

Ref: CommHR/DM/sf 024-2020

Mr Zbigniew RAU
Minister of Foreign Affairs of Poland

Strasbourg, 13 October 2020

Dear Minister,

As Council of Europe Commissioner for Human Rights, my mandate includes “facilitat[ing] the activities of national Ombudsmen or similar institutions in the field of human rights”. It is with this goal in mind that I am writing to you regarding recent developments that may affect the functioning of the Office of the Polish Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*, hereinafter: the Polish Ombudsman institution).

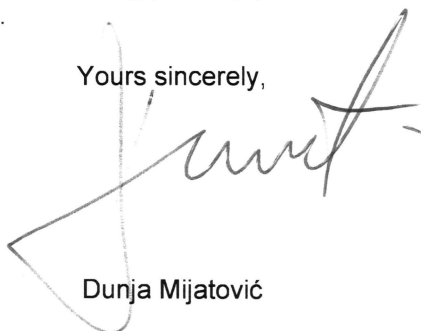
I note that the current Polish Ombuds has continued to exercise his functions since the expiry of his mandate on 9 September 2020 to bridge the gap to the election of his successor, as explicitly provided for by Poland’s Act on the Commissioner for Human Rights. However, on 17 September some members of the Polish parliament (the Sejm) went before the Constitutional Tribunal to challenge the conformity of these transitional arrangements with the Polish Constitution. I also note that the parliamentary majority has not yet put forward its own candidate for the position of Polish Ombuds and that a vote scheduled in the Sejm last week on a candidate backed by a large number of civil society organisations has been postponed *sine die*.

Taken together, the constitutional challenge and the delays in the process of selecting a new Ombuds have created a serious risk that the Polish Ombudsman institution may be left without a head of institution for an unknown period of time. I am particularly concerned that this may hamper the continuity and effective functioning of this important constitutional body. I should like to recall in this context that, under the Venice Principles, states are obliged to protect their Ombudsman institutions effectively from any threats or action aiming at or resulting in the suppression of the Ombudsman institution or in any hurdles to its effective functioning. It is crucially important first and foremost for Polish citizens but also for Poland’s international partners, including the Council of Europe, to be able to count on the expertise of an independent and effective Ombudsman institution fully compliant with international standards, including the Paris Principles and the Venice Principles.

I sincerely hope that all efforts will be made to identify and elect a successor to the current office holder without undue delay and in a spirit of cooperation. I would point out that, in accordance with international standards and under Polish law, the person selected should be a candidate with relevant professional expertise and high moral authority and integrity, while the election should be public, transparent, objective and merit-based.

I would welcome any information that you may be able to provide about how the Polish authorities intend to ensure that the independence and continuity of the Ombudsman institution remain fully protected, particularly in the event that the Constitutional Tribunal finds the aforementioned provision to be unconstitutional. I look forward to receiving your reply and to a constructive dialogue with you on these and other human rights issues.

Yours sincerely,



Dunja Mijatović