



RAFTO

Award statement 27.09.2018

THE RAFTO PRIZE 2018 IS AWARDED TO THE POLISH LAWYER ADAM BODNAR AND THE INSTITUTION HE LEADS, THE OFFICE OF THE COMMISSIONER FOR HUMAN RIGHTS, FOR THE IMPORTANT STANCE TAKEN IN THE FACE OF CURRENT POLITICAL DEVELOPMENTS IN POLAND.

- Defender of minority rights and judicial independence in Poland

A key function of the Ombudsman, the Commissioner for Human Rights, is to ensure that the public authorities secure and respect the human rights of all members of Polish society. As Commissioner, Adam Bodnar has highlighted the crucial role played by independent Ombudsman institutions in safeguarding human rights in Poland - and other countries - where such actors and institutions come under attack.

To guarantee fundamental human rights for all, it is necessary to maintain the independence of the judiciary, a free press, and an active civil society. Protection of the interests of minorities is a significant democratic value. Democracy is fragile when it is reduced to the will of the majority and when human rights, minority rights and the rule of law are undermined. Since Law and Justice (PiS) won the Polish election in October 2015, the party has used its majority in the National Parliament to adopt legislation that reduces the independence of the courts and centralizes state powers. New laws grant the government control of state media and place severe limits on freedom of information and political lobbying. The rights of vulnerable groups have been repeatedly ignored.

In this situation, the Commissioner for Human Rights is an important defender of judicial independence and minority rights. As an independent ombudsman, Adam Bodnar stands out as an advocate of democracy, a defender of minorities and fundamental human rights.

Ombudsman Bodnar: A human rights defender

On 9 September 2015, Adam Bodnar took the oath in the Polish Parliament as the country's seventh Commissioner for Human Rights. The Ombudsman and his staff provide expert opinion on new laws, produces independent reports, and calls attention to proposed laws that may be unconstitutional. His office also investigates issues involving equality before the law and discrimination against vulnerable. Since his appointment, Adam Bodnar has focused in particular on minority rights and the vulnerable situation of migrants, women, ethnic and national minorities, persons with disabilities and sexual minorities in Poland. In this work, Bodnar is an important voice speaking against hate-speech and

RAFTO FOUNDATION FOR HUMAN RIGHTS

Menneskerettighetenes plass 1 / N-5007 Bergen, Norway

Ph. +47 55 21 09 30 / Fax +47 55 21 09 59 / E-mail: rafto@rafto.no / Org.nr. 877155102 / www.rafto.no

violence against such minority groups.

As Ombudsman, Bodnar works for human rights on various levels: from monthly visits to Polish provinces, meeting people facing challenges in relation to tenancy contracts, pension entitlements, and pollution in their neighborhoods, to national and international campaigns for human rights. Bodnar has criticized Polish anti-terror legislation for its violation of human rights standards and lack of review by the Constitutional Court. He provides legal assistance to migrants and insists that the constitution obliges the government to guarantee the rights of national and ethnic minorities. In 2015, he took legal action against a public printing company that refused to print publicity material for an LGBT organization on the grounds that it infringed their right to access a public good. He has also commented on the Polish education system, arguing for inclusion of subjects like human rights and tolerance in the school curriculum. Bodnar exposes how government policies contribute to increasing xenophobia and legitimizes hate crimes against vulnerable groups:

“This is the moment when words turn into deeds. About once a week, or every two weeks we receive a report of a racial beating”
– Adam Bodnar (Radio Poland)

Independent courts and human rights are key factors in a democracy

Poland established the office of the Commissioner for Human Rights in 1988; it has been a model for the establishment of similar offices in other Central and East European countries. Since Poland's accession to the EU in 2004, the Commissioner works as so-called equality body. Furthermore it is the National Preventive Mechanism to the UN Convention Against Torture and monitoring body under the UN Convention on Rights of Persons with Disabilities

At the same time, the democratically elected government in Poland has over the last three years been introducing changes that challenge the work of the Ombudsman. In a political game which pits majority rights against the principles of the rule of law, the Constitutional Tribunal has been sidelined and court reforms now grant politicians power to discipline and dismiss judges. Poland's new "normal" severely challenges the independence of courts, the freedom of media and institutions intended to protect the rights of minorities and vulnerable groups.

Ombudsman in a storm

At a time when freedom of expression is being increasingly circumscribed and those who stand up to the majority risks paying a high price, Adam Bodnar is an important voice. He has attempted to reverse changes in the law that infringe the legal protections of vulnerable groups, and has taken an active role in defending

the independence of the judiciary and criticizing judicial reforms:

“The Polish government is concentrating power in its hands, subordinating public media, the secret services and the prosecutor’s office. The independence of the judiciary has already been badly damaged. Due to changes implemented in last two years the Constitutional Court has lost its ability to effectively control legislation of political importance”

- Adam Bodnar (Politico)

In reaction to Bodnar’s advocacy, the very existence of the office of the Commissioner for Human Rights is now under threat, and Adam Bodnar attracts public hatred. Members of the ruling Law and Justice party, with support in the media and elsewhere, are undermining the Ombudsman’s independence, and there have been proposals that his office should lose its constitutional protection. The government is often not responding to the Ombudsman’s letters, and his recommendations are increasingly ignored or marginalized.

Bodnar and other independent voices are accused of spreading misinformation and are subject to harsh criticism, hate speech and personal threats in state media. A proposal to sack Bodnar has been made by politicians of the ruling party, and recently, by a judge of the Constitutional Court appointed by Law and Justice; this makes his work more difficult, casting doubt on his independence and integrity. The Ombudsman’s budget has also been significantly cut and his case load increased.

These changes restrict the institution’s ability to safeguard human rights, but Adam Bodnar and his staff continue to bravely and clearly oppose the legal reforms and defend human rights in Poland.

In defense of judicial independence and human rights

In accord with its international human rights obligations, the Polish state is required to facilitate the Ombudsman’s human rights work. His work must be facilitated via access to information, funding, and independence. The attack on judicial independence is unacceptable, as pointed out by the EU Commission, the UN High Commissioner for Human Rights, the Venice Commission, and the OSCE Office for Democratic Institutions and Human Rights.

Poland must also ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, and the additional protocols on economic, social and cultural rights, children’s rights, and the rights of persons of disability. Adam Bodnar’s important work shows

these vulnerable groups to be particularly at risk, as pointed out by the UN High Commissioner for Human Rights.

The Rafto Prize for 2018 to Adam Bodnar and the Ombudsman for Human Rights highlights the rolling back of democracy and human rights protections in Poland. The conflict over the Polish Constitutional Tribunal and the Supreme Court are important internationally because they are symbolic of an alarming tendency where the independence of courts increasingly is under political pressure. It is crucial that the international community, the EU, Norway and other European countries take a clear stance against human rights violations and attacks on the rule of law and minority rights that take place in our own region.

The Rafto Foundation, Bergen, Wednesday 15 August 2018

The Rafto Prize will be presented at 18.00 on Sunday 4 November 2018 at The National Stage, Bergen

Adam Bodnar, being the civil servant, cannot accept the prize money awarded along with the Rafto Prize. The Rafto Foundation will identify and donate the prize money to civil society working for human rights in Poland.

Resources:

The Commissioner for Human Rights in Poland: www.rpo.gov.pl

Report: Summary of the report on the activity of the Commissioner for Human rights in 2016 with Comments on the Observance of Human and Civil rights and Freedoms (2017)
https://www.rpo.gov.pl/sites/default/files/Summary_2016_EN.pdf

Report: UN High Commissioner for Human Rights, Poland (2018)
<http://lib.ohchr.org/HRBodies/UPR/Documents/Session27/PL/PolandHCLetter.pdf>

Report Human Rights Watch: Eroding Checks and Balances Rule of Law and Human Rights Under Attack in Poland (2017)
<https://www.hrw.org/report/2017/10/24/eroding-checks-and-balances/rule-law-and-human-rights-under-attack-poland>

E-book: "Ombudsperson institutions in Europe before ECHR and COE", Dagmara Rajska, Zuzanna Rudzinska-Bluszcz (editoreKey, 2016)
<https://books.google.no/books?id=malgDAAAQBAJ&pg=PA21&lpq=PA21&dq=adam+bodnar+migrants&source=bl&ots=pP1X065poJ&sig=3jY0sIWjXqbINWPmFnRWSvLb8VE&hl=no&sa=X&ved=0ahUKEwjvu6jy7LLbAhWDVywKHQX1CNO4ChDoAQhQMA#v=onepage&q=adam%20bodnar%20migrants&f=false>

Articles:

Business Insider: Poland's top human rights official is under fire for saying that Poland took part in the Holocaust (23/6-2017)

<http://www.businessinsider.com/ap-polish-human-rights-official-under-fire-for-holocaust-remark-2017-6>

HRW: Poland's Government Devastates its Supreme Court (03.04.2018)

<https://www.hrw.org/news/2018/04/03/polands-government-devastates-its-supreme-court>

Politico: Adam Bodnar: Europe can save Poland from darknes (04.10.2018)

<https://www.politico.eu/article/poland-judiciary-rule-of-law-europe-must-intervene/>

Politico: Warsaw grabs purse strings of Polish NGOs (12.08.2017)

<https://www.politico.eu/article/pis-polish-ngos-fear-the-governments-embrace/>

Radio Poland: Racial tension escalating in Poland: human rights ombudsman (08.03.2016)

<http://www.thenews.pl/1/9/Artykul/243728,Racial-tension-escalating-in-Poland-Human-rights-ombudsman>

Verfassungsblog, Agnieszka Grzelak: "Choosing between two evils: the Polish Ombudsman's Dilemma" (06.05.2018)

<https://verfassungsblog.de/choosing-between-two-evils-the-polish-ombudsmans-dilemma/>

Wise Europa, blog post by Adam Bodnar: The end of Rechtsstaat? Rule of law in Poland and in the European Union

<http://wise-europa.eu/en/2017/10/05/the-end-of-rechtsstaat-rule-of-law-in-poland-and-in-the-european-union-2/>