be neither detained nor arrested, except for cases when he has been apprehended in the

119 Art. 210 of the Polish Constitution.

commission of an offence and in which his detention is necessary for securing the proper course of proceedings. But in that case, the Marshal of the Sejm shall be notified forthwith of any such detention and may order an immediate release of the person detained¹²⁰. In accordance with statutory regulations a motion for consent to hold the Commissioner criminally liable for an offence prosecuted: a) by public indictment shall be submitted through Prosecutor General and b) pursuant to a private claim shall be submitted by a private plaintiff after bringing the case to court.

It should be borne in mind that annually, the Commissioner for Citizens' Rights shall 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 citizens¹²¹.

Analysing the Ombudsman's formal powers, it should be pointed out that his activities are characterised by the use of non-authoritarian measures. First of all, he does not settle disputed human rights cases. He does not issue verdicts, orders or decisions in this regard.

By design, access to the Ombudsman should be easy. This is facilitated, among other things, by the fact that the proceedings before him are free of charge and that the proceedings are as informal as possible. Statutory regulations on the ombudsman himself, as well as on proceedings before him, are contained in the Act of 15 July 1987 on the Commissioner for Citizens' Rights. In accordance with Article 1, the Commissioner shall safeguard human and civil freedoms and rights, including the implementation of the principle of equal treatment, as set forth in the Polish Constitution and in other legislative acts¹²².

Being a constitutional authority, the Commissioner for Citizens' Rights shall cooperate: in matters relating to children, with the Ombudsman for Children (Children's Rights Ombudsman; *Rzecznik Praw Dziecka*); and in matters relating to micro enterprises and small and medium enterprises, with the (an extra-constitutional authorities) Ombudsman for Small and Medium Enterprises (*Rzecznik Małych i Średnich Przedsiębiorców*).

In accordance with Article 2 paragraph 3 of the Act,

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.

120 Ibid., Art. 211.

121 Ibid., Art. 212.

122 Art. 1 para 2 of the Act on the Commissioner for Citizens' Rights.

Whereas in accordance with Article 2 paragraph 4 of the Act, the Commissioner for Citizens' Rights

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.

In addition, the Ombudsman performs the tasks specified in the Act of 14 June 2024 on the protection of whistleblowers, where a whistleblower is an individual who reports or publicly discloses information about a violation of law obtained in a work-related context¹²³.

The Commissioner shall take measures provided for in the Act of 15 July 1987 on the Commissioner for Citizens' Rights if he becomes aware of any violation of human or civil freedoms or rights (*naruszenie wolności i praw człowieka i obywatela*), including the principle of equal treatment. Moreover, the Commissioner shall, on a regular basis, monitor the treatment of persons deprived of liberty¹²⁴.

The Commissioner shall take action upon a motion: of a citizen or citizens' organisation; of a local government; of the Ombudsman for Children; of the Ombudsman for Small and Medium Enterprises; or on his own initiative¹²⁵.

Having accepted a case for further proceedings, the Commissioner in accordance with Article 12 of the Act may: carry out an explanatory procedure independently; 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; request the Sejm of the Republic of Poland to order the Supreme Audit Office (*Najwyższa Izba Kontroli*) to examine the case in whole or in part. As indicated in Article 203 of the Polish Constitution, the Supreme Audit Office: (a) shall audit the activity of the organs of government administration, the National Bank of Poland, State legal persons and other State organizational units regarding the legality, economic prudence, efficacy and diligence; (b) may audit the activity of the organs of local government, communal legal persons and other communal organisational units regarding legality, economic prudence and diligence; (c) may audit, regarding legality and economic prudence, the activity of other organizational units and economic subjects, to the extent to which they utilise State or communal property or resources or satisfy financial obligations to the State.

123 Ibid., Art. 4.

124 Ibid., Art. 8.

125 Ibid., Art. 9.

The Commissioner may:

examine every case on site, even without prior notification; 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 organisations, bodies of organisational units which have legal personality, as well as local government entities and their organisational units; 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; order the development of expert reports and opinions¹²⁶.

However, after taking action related to investigating the case, the Commissioner may: inform the complainant that no violation of human and civil freedoms and rights has been found; submit an intervention to the authority, organisation 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; request the authority superior to the one referred to in paragraph 2 (above) to take measures provided for under the law; 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; demand the initiation, by a competent prosecutor, of a preparatory proceeding regarding an offence prosecuted *ex officio*; 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; 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; file a cassation appeal or extraordinary appeal against a valid judgment, under the rules and procedures laid down in separate regulations¹²⁷.

■ 7.5. *Protection Provided by the Ombudsman for Children*

Mentioned in the Polish Constitution, the Ombudsman for Children operates under the Act of 6 January 2000 on the Ombudsman for Children. The Ombudsman

126 Art. 13 para. 1 of the Act of 15 July 1987 on the Commissioner for Citizens' Rights as published in Journal of Laws.

127 Art. 13 para 1 of the Act on the Commissioner for Citizen' Rights.

upholds the rights of the child as set forth in the Constitution of the Republic of Poland, the Convention on the Rights of the Child adopted by the United Nations General Assembly on November 20, 1989, and other laws, each time respecting the responsibilities, rights and duties of parents. He is obliged, in exercising his powers, to be guided by the welfare of the child and to always take into account that the natural environment of his development is the family¹²⁸.

In carrying out his tasks, the Ombudsman may: 1) report his participation in proceedings before the Constitutional Court, initiated on the basis of the Ombudsman's request, or in cases of constitutional complaint, concerning the rights of the child, and participate in these proceedings; 2) make proposals to the Polish Supreme Court (*Sąd Najwyższy*) to resolve discrepancies in the interpretation of the law in the area of children's rights legislation; 3) file a cassation (extraordinary appeal against a final judgment of the court of criminal appeals) or cassation appeal against a final decision; 4) take part with the rights of a prosecutor in pending juvenile proceedings.

8. Summary

The Polish human rights protection system covers both domestic and international regulations, including those in force within the European Union. Since international regulations (including the EU) are not specific to Poland, because in principle they are equally binding on all contracting parties, this study primarily discusses domestic regulations and institutions, mainly based on the Constitution of the Republic of Poland, which is the fundamental law with the highest legal force among all legal acts in force in Poland, expressing its sovereignty and international subjectivity. Including in the field of human rights.

There is no doubt that the hierarchical structure of legal acts defining the system is of particular importance for the human rights system. This structure covers all legal acts in force in the territory of Poland – once again both domestic and international. As a result of the clear definition of the unique position of constitutional regulations, it was the Constitution that was assigned the task of shaping the system of guarantees of human and civil rights and freedoms. The source of these freedoms and rights was indicated as the inherent and inalienable dignity of man, which is why the Polish legislator, after years of communist oppression, clearly referred to natural law. This had an impact on the internal systematisation of freedoms and rights, as indicated in the study, as well as on the system of their guarantees and on the admissibility of constitutional restrictions on human rights, including, for example, the principles of proportionality and legalism.

128 Art. 1 paras. 2–3 Act of 6 January 2000 on the Ombudsman for Children.

The constitutional freedoms and rights that are common to the Polish national and international systems were listed in the structural division. Elements specific to Polish conditions were discussed in more detail. Their different locations affect the guarantees granted to them for their preservation. Because the Polish Constitution also indicates basic means and institutions for the protection of human rights, such as: the right to court and the prohibition of closing the court route to claim violated freedoms or rights; the right to compensation for damage caused to a legal entity by the unlawful action of a public authority, which initially raised doctrinal disputes and practical doubts; the constitutional complaint to the Constitutional Tribunal, which seems particularly important due to the final and universally binding nature of judgments; the right to apply to the Commissioner for Human Rights for assistance in protecting freedoms or rights violated by public authorities, a mechanism characteristic of Poland, as well as the protection provided by the Commissioner for Children's Rights. All these national elements of the Polish system of human rights protection indicate that human rights protection in Poland (at least theoretically) is often more developed than that found in the general public.

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