

The Ombudsman's Role in Protecting the Rights of Refugees and Irregular Migrants – Poland's Experience in Comparison to Sweden and Greece Law and Practice

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Abstract: The article analyzes actions taken by the Polish, Swedish and Greek Ombudsmen to protect fundamental rights of persons seeking international protection and irregular migrants, which is of particular importance in the context of the ongoing migration crisis and the war in Ukraine. Research theses presented here state that the Ombudsman is an institution that fills the lacunae in legal protection exercised by courts and administrative bodies of the Member States and that the existing procedural standards of protection of migrants' rights are not effective in practice and require strengthening. The article proposes a 4-pillar model of the Ombudsman's conduct, which involves dealing with individual complaints (1st), systemic actions to combat maladministration (2nd), activities for the "domestication" of international law (3rd), as well as advocacy and soft competences supporting the civil society (4th). The methodology used includes investigation of the law in force, legal comparison and, to some extent, the statistical method and the analysis of non-legal sources.

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1. Introduction

Europe has continued to experience migration crises for several decades, which have essentially evolved into a high-wave influx of third-country nationals (TCN) into the European Union (EU). Recently, the war in Ukraine, which began on February 24, 2022, has had a particular impact on migration flows.

The research problem addressed in this article concerns standards of effective protection of rights of irregular migrants and migrants seeking international protection in EU Member States. The aim of the research project, the result of which is this article, is, among others, to create a legal model to be followed by national Ombudsmen, whose actions for TCNs remain particularly important in Member States that experience an increased influx of migrants. Poland has been such a country for several years now; it has turned from a transit country to partially a destination country for refugees fleeing Ukraine.

According to the first research thesis, the Ombudsman, as a body acting at the national level, is an institution that fills the lacunae in legal protection exercised by administrative courts and administrative bodies of the Member States and the EU. By means of their *ad hoc* activity, flexible mechanisms and the capacity for quick interventions, they contribute to the implementation of the principle of solidarity of protection of human rights.

Second of all, the existing procedural standards of protection of migrants' rights are not effective in practice and require strengthening. Thus, there is a need to create a universal model of the Ombudsman's activity in migrants' cases, the implementation of which at the level of Member States will contribute to a fuller and more effective protection of this group.

The article presents the results of research on the powers and real actions undertaken by the Polish Ombudsman – the Commissioner for Human Rights (CHR) – in comparison with the actions of Greek and Swedish Ombudsmen for third country nationals – refugees and irregular migrants. Due to the limits for presenting the research, the main focus will be given to the activities of the Polish Commissioner. The methodology employs investigation of the law in force, legal comparison and, to a certain extent, the statistical method and the analysis of non-legal sources. Due to the extensive research material and the dynamic situation

after February 24, 2022, the paper examines the activities of the Ombudsmen in 2022–2024.

2. The Diverse Migration Situation of Poland, Sweden and Greece as Justification for Undertaking a Comparative Study

The choice of the research material is justified by the diverse experience of receiving migrants – while Sweden has been the destination country for TCNs for years, Greece was initially only a sending country; however, over time, due to its location at the external borders, it has become both a transfer country and a destination country, experiencing administrative overload due to the number of incoming foreigners.¹ Poland has been a sending and transit country for decades, but as a result of the crisis on the Polish-Belarusian border (caused by the irregular influx of migrants from third countries to Belarus controlled by the Lukashenko regime in order to cross the border of the European Union), and above all the war in Ukraine, it has also become a receiving country and is facing the challenge of providing administrative services to migrants. European law on refugees and irregular migrants falls within the Area of Freedom, Security and Justice, which under the Treaty rules is a shared competence, and thus involves a certain harmonization of rules, and, consequently, of standards for the protection of TCNs' fundamental rights.²

Since 2020, Poland has recorded a sharp increase in requests for international protection – the number of applications submitted in 2023 was 9,750 compared to 2,785 in 2020.³ In the last three years, the number of applications for temporary protection has been particularly high – 677,110 such requests were submitted in March 2022 alone,⁴ and, at the end of March 2024, more than 955,000 people benefited from protection in Poland. The number of applications for international protection in Greece

¹ See: Marek Okólski, “Transition from Emigration to Immigration. Is It the Destiny of Modern European Countries?,” in *European Immigration. Trends, Structures and Policy Implications*, ed. Marek Okólski (Amsterdam: Amsterdam University Press, 2012), 32.

² See: Article 4(2) of the Treaty on European Union, consolidated version (OJ C202, 7 June 2016), 47.

³ “EMN Country Factsheet: Poland,” European Commission, 7, accessed March 3, 2025, https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-publications/country-factsheets_en.

⁴ *Ibid.*, 10.

is several times higher compared to Poland and also increased in 2023 (over 64,000),⁵ while temporary protection in Greece is exercised for only around 27,000 persons.⁶ In Sweden, the number of applications submitted in 2023 was lower than in 2022⁷ and amounted to 17,000, and just over 36,000 people benefited from temporary protection.⁸

In the area of irregular migration on the territory of the Republic of Poland, in 2023 irregular residence of more than 16,000 people was confirmed and over 10,000 return decisions were issued.⁹ In Greece at the same time there were more than 72,000 irregular migrants, and almost 30,000 return decisions were issued.¹⁰ In Sweden, in 2023, illegal residence was found against just over 2,500 people and return decisions were issued for fewer than 7,700 people.¹¹

The data presented shows the different experiences of the three countries in managing migration as well as the different administrative burden in this regard.

3. The Ombudsman as an Agent of Migrants' Rights

The institution of the Ombudsman has its roots in Sweden and can be defined as “a self-reliant, independent state body, usually created by constitutional regulation, established to exercise control over the proper functioning of public administration or the observance of human rights.”¹² The Ombudsman is called the Agent of Rights, Justice and

⁵ “EMN Country Factsheet: Greece,” 7.

⁶ Ibid., 10. See also: Konstantinos Tsitselikis, “Refugees in Greece: Facing a Multifaceted Labyrinth,” *International Migration* 57, no. 2 (2019): 158–75, <https://doi.org/10.1111/imig.12473>; Theodoros Fouskas, “Migrants, Asylum Seekers and Refugees in Greece in the Midst of the COVID-19 Pandemic,” *Comparative Cultural Studies: European and Latin American Perspectives* 5, no. 10 (2020): 39–58, <https://doi.org/10.13128/ccselap-12297>.

⁷ “EMN Country Factsheet: Sweden,” 7.

⁸ Ibid., 10.

⁹ “EMN Country Factsheet: Poland,” 18.

¹⁰ “EMN Country Factsheet: Greece,” 18.

¹¹ “EMN Country Factsheet: Sweden,” 17.

¹² Agnieszka Gajda, “Ewolucja modelu ombudsmana w ujęciu teoretycznoprawnym,” in *Institucje ombudsmana w państwach anglosaskich. Studium porównawcze*, ed. Piotr Mikuli (Warsaw: Wydawnictwo Sejmowe. Kancelaria Sejmu, 2017), 11.

Democracy in the literature and commentary,¹³ which aptly reflects the nature of his mandate.

The catalogue of migrants' rights, which are guaranteed and require national authorities' protection, is broad and results not only from constitutional guarantees but also from guarantees enshrined in the EU Charter of Fundamental Rights and EU acts of secondary law implemented in national law, as well as international agreements, such as the Geneva Convention.¹⁴ Among the most important fundamental rights are the right of entry, residence rights, prohibition of arbitrary and collective expulsion, rights of stateless persons, rights of refugees (including the right to international protection) and observance of the principle of non-refoulement.¹⁵ Most of these rights are exercised in the form of an administrative procedure culminating in a decision.

The institution of the Ombudsman in Poland was established in 1987. Currently, the basis for the activities of the Ombudsman is stipulated in Article 80 of the Constitution of the Republic of Poland¹⁶ and the Act on the Commissioner for Human Rights (hereinafter the CHR Act).¹⁷ The Polish model of the institution of the Ombudsman is described as hybrid, typical for countries that have undergone a political transformation.¹⁸ The term "human rights model" is also used in the literature to refer to the Polish CHR due to his broad competences that go beyond the handling of citizens' complaints.¹⁹ The Ombudsman's mandate to support foreigners is grounded in Article 37 of the Constitution, when read together with the general

¹³ Ann Abraham, "The Future in International Perspective: The Ombudsman as Agent of Rights, Justice and Democracy," *Parliamentary Affairs* 61, no. 4 (2008): 681–93, <https://doi.org/10.1093/pa/gsn031>.

¹⁴ Convention relating to the Status of Refugees, done at Geneva on July 28, 1951 (United Nations, Treaty Series, vol. 189, p. 137).

¹⁵ Walter Kälin and Jörg Künzli, *The Law of International Human Rights Protection* (Oxford: Oxford University Press, 2019), 523–50.

¹⁶ Constitution of the Republic of Poland of April 2, 1997 (Journal of Laws of 1997, No. 78, item 483, as amended).

¹⁷ Act of July 15, 1987, on the Commissioner for Human Rights (consolidated text: Journal of Laws of 2024, item 1264).

¹⁸ Gajda, "Ewolucja modelu ombudsmana," 27.

¹⁹ Gabriele Kucsko-Stadlmayer, "Classification by 'Models,'" in *European Ombudsman-Institutions. A Comparative Legal Analysis Regarding the Multifactorial Realisation of an Idea*, ed. Gabriele Kucsko-Stadlmayer (Vienna: Springer, 2008), 64.

powers of the office. Importantly, the Commissioner's competence to act for foreigners has been explicitly expressed in Article 18 of the CHR Act. It reads that

The provisions of the law concerning the protection of the rights and freedoms of man and citizen shall also apply *mutatis mutandis* to: 1) persons who are not Polish citizens, who are under the authority of the Republic of Poland – within the scope of their rights and freedoms; (...).²⁰

The institution of the Greek Ombudsman (*Synigoros*) was not established until 1997, and the taking-up of the office took place in 1998. The appointment of the National Ombudsman in Greece was largely influenced by the establishment of the office of the European Ombudsman in the Maastricht Treaty.²¹ The mandate of the Ombudsman is based on Articles 101a and 103(9) of the Constitution of Greece and the Act of 22 May 2003.²² The Ombudsman's mandate also covers issues of discrimination, including that based on origin. Under Law No. 4443/2016, the Greek Ombudsman handles complaints concerning discrimination not only in the public but also in the private sector.²³ The Greek Ombudsman, like the Polish one, is a one-man body. Complaints may be lodged by persons under the jurisdiction of the Greek State.

Since the institution of the Ombudsman originated in Sweden (founded in 1809),²⁴ the Ombudsman's model currently functioning in Sweden is

²⁰ See: Stanisław Trociuk, *Ustawa o Rzeczniku Praw Obywatelskich. Komentarz*, 2nd ed., LEX/el. 2020.

²¹ Stella Ladi, "Policy Change and Soft Europeanization: The Transfer of the Ombudsman Institution to Greece, Cyprus And Malta," *Public Administration* 89, no. 4 (2011): 1643–63, <https://doi.org/10.1111/j.1467-9299.2011.01929.x>.

²² Brigitte Kofler, "The Different Jurisdictions. Greece," in *European Ombudsman-Institutions. A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea*, ed. Gabriele Kucsko-Stadlmayer (Vienna: Springer, 2008), 216. See "Legislation", The Greek Ombudsman, accessed March 1, 2025, <https://old.synigoros.gr/?i=stp.en.legislationono>.

²³ See: Equinet, accessed March 1, 2025, <https://equineteurope.org/>.

²⁴ Piotr Mikuli, "Ombudsman Institutions and the Judiciary in Sweden and Finland," *Przegląd Prawa Konstytucyjnego* 40, no. 6 (2017): 38, <https://doi.org/10.15804/ppk.2017.06.02>.

referred to as classic²⁵ or as a “Rule of Law Model.”²⁶ The basis of the Ombudsman's action (Justitieombudsman) is Regeringsformen – the so-called Swedish Instrument of Government, revised in 1974.²⁷ The Ombudsman in Sweden is a collegial body (it has been four people since 1986), equipped with the capacity to deal with individual complaints only since 1974.

Taking into account the general statistical data from 2023 available at the time of preparation of this study, it should be emphasized that the office of the Polish CHR received almost 80,000 complaints (which was, incidentally, a record number since 1988),²⁸ while the Greek *Synigoros* received just over 13,500 complaints²⁹ and the Swedish Ombudsman received 10,500 such applications.³⁰

According to the data provided by the Office of the Commissioner for Human Rights, in 2022 there were 567 cases concerning foreigners, in 2023 they handled 1,246 such cases, and in 2024 1,295 (only until October 30, 2024).³¹ The data obtained from the office of the Greek Ombudsman is not so transparent. The only official information received back from Greece said that in 2023 there were 33 complaints regarding entry and stay; however, some migration cases are included in OPCAT statistics³²

²⁵ Gajda, “Ewolucja modelu ombudsmana,” 26.

²⁶ Kucsko-Stadmayer, “Classification by ‘Models,’” 64. See also: Alfred Bexelius, “The Ombudsman's Office and Other Means for Protecting Citizens' Rights in Sweden,” *International Social Science Journal* 18, no. 2 (1966): 247–51.

²⁷ Joachim Stern, “Sweden,” in *European Ombudsman-Institutions. A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea*, ed. Gabriele Kucsko-Stadmayer (Vienna: Springer, 2008), 409.

²⁸ Informacja o działalności Rzecznika Praw Obywatelskich w roku 2023, Biuletyn Rzecznika Praw Obywatelskich 2024, no. 2, Źródła, ed. St. Trociuk, Warsaw 2024, p. 654.

²⁹ “Ενημερωτικό Σημείωμα Ετήσια Έκθεση του Συνηγόρου του Πολίτη για το 2023,” The Greek Ombudsman, accessed March 1, 2025, www.synigoros.gr.

³⁰ “Annual Report 2023,” Summary in English, Riksdagens ombudsmän, 6, accessed February 1, 2025, <https://www.jo.se>.

³¹ The system of collecting statistical information in the Office of the Commissioner does not allow for the collection of data on the citizenship of applicants, thus it was not possible to determine how many complaints from third-country nationals were received by the CHR in the years 2022–2024. Data received on November 19, 2024 from the CHR Equal Treatment Team through a freedom of information request.

³² Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly on December 18, 2002 (United Nations, Treaty Series, vol. 1465, p. 85).

(in 2023 there were 42 such cases).³³ When it comes to Sweden, despite the working contact established in 2023, we could not get an answer to our inquiry. Annual reports show that there were 762 migration complaints in the 2021/22 period and a decrease was recorded³⁴ in 2023.

Taking into account Polish statistics, there is no doubt that the role of the Ombudsman in the protection of migrants' rights is significant and the analysis of cases handled by them may be used to develop a model for the Ombudsman's office to follow in the realm of migrants' rights.

4. Actions Taken by Ombudsmen to Protect the Rights of Refugees and Irregular Migrants

In order to verify the research theses, the types of competences and activities undertaken by the Commissioner's office in the area of protection of migrants' rights were investigated. The model adopted is based on a four-pillar structure.³⁵ The first pillar includes actions considered to be the Ombudsman's classic competence, i.e. the handling complaints from individuals; the second pillar includes actions taken under the national level mandate, which aim to comprehensively combat maladministration in the area of protection of migrants' rights; the third pillar involves actions for the so-called "domestication" of international law standards, while the last pillar (4th) includes soft actions: advocacy, networking and the building of civil society awareness.

As the competences under the first pillar do not raise any major doubts, a discussion on them has been minimized. The Polish Commissioner accepts individual complaints from third-country nationals under Article 80 of the Constitution of the Republic of Poland and the CHR Act (Article 10). After reading the complaint, he may take the actions listed in the Act (Articles 11–15 of the CHR Act). However, the address of the Polish Commissioner to the Government Plenipotentiary for Ukraine may be mentioned as an example of an action associated with the large number of complaints

³³ The Office of The Greek Ombudsman, e-mail correspondence with author; November 11, 2024.

³⁴ "Annual Report 2021/2022," Riksdagens ombudsmän, 58; "Annual Report 2023," Riksdagens ombudsmän, 31, accessed February 1, 2025, www.jo.se.

³⁵ See other models: Gabriele Kucsko-Stadlmayer, "Powers," in *European Ombudsman-Institutions. A Comparative Legal Analysis Regarding the Multifaceted Realisation of an Idea*, ed. Gabriele Kucsko-Stadlmayer (Vienna: Springer, 2008), 39–58.

filed at the same time by Ukrainian citizens. The accumulation of complaints concerned repeated situations where Ukrainian refugees left Poland for less than 30 days and lost their UKR status, contrary to the regulations (a designation awarded to Ukrainian citizens who came to Poland as a result of the war in their homeland).³⁶ Thus, even individual complaints may lead to a diagnosis of a systemic problem and intervention in this area (the legal basis was Article 13(1)(2) of the CHR Act). In turn, in 2023, the Greek Ombudsman received a number of complaints regarding the conditions at the Samos detention center³⁷ or delays in the extension of residence permits for asylum seekers.³⁸ Complaints regarding migration issues in Sweden are published in the Ombudsman's annual reports and have in recent years concerned, among others, the activities of the Swedish Migration Agency and conditions in detention centers.³⁹

Within the second pillar of the proposed model, the Commissioner takes actions to combat maladministration at the national level. It includes the following activities:

- (1) **Delivering addresses to state administration bodies competent for migration matters** – In the years 2022–2024 the Commissioner repeatedly addressed administrative bodies, e.g. the Prime Minister (June 20, 2022), in connection with the need to eliminate the so-called “push-backs”⁴⁰ and the need to clarify the migration policy drafted by the government.⁴¹ Other statements concerning vulnerable groups were of particular importance, such as the address to the Government

³⁶ “Address to Paweł Szefernaker, Government Plenipotentiary for War Refugees from Ukraine, 8.03.2023, XI.541.139.2022.KM,” *Rzecznik Praw Obywatelskich*, accessed March 1, 2025, <https://bip.brpo.gov.pl/pl>. All documents cited in the article concerning the activities of the Polish Ombudsman are available on this website.

³⁷ “ΕΘΗΣΙΑ ΕΚΘΕΣΗ 2023 (Annual Report 2023),” *The Greek Ombudsman*, 60, accessed March 1, 2025, www.synigoros.gr.

³⁸ *Ibid.*, 62.

³⁹ “Annual Report 2021/2022,” *Riksdagens ombudsmän*, 35 ff.; “Annual Report 2023,” *Riksdagens ombudsmän*, 31.

⁴⁰ “Address to Prime Minister Mateusz Morawiecki of June 20, 2022, XI.543.238.2022.AS/,” *Rzecznik Praw Obywatelskich*.

⁴¹ “Address to the Prime Minister of 22.10.2024, XI.540.413.2024.AM,” *Rzecznik Praw Obywatelskich*. “Take back control. Ensure security” – comprehensive and responsible migration strategy of Poland for the years 2025–2030, resolution of the Council of Ministers of October 15, 2024, No. 120, Annex.

Plenipotentiary for Ukraine on the protection of vulnerable groups⁴² (April 8, 2022, repeated, addressed to Prime Minister Donald Tusk on July 11, 2024).⁴³ Migrants themselves are a vulnerable group, hence the Commissioner's efforts to protect the so-called "double vulnerability" of people are of such great importance, an example of which are speeches in cases of migrants with disabilities regarding accommodation organized for them⁴⁴ or deaf persons from Ukraine.⁴⁵ The CHR's address to the Head of the Office for Foreigners regarding the eligibility for protection of stateless persons from Ukraine was also significant, as the Law on assistance to citizens of Ukraine in connection with armed conflict on the territory of that country regulates this issue to a limited extent.⁴⁶ This speech is an example of a diagnosis of legal deficits in the protection of certain groups, especially since Poland has not ratified the Convention relating to the protection of Stateless Persons.⁴⁷ In Greece, an interesting example of intervention was the sending of a letter of opinion on standards in health treatment of asylum seekers in the Policastro Camp on May 25, 2020. The case of one asylum seeker with HIV was finally brought before the European Court of Human Rights (ECHR) and the Court, in justifying violation of Article 3 of the Convention, took into account the Commissioner's position.⁴⁸ An interesting example of the Ombudsman's actions involves interventions in urgent cases (and such is often the nature of migration

⁴² "Address to the Government Plenipotentiary for War Refugees from Ukraine, 8.04.2022, XI.518.9.2022.MK," *Rzecznik Praw Obywatelskich*.

⁴³ "Address to the Prime Minister of July 11, 2024, XI.543.445.2024.JK," *Rzecznik Praw Obywatelskich*.

⁴⁴ "Address to the Mazovian Governor of 18 April 2024, XI.543.52.2024.KM," *Rzecznik Praw Obywatelskich*.

⁴⁵ "Address to the Deputy President of the Management Board for Program of the State Fund for Rehabilitation of Disabled Persons of April 18, 2024, XI.815.9.2024.DB," *Rzecznik Praw Obywatelskich*.

⁴⁶ Law of March 12, 2022, on assistance to Ukrainian citizens in connection with the armed conflict on the territory of that country (consolidated text: *Journal of Laws* of 2024, item 167).

⁴⁷ "Address to the Head of the Office for Foreigners of August 28, 2023, XI.540.136.2023.KM," *Rzecznik Praw Obywatelskich*. Convention relating to the Status of Stateless persons adopted on August 28, 1954, by a Conference of Plenipotentiaries convened by the Economic and Social Council Resolution 526a (XVII) of April 26, 1954 (United Nations, Treaty Series, vol. 360, p. 117).

⁴⁸ ECtHR Judgment of 5 October 2023, *E.F. v Greece*, application no. 16127/20, hudoc.int.

cases, e.g. detention or expulsion) based on information obtained by the Commissioner, not only from complainants, but also from independent sources. Such interventions have been repeated many times, including those concerning deportations⁴⁹ and detention of migrants.⁵⁰

- (2) **Signaling the need for legal changes** – The introduced model of the Commissioner's activities is technical, but it should be remembered that during the handling of cases, the Commissioner acts in a multifaceted way and the acquired insight allows him to take actions to signal the need for changes in the law in order to better protect the rights of irregular migrants and refugees. Examples of such actions include an address to the Minister of the Interior and Administration⁵¹ of July 17, 2023. In his speech, the CHR presented comments on the need to amend the border regulation⁵² and eliminate those provisions that are contrary to the guarantees of the rights of individuals, including those provided for in European Union law. Acting under his mandate (Article 14(6) of the CHR Act), the Commissioner also challenged the Order Regulation of the Governor of the Podlaskie Voivodship No. 1/2023 of February 16, 2023, on the rules of order in force in the border zone adjacent to the external state border in the Podlaskie Voivodeship. The CHR concluded that “the objectives of the Regulation are achievable based on the provisions of generally binding law contained in EU laws or acts.”⁵³ This regulation limited the possibility of providing humanitarian aid to migrants on the Polish-Belarusian

⁴⁹ “Interwencja RPO w sprawie deportacji cudzoziemca,” Rzecznik Praw Obywatelskich, accessed March 1, 2025, <https://bip.brpo.gov.pl/pl/content/rpo-interwencja-deportacja>.

⁵⁰ “Interwencja ZRPO Wojciecha Brzozowskiego w sprawie trzech Afgańczyków zatrzymanych przy granicy przez SG,” Rzecznik Praw Obywatelskich, accessed March 1, 2025, <https://bip.brpo.gov.pl/pl/content/zrpo-straz-graniczna-uchodzcy-granica-interwencja>.

⁵¹ “Address to the Minister of the Interior and Administration of July 17, 2023, XI.543.10.2022. KM,” Rzecznik Praw Obywatelskich. The basis for the action taken by the CHR was Article 16(1) of the CHR Act.

⁵² Regulation of the Minister of the Interior and Administration of March 13, 2020, on temporary suspension or restriction of border traffic at certain border crossing points (Journal of Laws 2023.1403, consolidated text of July 24, 2024).

⁵³ “Complaint of the Commissioner for Human Rights to the Voivodship Administrative Court in Białystok of April 26, 2023, V.543.1.2023.ŁK/ST,” Rzecznik Praw Obywatelskich.

border. The Voivodship Administrative Court in Białystok, by its judgment of July 13, 2023, declared invalidity of the contested regulation.⁵⁴

- (3) **Presentation of comments on draft legal acts** – Within their mandate, the CHR may submit their comments on draft legal acts (Article 16(2)(1) of the CHR Act). These actions are important since the national migration law has been recently subject to dynamic changes due to the crisis on the Polish-Belarusian border, the war in Ukraine and the implementation of the so-called EU Migration Pact. Examples of such actions include: comments addressed to the Marshal of the Senate concerning the Act amending the Law on assistance to citizens of Ukraine,⁵⁵ comments presented to the Marshal of the Senate on February 15, 2023, regarding the Act amending the Act on Foreigners.⁵⁶ Similar activities were carried out by the Greek Ombudsman – they submitted their comments on the draft law “Immigration Code” to the Standing Committee on Public Administration, Public Order and Justice, which were submitted to Parliament on March 20, 2023, after the completion of the public consultation process.⁵⁷
- (4) **Actions to change the line of decisions to one that is compatible with the fundamental rights of migrants** – An interesting example of the Commissioner’s actions, certainly worth cementing in the practice of the office, involved sending comments to the President of the Regional Court in Krosno on the conditions in detention centers for foreigners (the office collected the data while monitoring the National Preventive Mechanism), information on the ECtHR case-law in detention cases and general conclusions on the need to limit detention whenever possible, in particular with regard to minors.⁵⁸ Under the law, detention of a foreigner is ruled by a court, hence the Commissioner addressed

⁵⁴ Voivodship Administrative Court in Białystok, Judgment of 13 July 2023, Ref. No. I SA/Bk 365/23.

⁵⁵ “Comments addressed to the Marshal of the Senate Tomasz Grodzki on April 12, 2022, XI.543.104.2022,” *Rzecznik Praw Obywatelskich*. Article 16(1) of the CHR Act provided the legal basis for the comments.

⁵⁶ “Comments addressed to the Marshal of the Senate Tomasz Grodzki on February 15, 2023, XI.540.55.2021.JK,” *Rzecznik Praw Obywatelskich*.

⁵⁷ The Greek Ombudsman, accessed March 1, 2025, www.synigoros.gr.

⁵⁸ Letter to Judge Janusz Kmiecik, President of the Regional Court in Krosno of February 25, 2022, KMP.572.1.2021.PK.

their comments to the court adjudicating in foreigners' matters. Such actions have educational qualities on the one hand, and typical advocacy qualities on the other, indicating the grounds for formulating the line of jurisprudence consistent with international standards of human rights protection.

- (5) **Participation in court proceedings** – Under the CHR Act and procedural regulations, the CHR may join civil and administrative proceedings and lodge cassation appeals in criminal cases if they believe that there has been a violation of human rights (these are the so-called CHR's strategic proceedings).⁵⁹ An example of an important migrant rights case involving the Commissioner was the case of a minor Syrian (O.A.) who was detained in 2022 and returned to Belarus with a person who was not their legal guardian. The minor entered Poland again and was then placed in foster care. The CHR filed a complaint with the Voivodship Administrative Court against the decision to return the minor, alleging numerous violations of the return procedure (e.g. lack of access to an interpreter, lack of medical examinations, lack of activities aimed at clarifying the case). The Voivodship Administrative Court in Białystok, in its judgment of October 27, 2022, repealed the contested order and remanded the case back.⁶⁰

The so-called action as an agent of international law (third pillar within the proposed model) is extremely important in the context of protecting the rights of refugees and irregular migrants, whose rights are guaranteed in international agreements ratified by the states. As Richard Carver notes, the national ombudsman “domesticates (...) international human rights law and ensures its standards to be applied directly.”⁶¹ This is done through direct reference to acts of international law, monitoring the

⁵⁹ Article 14(4–8) of the CHR Act. See also the Law on proceedings before Administrative Courts (consolidated text: Journal of Laws of 2023, item 259); Article 8 concerning the participation of the Commissioner in the proceedings.

⁶⁰ Voivodship Administrative Court in Białystok, Judgment of 27 October 2022, Ref. No. I SA/Bk 588/22. Since the judgment was not satisfactory for the CHR, they filed a cassation appeal, which was dismissed by the Supreme Administrative Court ruling of January 9, 2024, Ref. No. II OSK 165/23.

⁶¹ Richard Carver, “National Human Rights Institutions in Central and Eastern Europe. The Ombudsman as Agent of International Law,” in *Human Rights, State Compliance, and*

implementation of treaty obligations by States, or direct action in the area of implementation of treaties, such as the Additional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.⁶² Under the Protocol, a National Preventive Mechanism (NPM) was established in the States Parties to the Convention, which monitors places of limitation of liberty, including detention centers for foreigners. In Poland,⁶³ Greece⁶⁴ and Sweden⁶⁵ the functions of the NPM were entrusted to the offices of the Ombudsmen. The Polish Commissioner carries out unannounced inspections of detention centers and centers for foreigners (e.g. in 2022 – in Przemyśl and in Lesznowola; in 2023 – in Kętrzyn).

The Commissioner's action for the protection of human rights also includes the right to submit the so-called *amicus curiae* in proceedings pending before the European Court of Human Rights,⁶⁶ which are of particular importance for the detection of systemic human rights violations. The Polish Commissioner declared his participation in the R.A. and others v. Poland case (complaint No. 42120/21), which concerned a group of foreigners residing in the border area near Belarus. The complaint alleged that Poland violated the prohibition of inhuman treatment and collective expulsion. The case was transferred to the Grand Chamber of the Court in June 2024.⁶⁷

As an example of action for the “domestication” of international law, one should mention actions for the implementation by Poland of “interim

Social Change. Assessing National Human Rights Institutions, eds. Ryan Goodman and Thomas Pegram (Cambridge: Cambridge University Press, 2012), 190.

⁶² Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly on December 18, 2002 (United Nations, Treaty Series, vol. 1465, p. 85).

⁶³ Polish NPM reports are available at: www.bip.brpo.gov.pl, accessed March 1, 2025.

⁶⁴ “ΕΘΝΙΑ ΕΚΘΕΣΗ 2022 (Annual Report 2022),” The Greek Ombudsman, 118, accessed March 1, 2025, www.synigoros.gr.

⁶⁵ For the Swedish Migration Agency, which is responsible for the operation of detention centers, see the “2023 National Preventive Mechanism Report on the Activities,” Riksdagens ombudsmän, 54, accessed March 1, 2025, www.jo.se.

⁶⁶ See: “Rules of the Court, 28.03.2024 edition,” European Court of Human Rights, accessed March 1, 2025, www.echr.coe.int.

⁶⁷ “Skarga migrantów zawróconych do linii granicy. Opinia Rzecznika dla ETPC. Sprawę zbada Wielka Izba Trybunału,” Rzecznik Praw Obywatelskich, accessed March 1, 2025, <https://bip.brpo.gov.pl/pl/content/rpo-opinia-migranci-pushbacki-etpc-wielka-izba>.

measures” issued by the ECtHR. Their purpose is to prevent the possible violation of the rights of individuals by the State accused of systemic violations. This is particularly important in migration cases, where arbitrary or collective expulsions may occur. The Polish CHR addressed the Headquarters of the Border Guard in the case of a citizen of Tajikistan, against whom the ECtHR issued an “interim measure,” and who was nevertheless to be expelled, asking for clarification of the non-application of the standard of international law in the Polish order.⁶⁸

In Greece, in turn, the Ombudsman has the power to monitor TCN return operations, both domestic and joint return operations organized by Frontex.⁶⁹

The fourth pillar of the CHR's activities involves advocacy, networking and building civil society awareness. These include monitoring observance of the rights of specific groups or specific rights and preparing reports in this area that inform about the shortcoming in the human rights protection and thus reveal them to the public.⁷⁰ The Commissioner carries out specific system checks and acts as a kind of watchdog. These actions consequently uphold the moral authority of the Commissioner, who forms public opinion in civil society through views and judgments – in the context of refugee issues, this is important given the recurring anti-migration sentiment. In parallel to these activities, the Commissioner conducts a direct dialog with the civil society, e.g. through meetings and consultations with key third sector organizations (e.g. the cooperation of the Greek Ombudsman with

⁶⁸ “Interwencja ZRPO Wojciecha Brzozowskiego w sprawie deportacji tadzyckiego opozycjonisty,” Rzecznik Praw Obywatelskich, accessed March 1, 2025, <https://bip.brpo.gov.pl/pl/content/interwencja-zrpo-deportacja-tadzyckiego-opozycjonisty>.

⁶⁹ See: “ΕΤΗΣΙΑ ΕΚΘΕΣΗ 2022 (Annual Report 2022),” The Greek Ombudsman, 116, accessed March 1, 2025, www.synigoros.gr.

⁷⁰ The report of the Greek Ombudsman “The challenge of migration flows and refugee protection – reception conditions and procedures” serves as an example here. Information available at: “Συνήγορος του Πολίτη,” The Greek Ombudsman, accessed March 1, 2025, <https://www.synigoros.gr/el/category/allodapoi-ithageneia-astiki-katastasi/post/ek8esh-or>.

the International Red Cross)⁷¹ and through networking with other national ombudsmen, e.g. within the European Network of Ombudsmen.⁷²

5. Conclusions

Summing up the analysis, it should be stated that the first research thesis put forward is true – the Ombudsman is an institution that completes the gap in legal protection of refugees and irregular migrants at the national level. This is indicated by the proposed and presented model of activities under his mandate, which is framed in a four-pillar model. The added value of the operation of the Ombudsman's office involves the adaptability and flexibility of their actions and their authority,⁷³ which allows for effective interventions, despite the lack of formal power for sanctions.⁷⁴ By transforming the views of legal scholars and commentators, one can recognize that the Ombudsman is a kind of a “surrogate” institution for migrants and, through the activities undertaken, creates conditions for their adoption and adaptation in the receiving country.⁷⁵

As a result of the comparative investigation, the second thesis, according to which the rights of migrants are not fully guaranteed in the actions of the state administration, should also be considered true and thus the proposal of a four-pillar model for the Ombudsman's operation was justified. This model allows for a comprehensive cataloguing of the Ombudsman's possible actions and assumes the functioning of the office in a specific algorithm – from the detail (i.e. handling individual complaints, pillar one) to the general, i.e. diagnosing and eliminating maladministration in actions undertaken by the state. Only the parallel and continuous functioning of

⁷¹ “ΕΤΗΣΙΑ ΕΚΘΕΣΗ 2022 (Annual Report 2022),” The Greek Ombudsman, 114–5, accessed March 1, 2025, www.synigoros.gr.

⁷² “O Europejskiej Sieci Rzeczników,” Europejski Rzecznik Praw Obywatelskich, accessed March 1, 2025, <https://www.ombudsman.europa.eu/pl/european-network-of-ombudsmen/about/pl>.

⁷³ Roy Gregory, “An Office for all Seasons? The Origins and Development of the Ombudsman Institution in the United Kingdom,” in *Law and the Spirit of Inquiry. Essays in Honour of Sir Louis Blom-Cooper*, eds. Charles Blake and Gavin Drewry (The Hague: Brill, 1999), 107.

⁷⁴ Ludvig Beckman and Fredrik Ugglä, “An Ombudsman for Future Generations: Legitimate and Effective,” in *Institutions for Future Generations*, eds. Inigo González-Ricoy and Axel Gosseries (Oxford: Oxford University Press, 2016), 118.

⁷⁵ Manos Moschopoulos, “A ‘Surrogate State’ for Refugees in Greece,” *Refugee Survey Quarterly* 42, no. 2 (2023): 123–57, <https://doi.org/10.1093/rsq/hdad002>.

these four pillars can ensure effective protection of migrants as a vulnerable group.

The legal norms currently in force in the Polish national order in the area of the Ombudsman's mandate should be considered as broadly consistent and enabling specific actions to be taken, resulting in enhanced protection of TCNs. Thus, both the legal bases shaping the mandate of the Ombudsman in Poland, as well as the actual actions taken, indicate that the Polish solution may be considered a model. In recent years, Poland has faced a sudden influx of a significant number of TCNs, becoming a receiving country (unlike Greece and Sweden, which have been receiving countries for decades) – the analysis indicates the effectiveness of the envisaged legal mechanisms in the area of the Commissioner's activities. On the other hand, this success was also down to the high dynamics of the activities undertaken by the Commissioner's office team, the transparency of these activities and the provision of extensive feedback on the activity of the office to civil society. This is not the case for the Greek and Swedish Ombudsmen, whose activity in the area of migration matters is either less (Greece) or more limited in terms of the range of activities undertaken (Sweden). Thus, the Commissioner's office in Poland may be considered an office for all seasons,⁷⁶ providing effective *ad hoc* protection to doubly vulnerable groups.

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⁷⁶ Gregory, "An Office for all Seasons?," 107.

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