

Dear European members of IOI,

I would like to raise your attention to the recent decision of the Polish Constitutional Tribunal. In its judgment of 15 April 2021 (ref. no. K 20/20) ruled that Article 3(6) of the Act of 15 July 1987 on the Commissioner for Human Rights stating that "The current Commissioner shall perform his duties until the new Commissioner takes office" is inconsistent with Article 209(1) in conjunction with Article 2 and in conjunction with Article 7 of the Constitution of the Republic of Poland. The Tribunal postponed the entry into force of the judgment for three months from the date of its publication in the Journal of Laws, i.e., until July 15, 2021.

This decision runs counter the Venice principles (Principles on the protection and promotion of the Ombudsman Institution), which state that "the Ombudsman shall be removed from office only according to an exhaustive list of clear and reasonable conditions established by law. These shall relate solely to the essential criteria of 'incapacity' or 'inability to perform the functions of office', 'misbehaviour' or 'misconduct', which shall be narrowly interpreted. The parliamentary majority required for removal – by Parliament itself or by a court on request of Parliament- shall be equal to, and preferably higher than, the one required for election. The procedure for removal shall be public, transparent and provided for by law".

The court decision also runs counter the resolution adopted by the UN General Assembly on 16 December 2020, on the role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law, which says: "(c) Where they exist, to take the appropriate steps to ensure that the means of appointment of the Ombudsman or mediator respect the full independence and State recognition of, as well as respect for, the Ombudsman and mediator institutions and their work".

As International Ombudsman Institute, we concluded that the existing provision regulating the transitional period of the Polish Commissioner for Human Rights (Art. 3 para 6 of the Act on the Commissioner for Human Rights) is in line with international principles and common among many other European jurisdictions.

As European president of IOI, I decided to take action in three different approaches:

1. Ask **IOI General Secretariat** to start the procedure to support colleagues under threat, according to IOI Guidelines document approved by the IOI Board of Directors in Bangkok (November 2016), applying it to the situation faced by the Polish Ombudsman.
2. Ask **Dunja Mijatović, European Commissioner for Human Rights**, to start the own initiative procedure, introduced by Protocol No. 14 to the convention, in the decision of the Polish Constitutional Tribunal, in its judgment of 15 April 2021 (ref. no. K 20/20).
3. Ask the **European Commission for Democracy through Law** - better known as the Venice Commission-, to examine the decision of the Polish Constitutional Tribunal, in its judgment of 15 April 2021 (ref. no. K 20/20).
4. Address to **Polish Parliament** the information on the election and remove from office according to Venice Principles and the UN resolution on the role of Ombudsman and mediator institutions in the promotion and protection of human rights.

I would like to stress that it is indispensable for the effective functioning of an Ombudsman institution, to allow citizens to receive proper service and seek assistance in protecting their rights or freedoms, to have an uninterrupted term of office until a new head of the Ombudsman institution is elected.

I remain at your disposal for any support and cooperation on this matter.

Best regards,



Rafael Ribó
European president of IOI