

**REPORT**  
on the Activity  
of the Human Rights Defender

**in the Area of Equal  
Treatment**

in 2014  
and on the Observance of the  
Principle of Equal Treatment  
in the Republic of Poland

This Report implements Article 212 of the Constitution of the Republic of Poland of 2 April 1997 (Dz. U. No. 78, item 483, as amended), which stipulates that the Human Rights Defender shall each year present information to the Sejm and the Senate about his/her activities and the observance of human and civil rights and freedoms, including, pursuant to Article 19(1)(1)-(3) of the Act of 15 July 1987 on the Human Rights Defender (Dz. U. of 2014, item 1648, consolidated text), the information about the conducted activities in the area of equal treatment and the results thereof; the observance of the principle of equal treatment in the Republic of Poland, as well as the conclusions and recommendations regarding measures which should be taken in order to ensure observance of the principle of equal treatment. Furthermore, the Report implements Article 19(2) of the Act on the Human Rights Defender which imposes an obligation to make the information public.

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**Report on the Activity of the Human Rights Defender  
(Ombudsman in Poland)  
in the Area of the Equal Treatment in 2014  
and the Observance of Equal Treatment Principle  
in the Republic of Poland**

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# INTRODUCTION

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Pursuant to the Act of 3 December 2010 on the implementation of some regulations of the European Union regarding equal treatment<sup>1</sup> (the Act on equal treatment), the Human Rights Defender shall perform tasks of the authority competent to counteract violations of the principle of equal treatment. The scope of the basic tasks of the Defender includes examination of applications sent to her, including complaints relating to violation of the principle of equal treatment, and undertaking appropriate steps in accordance with the Act on the Human Rights Defender. Within the period covered by the Information, the Office of the Human Rights Defender received 1198 cases concerning broadly understood issues of equal treatment. In the opinion of the Defender, however, this number is disproportionate to the actual scope of discrimination in Poland. It should be kept in mind that people at risk of discrimination and social exclusion are often characterized by the lack of trust in public institutions, low legal awareness and lack of knowledge of the authorities offering assistance to victims of discrimination.

For these reasons, the Act imposes the obligation to conduct proactive activities, including analysis, monitoring and support of equal treatment of all persons, to conduct independent surveys concerning discrimination, as well as prepare and publish independent reports and make recommendations on problems related to discrimination. Bearing the content of Article 1 of the Act on equal treatment in mind, the analytical and research activities are limited to the following grounds of discrimination: sex, race, ethnicity, nationality, religion, denomination, beliefs, disability, age and sexual orientation.

As a part of these obligations, in 2014, the Human Rights Defender published three reports in the series "Equal Treatment Principle. Law and Practice":

- *Service of Deaf and Deaf-Blind Persons in Public Administration Offices. Analysis and Recommendations*
- *Equal Treatment of Patients - Non-heterosexuals in Health Care. Analysis and Recommendations*
- *Support for the Mentally Ill in the Labour Market. Analysis and Recommendations*

The Defender also commissioned anti-discrimination studies on the access of persons with disabilities to higher education, the reconciliation of social and professional roles and non-discrimination of young parents in the labour market, as well as the access to lessons in ethics and religion for religious minorities in public schools. The results of these studies will be published in a report in 2015.

Bearing in mind the need to ensure full transparency of actions of the Defender and proper identification of major problems in the field of implementation of the principle of

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<sup>1</sup> The Act of 3 December 2010 (Dz.U. No. 254, item 1700).

equal treatment, topics of studies which are to be performed in the coming years are selected on the basis of an open consultation procedure addressed primarily to scientific and research institutions and social organizations offering help to victims of discrimination.

Monitoring of the activities of public institutions from the point of view of preventing discrimination was also continued. The case law of Polish and international courts related to the implementation of the principle of equal treatment was also analysed in the normal course.

Since Poland ratified the Convention on the Rights of Persons with Disabilities<sup>2</sup>, the Human Rights Defender was also designated as the independent body that supports, protects and monitors implementation of the Convention. The most important observations related to the observance of rights and freedoms of persons with disabilities have been included in the Defender's report on the implementation of obligations resulting from the Convention on the Rights of Persons with Disabilities by Poland between 2012 and 2014. The report was supplemented with the results of monitoring of the implementation of some of the provisions of the Convention at the local government level and the conclusions resulting from the public consultation of the report.

Bearing in mind the specific nature of tasks related to the implementation of the principle of equal treatment and monitoring of the implementation of the Convention on the Rights of Persons with Disabilities, a Department of Equal Treatment and Protection of Rights of Persons with Disabilities was set apart in the organizational structure of the office. The objective of the Department is to ensure proper implementation of the tasks of the Defender as an independent equality body and an independent body for the promotion, protection and monitoring of the implementation of the Convention on the Rights of Persons with Disabilities.

Moreover, three expert committees, i.e. the Expert Committee on Elderly People, the Expert Committee on People with Disabilities and the Expert Committee on Migrants, carry on working. The Expert Committees are intended to support the Defender in carrying out her statutory tasks, in particular with regard to the monitoring of the observance of the principle of equal treatment and the implementation of the Convention on the Rights of Persons with Disabilities. The Commission is composed of the representatives of the scholarly community and NGOs involved in the protection of the rights of persons with disabilities, the elderly and migrants. The Committees' work is based on cyclical meetings during which priority actions in various areas are discussed and new activities are initiated. At the same time, working groups are operating within the Committees, analysing specific issues related to above-mentioned social groups. The activities of members of the Committees, prominent experts in their fields, are of a social nature.

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<sup>2</sup> Convention on the Rights of Persons with Disabilities of 13 December 2006 (Dz. U. of 2012, item 1169).

# I. ACTIVITY OF THE HUMAN RIGHTS DEFENDER IN THE AREA OF EQUAL TREATMENT AND ITS RESULTS – GENERAL MOTIONS, SELECTED INDIVIDUAL CASES AND OTHER ACTIONS

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The activity of the Defender in the area of equal treatment on the grounds of race, ethnic origin, nationality, age, sex, sexual orientation, gender identity, religion, denomination or beliefs is presented below. Due to new tasks of the Defender in the area of support, protection and monitoring of implementation of the Convention on the Rights of Persons with Disabilities, information on preventing discrimination on grounds of disability is presented in a separate chapter.

## 1. Preventing discrimination on the grounds of race, ethnicity or nationality

### a) Hate crimes

In her motion to the Minister of the Interior<sup>3</sup>, the Defender raised the issue of the creation of a system of integrated monitoring of hate crimes<sup>4</sup>. As a part of work of the Council for Counteracting Racial Discrimination, Xenophobia and Related Intolerance<sup>5</sup>, among others, the establishment of such a system for incidents of a racist, xenophobic, homophobic nature, or other events on discriminatory grounds was agreed on. The system was to be an electronic platform, a source of current information about events, facilitating communication between the entities incorporated into the system, allowing the creation of statistical summaries and reports, and contributing to effective response of the relevant public authorities. In the Defender's opinion, the platform, as the first systemic measure of this kind enabling monitoring of hate crimes not only on grounds of race and nationality, would largely contribute to broadening knowledge of the scale of the phenomenon, and consequently to the appropriate responses to cases of discrimination.

The Minister of the Interior<sup>6</sup> informed only that the monitoring of hate crimes is conducted by the Human Rights Protection Team, operating within the Department of Control,

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<sup>3</sup> I. 816.15.2014 from 22 July 2014.

<sup>4</sup> The postulate to establish such a system has been repeated by the Defender for several years, see, e.g., recommendations in: *Preventing violence motivated by race, ethnic origin and nationality. Analysis and Recommendations*, Human Rights Defender Bulletin. 2012 Sources, No. 4.

<sup>5</sup> Operating at the Ministry of Administration and Digitization.

<sup>6</sup> Letter of 25 August 2014.

Complaints and Petitions of the Ministry<sup>7</sup>. The Defender sent further motion<sup>8</sup> with the request for presenting figures relating to the monitoring of hate crimes conducted by this Team and the characteristics of the phenomenon developed based on this data, collected since 2013. She also asked for notification whether the undertaken actions gave rise to the formulation of demands for organizational or legislative changes aimed at raising the level of legal protection of groups at risk of discrimination<sup>9</sup>. Moreover, the Defender reiterated the request for work towards the establishment of an integrated system<sup>10</sup>. In reply, the Minister of the Interior<sup>11</sup> presented the results of a qualitative analysis of the monitored crimes motivated by nationality, ethnic origin, race and religion<sup>12</sup>. The Defender notices with satisfaction the possibility of real strengthening of legal protection of victims of hate crimes. On 19 November 2014, the Acts of 12 September<sup>13</sup> on the ratification of the Council of Europe Cybercrime Convention<sup>14</sup> and on the ratification of the Additional Protocol thereto<sup>15</sup>, extending its effect to the offences concerning racism or xenophobia<sup>16</sup>, entered into force. Since 2008, the Defender has repeatedly appealed to the Ministry of Justice to undertake work for the ratification of the Convention. The ongoing work on the implementation of the directive establishing minimum standards on the rights, support and protection of victims of crime<sup>17</sup>, due to which further measures improving the situation of victims should be introduced<sup>18</sup>, should also be indicated. We also note further improvements in organizational solutions regarding the prosecution of hate crimes on the Internet<sup>19</sup>.

<sup>7</sup> The Team collects information based on notifications of non-governmental organizations, private entities, organizational units of the Police, as well as information contained in newspaper articles and reports of NGOs. The Team turns to the relevant organizational units of the Police, prosecutor's office and the courts for information on the activities undertaken in relation to these events, as well as information about the way the conducted proceedings ended, in particular the decisions or judgements issued.

<sup>8</sup> VIII. 816.2.2014 of 30 December 2014.

<sup>9</sup> See the National Action Plan for Equal Treatment for 2013-2016, the area of preventing violence and enhancing protection of people experiencing violence, objectives 3.2, 3.3, 3.4.

<sup>10</sup> The project implemented as a part of work of the Council for Counteracting Racial Discrimination, Xenophobia and Related Intolerance entitled *Map of Prejudice: Repository of survey-based data*. It will be a tool for collecting and analysing data from surveys on attitudes toward ethnic, national and social groups being the most common objects of discrimination and hatred.

<sup>11</sup> Letter of 30 January 2015.

<sup>12</sup> The analysis included 372 cases from the period January 2013 – November 2014.

<sup>13</sup> Dz.U. of 2014, item 1514 and item 1515.

<sup>14</sup> The Convention signed in Budapest on 23 November 2001.

<sup>15</sup> The Additional Protocol to the Council of Europe Cybercrime Convention related to the penalization of acts concerning racism or xenophobia committed through computer systems, signed in Strasbourg on 28 January 2003.

<sup>16</sup> The Protocol obliges the States to penalize the distribution or publication of racist and xenophobic material in the computer systems.

<sup>17</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ EU L 315/57).

<sup>18</sup> The Defender is monitoring work in this area, among others, through participation in the meetings of the Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance at the Ministry of Administration and Digitization.

<sup>19</sup> The Department for Combating Cybercrime of the General Police Headquarters conducts ongoing monitoring of the Internet in relation to publication of hate speech, posted on fora and websites,



Bearing in mind the objective to ensure appropriate protection measures for the discriminated entities – the Office is constantly monitoring the course of criminal proceedings, especially in the area of preparatory proceedings, in cases of hate crimes.

The continuation of activities aimed at proper preparation of the relevant authorities and government services to respond to racist or xenophobic incidents should be considered extremely important. Therefore, the Defender undertakes<sup>20</sup> or supports further initiatives aimed at strengthening competence in this area<sup>21</sup>, as well as the exchange of experience between different entities<sup>22</sup>.

In the opinion of the Defender, it is also worth considering taking measures to increase the presence of the representatives of minority groups among the officers. In a letter to the Commander in Chief of the Police<sup>23</sup>, the Defender asked, among others, for notification whether activities in this regard are planned<sup>24</sup>. In reply, the Plenipotentiary of the Commander in Chief of the Police for Protection of Human Rights<sup>25</sup> informed that the recruitment procedure into the Police is functioning since 2005 and the internal rules applied by the Police ensure equal opportunities to all candidates and objectivity in their evaluation. Moreover, the selection process for the Police service is characterized by openness, competitiveness and voluntary character of participation. Unfortunately, no evidence indicating specific actions aimed at increasing the presence of the representatives of specific social groups among the officers was noticed.

## **b) Criticism of the sale of items associated with the Third Reich at online auctions**

The proceedings related to the infringement of personal interests of a commercial entity continue<sup>26</sup>. The case concerns the modification of legally protected graphic sign of an Internet portal involved in sale by changing two letters from its name into sig runes (the sign of the Nazi German National Youth). The modified sign was used to organise a protest cam-

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which can fulfil the criteria of prohibited acts typified in Articles 256, 257 and 119 of the Penal Code. From 1 October 2014, units for combating cybercrime, which are also involved in the monitoring of hate speech, have been established in all the Voivodeship Headquarters of the Police – VIII.815.15.2014 of 14 January 2015.

<sup>20</sup> On 4 November 2014, a panel discussion entitled *Role of justice in fighting hatred and discrimination*, which was organized by the Human Rights Defender, the President of the Constitutional Tribunal and the Auschwitz-Birkenau State Museum, was held at the Auschwitz Memorial Site.

<sup>21</sup> The Defender addressed a special petition to the Police officers participating in training entitled *Understand Evil. Workshops for Superiors in the Police*. Representatives of the Defender participate in the project of the Helsinki Foundation for Human Rights, entitled *Raising awareness of judges and prosecutors in the field of equal treatment*, the aim of which is to develop a guide.

<sup>22</sup> On 13 February 2014, the operation of the Police Platform against Hatred, as a form of cooperation between the Police and NGOs in preventing and combating hate crimes, was inaugurated in the Office of the Defender.

<sup>23</sup> VIII.815.15.2014 of 16 December 2014.

<sup>24</sup> See point 11 of the Final Notes of the Committee on the Elimination of Racial Discrimination of 20 February 2014 on the combined 20th and 21st periodic reports provided by Poland, No.: CERD/C/POL/CO/20-21.

<sup>25</sup> Letter of 14 January 2015.

<sup>26</sup> File No. I ACa 841/13.

paign on the streets of Warsaw to draw attention to the sale of items referring to the Third Reich at online auctions of the plaintiff.

The Defender questioned the validity of the categorical support expressed by the Court of first instance for the primacy of the protection of personal interests of the commercial entity over the criticism motivated by the protection of public interests<sup>27</sup>. The Court of Appeal in Warsaw agreed with the Defender and dismissed the action, stating that artistic criticism of the activity of the portal is not unlawful and should be subject to constitutional protection<sup>28</sup>. However, the plaintiff did not share the position of the Court of Appeal and filed a cassation appeal. The Defender is still participating in the proceedings<sup>29</sup> and expects decision on the case from the Supreme Court.

### **c) Protection of the rights of the Roma minority**

The specific situation of the Roma community has been monitored by the Defender for many years.

In 2014, relatively often the Defender was receiving signals about the acts of vandalism or even active aggression directed against the Roma<sup>30</sup>. However, particularly dangerous incidents occurred in Andrychów. In connection with this matter, in her motion to the Minister of Administration and Digitization<sup>31</sup> the Defender expressed concern about information relating to attacks on the Roma community. Containing the current situation, as well as prevention of similar conflicts in the future, requires undertaking firm actions also by the government administration. Cases examined at the Office of the Defender showed that, in emergency situations, local authorities cannot cope without the support of the central authorities. The Defender appealed to the Minister of Administration and Digitization to start mediation with the participation of local authorities and representatives of the parties to the conflict. In reply<sup>32</sup>, the Minister shared the view that in this situation the government administration cannot remain passive and pointed to the involvement of the Małopolska Voivode in the amicable resolving of the conflict.

In recent years, positive changes in the situation of the Roma community have also taken place, largely thanks to the funding from the governmental Programme for the Roma community in Poland. However, some problems encountered by this community have been unresolved for years. In the letter to the Minister of Administration and Digitization<sup>33</sup>, the Defender pointed out that the Roma, especially those belonging to Bergitka Roma group, still live on the margins of society without any real possibility of improvement in their situation. The fact was confirmed by visits of the employees of the Office of the Defender<sup>34</sup>. Conditions

<sup>27</sup> RPO-727839-I/13 of 5 May 2013.

<sup>28</sup> Judgement of 9 January 2014.

<sup>29</sup> Answer to the cassation appeal – VII.801.4.2014 of 25 June 2014.

<sup>30</sup> *Inter alia*, the case of assault on a woman of Roma origin in Leszno (V.816.39.2014) or vulgar inscriptions appearing on walls in Siemianowice Śląskie with clearly anti-Roma content (V.816.41.2014).

<sup>31</sup> V. 816.53.2014 of 12 July 2014.

<sup>32</sup> Letter of 25 July 2014.

<sup>33</sup> V.816.52.2014 of 13 August 2014.

<sup>34</sup> See *Activities of the Human Rights Defender for the Roma minority in the Małopolska Voivodeship. Report on the visits to the Roma Settlements*, ed. 2014.

in the majority of the visited settlements are very bad. Local government units are not able, independently and on their own, to solve the problem of improving the living conditions of the Roma community settled in their area. An effective solution may be to create a separate comprehensive programme, independent from the Programme for the Roma Community, whose objective would be to plan and finance the improvement of the housing and living conditions in the Roma settlements across Poland. Situation of the Roma is worsened by extreme poverty, caused by lack of regular income, low level of education and the consequent lack of professional qualifications allowing competition in the labour market<sup>35</sup>.

Therefore, any activating measures, ranging from information meetings, training or internships, to active support in the search for employment offers, are desirable. The problem persisting in relations between the Roma and local government authorities or employees of commune offices is verbal submission of applications, as well as verbal responses of civil servants, which means that in the case of a complaint about the way a matter is settled, there is no possibility to examine the legitimacy of the accusations made. Such situations would be prevented by gradual increase in knowledge of the Roma about their rights. An immediate solution would be to popularize the institution of social assistant who would mediate in relations between the Roma, interested in sorting out their affairs in the office, and the local administration.

Actions of the Defender have brought a positive effect: in response to the report and the petition, the Minister of Administration and Digitization made efforts to increase the amount of special reserve of the budget, to be used for repairs and investments in Roma settlements<sup>36</sup>.

In order to improve the situation of this community it is necessary to ensure equal access to education for the Roma children. The postulates of the Defender related to ensuring access to pre-school and extraschool education with an extended programme of Polish language instruction for children are still valid. At the same time, all attempts to place Roma children in special schools only because of their problems with adaptation or insufficient knowledge of Polish should be thwarted, as should the plans to create classes only for the Roma at schools. The fact that the problem of the Roma-only classes in schools remains valid is demonstrated by the case of one of primary school in Poznań where such a solution was adopted. As a part of the investigation, the Defender requested the Ministry of National Education to examine the matter<sup>37</sup>. In reply to this petition, the Ministry of National Education turned to the Wielkopolska Education Officer to undertake measures to end the practice of creating separate classes for pupils of Roma origin<sup>38</sup>. According to the explanations provided<sup>39</sup>, the expected period of the end of functioning of Roma class, which entails

<sup>35</sup> These observations were also confirmed in relation to the camp in the area of Wrocław – V.816.16.2014.

<sup>36</sup> Letter No. DWRMNIÉ-WMR.6222.71.2014, received by the Office of the Human Rights Defender on 9 September 2014.

<sup>37</sup> V.813.4.2014 of 11 December 2014.

<sup>38</sup> Letter of 30 December 2014.

<sup>39</sup> Letter from the MNE of 9 February 2015. The departments were supposed to be created at the request of an organization representing the Roma, in order to create conditions to undertake education on an early level by a large group of teenage Roma who, until now, have attend school unsystematically or have not attend it at all.

full integration of Roma pupils in other classes, is scheduled for the end of the school year 2014/2015.

#### **d) Education of juvenile foreigners**

The Defender continued her activities related to education of children staying in the centres for foreigners<sup>40</sup>. In her petition to the Minister of National Education<sup>41</sup>, the Defender noted that those using social assistance in the centres for foreigners applying for refugee status were usually sent to schools indicated by social workers of these centres. Not all children pursued compulsory education. Some schools did not accept minors who came to the centres by the end of the school year. In other cases, the centre delayed enrolling the child to school, preceding this moment with an adaptation period lasting even several weeks, which was meant to be used for learning Polish. In the Defender's opinion, children included in compulsory education should be enrolled to schools immediately after admission to the centre. It is worth considering whether the core curriculum implemented in relation to juvenile foreigners could be standardized by, e.g., defining minimum requirements for pupils. The principles of permitting foreigners to take the external examinations (primary school final exam and lower secondary school final exam) require a systemic change. In most schools, the obligation to organize additional Polish language lessons for foreigners was implemented. It is necessary for the Ministry of National Education to develop rules for communes interested in employing a full-time cultural assistant. Currently, the assistants are employed for the duration of a given project implemented by NGOs.

Children staying in guarded centres for foreigners are in a far worse situation. Teaching this group of foreigners takes place only on the basis of an agreement between the Border Guard, public schools and education authorities, and depends only on the will and capabilities of these institutions. Therefore, the proposal, formulated repeatedly by the Defender, for the introduction of a statutory ban on placing juveniles and their guardians in guarded centres is justified.

In reply, the Minister of National Education<sup>42</sup> pointed out that currently delays in enrolling children to schools basically do not take place. Moreover, Poland is facing new challenges connected with the increasing number of children from immigrant families<sup>43</sup>. These conditions require development of intercultural competence of the school staff, adaptation of the content and methods of didactic and educational work to the needs of pupils and their parents and taking actions which will make the school environment friendly to culturally different pupils<sup>44</sup>.

<sup>40</sup> See *Execution of the Right of Juvenile Foreigners to Education*, Equal Treatment Principle. Law and Practice, No. 12.

<sup>41</sup> V.540.11.2014 of 16 June 2014.

<sup>42</sup> Letter of 9 December 2014.

<sup>43</sup> In the school year 2012/2013, according to data of the Education Information System, in all types of public and non-public schools and at all levels of the education system, there was 7311 foreigners, and in the next school year their number increased to 8174 (out of a total of approx. 4.3 million pupils).

<sup>44</sup> Actions in this area are undertaken, in particular, by the Centre for Education Development. In 2014, the Centre began implementation of a 3-year project *Diversity among us*, whose main objective is creation of the Polish Intercultural Competence Framework for the educational system. It is to form a

The case is still ongoing – the Defender expects introduction of the announced changes in law.

## 2. Preventing discrimination on the grounds of age

### a) Proposal for the introduction of further facilitations of voting for elderly persons and persons with disabilities

In her petition to the Head of the Sejm Extraordinary Committee for Codification Changes,<sup>45</sup> the Defender submitted her observations and recommendations on the introduction of further measures supporting participation of citizens with special needs in the electoral process.

In the opinion of the Defender, during work on supplementing the Electoral Code with the new institutions which facilitate voting for people with disabilities and advanced in years, the proposal to extend the circle of voters eligible for the postal ballot procedure should be considered. Currently, it does not include persons advanced in years, temporarily sick and with limited mobility or encountering other barriers which prevent them from going to the polling station. It is also worth taking into consideration the change in deadlines for notification of the voter's intention of using the postal ballot and bringing them closer to the polling day. The postulate of the introduction of the possibility for a voter to add his or her name to a chosen polling district seems accurate. The Ordinance defining the technical conditions for the polling station adapted to the needs of persons with disabilities should also apply to the immediate vicinity of polling stations. To this end, it is necessary to change the authorization to issue a regulation, contained in the Electoral Code. The Defender also postulates for the introduction of a statutory obligation for communes to organize free transport for elderly voters and voters with disabilities to the polling stations. It is worth introducing a solution related to voting in the so-called separate electoral districts (*inter alia*, health care institutions, welfare care homes), according to which the district electoral committee would have to agree with a higher degree committee on the order on the application and resignation from the use of an auxiliary ballot box. The right solution would also be the introduction of a procedure allowing public authorities to efficiently inform each of the voters about the most important issues related to the elections in the form of an individual notice.

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comprehensive, coherent system of concepts, objectives, standards, regulations, programmes of education and training of teaching staff and guidance for schools and the school-related environment – aimed at shaping intercultural competences of pupils at all stages of education, as a part of formal education. The objective of the project is, among others, the preparation of guidelines for the functioning of pupils of different nationalities in the Polish school, the establishment of rules for providing pupils of this category with psycho-pedagogical support, the indication of the possibilities to include parents in the process of cultural adaptation of pupils, the inclusion of local authorities and pedagogical supervision in the process of building an environment conducive to the formation of intercultural competence of pupils.

<sup>45</sup> I.602.1.2014 of 20 January 2014.

Some of the postulates presented by the Defender were included in the drafted and adopted Act amending the Act – Electoral Code and some other acts.<sup>46</sup> This includes, among others, extending the time which the voters have to notify the intention to use the postal ballot, enlarging the group of voters eligible to postal ballot and the possibility of adding oneself to the list of voters in any given polling district. Some of the proposed solutions were also included in the draft Act amending the Act – Electoral Code, prepared by the President of the Republic of Poland in January 2015 (*inter alia*, the procedures for informing voters about the most important issues related to the elections in the form of personal notification).

**b) Creating separate electoral districts in local referenda (*inter alia*, in health care institutions and welfare care homes)**

The Office of the Defender carried out an analysis of the issues of the functioning of separate electoral districts created, among others, in health care institutions or welfare care homes, which enable patients and inmates – people with disabilities, the ill, the elderly and those who find it difficult to walk – to actively participate in voting. This solution is very desirable and successfully applied pursuant to the Electoral Code<sup>47</sup> in elections held within the Republic of Poland. The provisions of Article 12 § 4-6 of the Electoral Code define the procedure for the creation of separate districts<sup>48</sup>. Meanwhile, the Act on the local referendum<sup>49</sup> does not contain similar regulations. Article 54 of the above-mentioned Act provides only that the referendum must be carried out in permanent electoral districts. Hence, there are opinions that creating separate districts in the case of a local referendum is not a statutory obligation and, as practice shows, during referenda such districts are not always established. Thus, the analysis indicated that the rules clearly indicating the need for creating separate electoral districts every time should be introduced to the Act on the local referendum. In relation to the above matter, the Defender turned to the National Electoral Commission, which fully supported<sup>50</sup> the need for changes in the Act on the local referendum.

Then, the Defender petitioned the Head of the Local Self-Government and Regional Policy Committee of the Sejm. As a result of the undertaken work<sup>51</sup>, the Act introducing the changes postulated by the Defender was adopted<sup>52</sup>.

**c) Elderly people in the financial services market – difficulties in using banking services by people proving their identity with an identity card issued for an indefinite period**

Press reports suggested that banks hinder elderly people using an identity card issued for an indefinite period from using banking services. These people not only cannot use the

<sup>46</sup> The Act of 11 July 2014 (Dz. U. of 2014, item 1072).

<sup>47</sup> The Act of 5 January 2011 (Dz. U. No. 21, item 112, as amended).

<sup>48</sup> Separate electoral districts are created in health care institutions, welfare care homes, prisons and pre-trial detention centres, as well as in external facilities of such prisons and detention centres.

<sup>49</sup> The Act of 15 September 2000 (Dz. U. of 2013, item 706).

<sup>50</sup> Letter of 8 October 2013.

<sup>51</sup> Sejm Paper No. 2751.

<sup>52</sup> The Act of 23 October 2014 amending the Act on the local referendum (Dz. U. of 2014, item 1871).

financial instruments offered by banks, but are also deprived of access to their own funds accumulated on the bank account. The practice of banks forced customers to exchange their indefinite identity cards, which in the public perception is seen as an activity infringing the law and discriminating people over the age of 65<sup>53</sup>. The Defender called on the President of the Polish Bank Association to take a stand on this issue and to consider the possibility of removing the noticed irregularities<sup>54</sup>.

The reply<sup>55</sup> emphasised that, according to information held by the Polish Bank Association, irregularities in recording the characteristics of the identity documents with an indefinite period were sporadic and incidental, dictated by technological reasons, and this situation was not caused by the policy adopted by banks, introducing the need for all customers to prove their identity with an ID issued for a specified period. The irregularities found were eliminated by appropriate changes to the IT system. In view of the above, the Defender decided to finish her activity in the case.

#### **d) Health care services for seniors – the need to develop the Alzheimer’s Plan**

As early as 2009, the European Parliament adopted a declaration on making Alzheimer’s disease a priority of the health policy in the European Union countries, recommending development of national Alzheimer’s plans and the European Action Plan. So far, the Polish government has not even presented objectives of such a plan, which raises concerns of the Defender. It is necessary to create appropriate institutional and legal framework at the central level to care for people with Alzheimer’s disease. There is a need to create a network of specialist medical care centres for patients with dementias, providing comprehensive care of specialists. It is also necessary to undertake educational activities in the circles of people potentially at risk of the disease and to raise the level of knowledge of the medical community about dementia diseases<sup>56</sup>. The Defender asked the Minister of Health<sup>57</sup> to take a position on the matter in question, and in particular to undertake actions necessary to implement the National Alzheimer’s Plan.

The Minister of Health informed<sup>58</sup> that he considers it necessary to develop comprehensive solutions addressed to elderly persons, both in the area of health care and social assistance, including patients with Alzheimer’s disease. The medical care for people with Alzheimer’s at the place of their residence is provided and coordinated by general practitioners. In the case there is a need for further examination and specialist consultations, treatment is carried out as a part of outpatient specialist care. If the objective of treatment cannot be achieved within the outpatient treatment, the physician should refer a beneficiary to hospi-

<sup>53</sup> Pursuant to the Act of 24 October 2010 on Census and Identity Cards (Dz. U. No. 217, item 1427, as amended), an ID issued to the person who turned 65 is valid for an indefinite period, if this person asked for such an identity card.

<sup>54</sup> V.7220.189.2014 of 23 June 2014.

<sup>55</sup> Letter of 9 July 2014.

<sup>56</sup> See The situation of people with Alzheimer’s disease in Poland. Report of the HRD, ed. 2014.

<sup>57</sup> V.7011.21.2014 of 30 January 2014.

<sup>58</sup> Letter of 1 April 2014.

tal. Comprehensive care for people with the Alzheimer's disease is not presented separately, however, all the elements of such care are available.

Centralization of the activities related to the diagnosis and treatment of the Alzheimer's disease should be more functional in nature and result from the cooperation of the entire community, while those responsible for the activities in this direction should be the heads of the treatment units. Furthermore, the current rules do not contain a legal basis for the activities of the Minister of Health aimed at creating specialized referral and therapeutic centres.

Currently, work on developing a model of care for chronically ill persons, the elderly and disabled persons, requiring carer's allowances and care benefits, is in progress. This work is carried out by the Ministry of Health in cooperation with the National Health Fund and the Ministry of Labour and Social Policy. The cooperation focuses mainly on issues related to the state of care in the context of tasks of a nurse of primary care and long-term care.

In the absence of the stand of the Minister of Health on the repeatedly signalled issues, namely – the need to develop and implement the National Alzheimer's Plan, the Defender once again asked the Minister of Health whether and when such a plan will be implemented<sup>59</sup>.

In reply<sup>60</sup>, the Minister informed that the Ministry is implementing a number of measures for patients with Alzheimer's disease and, therefore, it does not seem appropriate to create a special programme for this group of patients.

In relation to the communicated decision to abandon the creation of the Alzheimer's plan, once again the Defender requested the Minister of Health to re-examine the problem and consider the implementing a national Alzheimer's plan or indicate alternative measures taken to assist those affected by this disease<sup>61</sup>.

In his reply<sup>62</sup>, the Minister of Health pointed out that in Poland treatment of Alzheimer's disease and other neurodegenerative diseases is undertaken through a number of different specialities and forms of care, such as: geriatrics, neurology, rehabilitation, psychiatry, chronic illnesses, long-term care and pharmacotherapy. Moreover, in the nearest future, there are plans to undertake work aimed at developing new methods on how to diagnose dementia diseases. The Minister believes that these various activities are aimed at ensuring adequate quality of health care services addressed to people affected by Alzheimer's disease.

The case has not been completed and is subject to further analysis regarding taking other actions.

#### **e) Health care services for seniors – difficulties in access to health care services financed from public funds**

One of the fundamental problems in the health care system are difficulties in access to health care services financed from public funds and the need for the patients to await treatment

<sup>59</sup> V.7011.21.2014 of 30 April 2014.

<sup>60</sup> Letter of 27 May 2014.

<sup>61</sup> V.7011.21.2014 of 29 August 2014.

<sup>62</sup> Letter of 25 September 2014.



for a long time. As an example of this state of affairs, the Defender points out to the dramatic situation in terms of access to cataract surgery. The latest report of the Supreme Audit Office states that almost 400 thousand patients await cataract surgery, and the average waiting time is more than one and a half year. The increasing demand for the surgery is a result of the progressive ageing of the Polish society. The disproportion between the offered number of contracted surgeries and the social needs is becoming deeper and deeper. The situation of people waiting in a queue for the cataract surgery is not exceptional. Press reports suggested that similar problems were also encountered in access to physicians of other specialties. The Constitution of the Republic of Poland guarantees the citizens the right to health care. At the execution of this right, public authorities are required to establish a public health service system, which will implement the real accessibility to health care services financed from public funds to the fullest extent possible. The surgery connected with the cataract treatment has been included in the list of guaranteed services, which imposes an obligation on the public authorities to guarantee a real access to the service and makes the social expectations as to the receipt of the service fully legitimate. The Defender asked for taking the necessary steps towards the execution of the constitutional right to health protection by providing universal access to treatment of cataracts<sup>63</sup>.

The Minister of Health explained<sup>64</sup> that the current regulations lay down the rules related to the sequence of providing health care services. Pursuant to the Act on Health Care Benefits Financed from Public Funds, health care services in hospitals and specialist services in outpatient health care are provided to beneficiaries according to the order in which they have reported, in days and hours designated by the service provider who concluded a contract for the provision of health care services with the National Health Fund.

In turn, pursuant to the provisions of the Ordinance of the Minister of Health on medical criteria which the service providers should follow while placing beneficiaries on waiting lists for providing health care services<sup>65</sup>, the service provider classifies and places a beneficiary, with the exception of a beneficiary in emergency cases, on the waiting list for the provision of health care services, following the medical criteria based on current medical knowledge as an "emergency case" or "stable case." When the condition changes, the beneficiary should inform the provider about this fact, who, based on the current condition of the patient, can adjust the waiting list and provide health care services earlier than at the appointed time.

The Ministry of Health constantly monitors the issues concerning queues of people waiting for the procedure of surgical treatment of cataracts, whereas the payer of health care services, insofar as financial resources are available, increases expenditure on these health care services, which certainly translates into increased access to health care services for patients. Expenditure on the provision of health care services for the treatment of cataracts is steadily increasing.

At present, the Defender exhausted legal possibilities of action on the matter, however, she does not accept the reply received.

<sup>63</sup> V.7013.1.2014 of 3 February 2014.

<sup>64</sup> Letter of 6 March 2014.

<sup>65</sup> Ordinance of 26 September 2005 (Dz. U. No. 200, item 1661).

#### **f) Health care services for seniors – low interest of GPs in training in the field of geriatric care**

A persisting problem is the lack of sufficient, with relation to the needs, number of geriatricians, but also low interest of general practitioners in the training offer, enabling them to acquire relevant expertise in dealing with older patients<sup>66</sup>. The Defender requested the President of the Supreme Medical Council<sup>67</sup> to investigate the reasons for this state of affairs and help strengthen the participation of physicians in training in geriatrics.

The Defender received a reply from the President of the Supreme Medical Council<sup>68</sup>, who presented the position in this case and the postulates related to the improvement of the situation in the preparation of physicians in geriatric care. Next, the Defender asked<sup>69</sup> the Head of the Political Cabinet of the Ministry of Health about the matter twice. In reply, the Minister informed<sup>70</sup> about the change in rules for doing speciality, which will contribute to the growth of interest of physicians in the geriatrics speciality. Geriatrics was included in the list of priority areas which allows setting a higher basic monthly remuneration of a resident doctor.

Given the information received, the Defender informed the President of the Supreme Medical Council about the position of the Ministry of Health and completed her action on this matter.

#### **g) Age limit for the function of court enforcement officer**

The issue of re-introduction to the Act on court enforcement officers and enforcement<sup>71</sup> of the age limit after which the court enforcement officers are forced to discontinue further performance of professional activities, raised doubts of the Defender. Pursuant to the regulation in force, the Minister of Justice dismisses a court enforcement officer from the occupied position when the officer turns 70. The provision stipulating mandatory dismissal of a court enforcement officer by the Minister of Justice when the officer reaches 65 was removed from the legal order. Through the re-introduction of the age limit for the profession of court enforcement officer to the legal system, the legislator not only failed to indicate the purpose for this solution, but it can even be considered that an action contrary to the current efforts of the State consisting in extension of professional activity of Poles was taken. At the same time, the justification for the bill amending the acts governing the exercise of certain professions lacks any explanations regarding the merits of the re-introduction of the age limit for

<sup>66</sup> The signals were related to the project entitled “Support for continuing education of medical personnel in the field of geriatric care,” co-funded by the European Social Fund under the Human Capital Operational Programme. The aim of the project is to improve care for persons advanced in years in Poland by improving competence (training) of medical personnel in the field of geriatric care, conducted from 1 March 2012 until 2015 by the Department of Nurses and Midwives of the Ministry of Health in partnership with the Medical Postgraduate Education Centre.

<sup>67</sup> V.7014.36.2014 of 19 March 2014.

<sup>68</sup> Letter of 2 April 2014.

<sup>69</sup> Letter of 17 April 2014 and of 9 September 2014.

<sup>70</sup> Letter of 22 September 2014.

<sup>71</sup> The Act of 27 August 1997 (Dz. U. of 2011, No. 231, item 1376, as amended).

the court enforcement officers. In accordance with the provisions of the EU Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, Member States may allow differences of treatment on grounds of age which do not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary. In the opinion of the Defender, further maintenance of the age limit in relation to the court enforcement officers does not fulfil the conditions laid down in the Directive, as well as the permissible restrictions on the freedom of performing occupation specified in the Constitution. The Defender turned to the Minister of Justice in relation to the need to start work on the appropriate change of the challenged statutory regulation<sup>72</sup>.

The Minister of Justice informed<sup>73</sup> that in his opinion there is no need to work on changes in the regulation, according to which after reaching the age of 70 the court enforcement officer is dismissed from the position by the Minister of Justice. The currently applicable regulation does not violate the EU law or the Constitution. It is essential to ensure that the rights of all the parties to the enforcement proceedings are complied with, and the interests of the Treasury are safeguarded. While justifying the presented position, the Minister of Justice stated, *inter alia*, that the situation of the court enforcement officers is similar, due to their functions and powers granted, to judges or prosecutors for whom the age limit was maintained. Performance of the duties of a judge is possible at the latest until the age of 70. Similar age restrictions are maintained in relation to notaries public.

The Defender forwarded the letter of the Minister of Justice to the Head of the National Council of Court Enforcement Officers with a request for position of the community of court enforcement officers on the matter<sup>74</sup>. The Defender is considering the validity of taking further actions in this regard.

#### **h) Services provided to elderly persons by banks**

The Supreme Court upheld the cassation of the Defender<sup>75</sup> in relation to an elderly person (81 years of age) who was refused access to the toilet in the bank of which that person was a customer and was instructed to use public toilet or toilet in a nearby restaurant. A bank employee, speaking to the victim in a mocking way, prevented meeting a physiological need in a hygienic way and led to the humiliating necessity of walking to the place of residence in dirty clothes, giving off unpleasant smell. By the verdict of the Regional Court in Warsaw<sup>76</sup>, the bank was obliged to apologize to the victim, pay compensation and provide access to the toilets to the bank customers. The Court of Appeal in Warsaw changed the verdict of the Court of first instance<sup>77</sup> by dismissing the claim in relation to providing access to the toilet to its

<sup>72</sup> I.801.17.2014 of 1 July 2014.

<sup>73</sup> Letter of 22 August 2014.

<sup>74</sup> I.801.17.2014 of 28 August 2014.

<sup>75</sup> Judgement of 17 September 2014 (file No. I CSK 682/13).

<sup>76</sup> Judgement of 6 March 2012 (file No. C 815/10).

<sup>77</sup> Judgement of 23 January 2013 (file No. VI Ca 961/12).

customers, because, in its opinion, the plaintiff cannot speak on behalf of others (customers of the defendant) and that the event was incidental and there is no real and justified fear that it will occur again in the future. The Defender did not agree with the judgement and lodged cassation<sup>78</sup>, arguing that the provision of access to toilets is a measure aimed at removal of the violation of the plaintiff's dignity found by the Court, and that the fear of a breach of the plaintiff's personal rights in the future is justified, because the plaintiff is still a customer of this bank. The Supreme Court reversed the verdict of the Court of Appeal and changed the verdict of the Regional Court, obliging the bank to provide access to the toilets for the customer in the future.

### 3. Preventing discrimination on the grounds of sex

#### a) Preventing violence against women

Violence against women violates dignity and fundamental human rights – the right to life and health, to respect for private and family life and breaches the prohibition of inhuman and degrading treatment. It is a form of discrimination on grounds of sex, motivated by the perpetrators' conviction about the stereotypically second-rate role of women. Due to the occurrence of multiple discrimination, i.e. unequal treatment on grounds of more than one personal characteristic, elderly women and women with disabilities are at a particular risk of falling victim to violence.

Condition for the effective prevention of violence is to ensure genuine gender equality. Knowledge of the employees of the services preventing and combating violence against women is still insufficient. This is a significant problem, especially in the context of a relatively small number of victims who decide to report violence. It is necessary to link all state activities aimed at counteracting negative stereotypes with the policy of preventing and combating violence, which occurs not only in private, but also in public life. In the opinion of the Defender, so far, a coherent long-range state policy in the area of preventing and combating violence on grounds of sex has not been created. Moreover, the conducted studies into the violence against women should be cyclical and cannot be limited only to the problem of domestic violence. The legal acts in force and other programming documents related to preventing and combating violence should take into account the specific nature of violence on grounds of sex, age and disability.

The Defender asked the Minister of Labour and Social Policy for information whether undertaking appropriate legislative or administrative changes in the area of preventing, combating and analysing the phenomenon of violence, taking into account the specific nature of violence on grounds of sex, including the special needs of elderly women and women with disabilities, is being considered<sup>79</sup>.

<sup>78</sup> I.505.28.2014.

<sup>79</sup> VIII.816.4.2014. of 7 April 2014.

In reply<sup>80</sup>, the Minister informed that the Council of Ministers adopted a new National Programme for Prevention of Domestic Violence<sup>81</sup>. Many activities that directly or indirectly affect the implementation of the principles set out by the Defender have been planned as a part of the Programme. The most important activities include: keeping statistics that take into consideration the division into sexes, and the elderly and the disabled; every two years carrying out research related to the diagnosis of the phenomenon of domestic violence and nationwide social campaigns aimed at changing public awareness in relation to preventing domestic violence; annual funding of training for “first contact” employees in the field of prevention of domestic violence. The amendments to the Act on preventing domestic violence<sup>82</sup> and implementing acts being developed will also influence the improvement in the quality of tasks performed in the field of prevention of domestic violence. Moreover, financial support was obtained for commune, county and voivodeship local governments for the creation of an integrated system of preventing domestic violence<sup>83</sup>.

The Defender again called on the Minister of Labour and Social Policy<sup>84</sup>, arguing that the Convention of the Council of Europe on preventing and combating violence against women and domestic violence (the Istanbul Convention)<sup>85</sup> requires the adoption and implementation of a national policy aimed at preventing and combating all forms of violence on grounds of sex. The bill ratifying the Convention points out to the National Programme for the Prevention of Domestic Violence and the governmental programme of crime reduction “Safer Together”, as well as the Monitoring Team for the Prevention of Domestic Violence as the elements of the policy of preventing domestic violence and other forms of violence fulfilling this requirement. However, they concern only domestic violence. It is necessary to take further programme actions, among others, in the area of preventing and combating violence in the professional and public sphere and on the Internet. The government bill ratifying the Convention<sup>86</sup> provides for an amendment to the Act on the prevention of domestic violence in order to broaden the definition of domestic violence, so that it also includes economic violence and violence in relations of people who are no longer in a stable relationship or marriage and do not living together. Unfortunately, specific legal measures and actions in the case of violence at universities, in schools, in sports, in situations unrelated to employment relationship, where mobbing or harassment occurs, as well as in welfare care homes and other care, rehabilitation and treatment institutions, still have not been provided for. In the Defender’s opinion, activities to enhance the effectiveness of measures allowing isolation of the perpetrator of domestic violence from the victim, particularly in the form of an order to vacate the

<sup>80</sup> Letter of 7 May 2014.

<sup>81</sup> Resolution of the Council of Ministers No. 76 of 29 April 2014 on the establishment of the National Programme for the Prevention of Domestic Violence for 2014-2020 (M.P. of 9 June 2014, item 445).

<sup>82</sup> The Act of 29 July 2005 (Dz. U. No. 180, item 1493, as amended).

<sup>83</sup> The programme “Support to Local Government Units in Creating the System for the Prevention of Domestic Violence.”

<sup>84</sup> VIII.816.4.2014. of 7 August 2014.

<sup>85</sup> Convention drawn up in Istanbul on 11 May 2011, signed by Poland on 18 December 2012.

<sup>86</sup> Sejm Paper No. 2515.

premises by the perpetrators, regardless of their sex, should be also taken. The Defender asked for information about the stage of work on amendment to the Act on the prevention of domestic violence.

The Minister expressed his view<sup>87</sup> that in many aspects the system for the prevention of domestic violence functioning in Poland corresponds to the assumptions of the Istanbul Convention. At the end of 2013 and the beginning of 2014, the Monitoring Team for the Prevention Domestic Violence began work on amendments to the Act on the prevention of domestic violence. Changes take into account the new definition of domestic violence, including the definition of economic violence and securing the relations of people who are no longer in a relationship or married and do not live together, and acts of violence between them still occur. It is planned that legislative work on amendments to the Act will begin in 2015.

As a part of studies carried out in accordance with the National Programme for the Prevention of Domestic Violence for 2014-2020, it will be possible to diagnose all forms of domestic violence and all victims of violence specified in the Istanbul Convention. The Minister of Labour and Social Policy is also obliged to issue every two years "Guidelines for conducting training in preventing domestic violence." In these Guidelines, it will be possible to extend the training subjects by the subjects indicated in the Istanbul Convention.

In relation to the application by the courts of the order to leave the premises occupied jointly with the victim and the prohibition of approaching the victim, the Defender addressed a petition to the Prosecutor General and the Ministry of Justice<sup>88</sup>.

In her petition, the Defender noticed an upward trend in the use of preventive measures in the form of an order to leave the premises occupied jointly with the victim, Police supervision on the condition of leaving the premises occupied jointly with the victim and Police supervision with an obligation to refrain from contacting the victim, as well as in the use of penal and probation measures in the form of an order to leave the premises occupied jointly with the victim and the prohibition of approaching the victim. However, taking into account the overall number of cases and convictions for abuse, she is of the opinion that these measures are not used optimally.

The Prosecutor General<sup>89</sup> reported that the materials obtained from appellate and regional prosecutor's offices which, in 2013, carried out the appropriate inspections, indicate that there were no improper practices found in any of the district units in the application of preventive measures against the perpetrators of crimes related to domestic violence. Since in individual cases the inspectors drew attention to the need to consider the application of a preventive measure, it can be concluded that the prosecutors did not fully use the procedural possibilities to protect the victim from possible actions of the suspect, especially as regards the application of the order to leave the premises occupied jointly with the victim. The Pros-

<sup>87</sup> Letter of 8 September 2014.

<sup>88</sup> II.518.6.2014 of 18 March 2014.

<sup>89</sup> Letter of 27 March 2014.

ecutor General, in order to shape proper prosecuting practice, issued appropriate guidelines in this regard<sup>90</sup>.

The Minister of Justice emphasised<sup>91</sup> that ensuring protection for a victim of domestic violence, including by separation from the perpetrator, is a priority in the activities of the bodies involved in combating domestic violence. The applicable law, including a number of instruments in the field of penal law and civil law, is to serve this objective. More and more often, the courts apply measures isolating the perpetrator from the victim of domestic violence. The court decides on the nature of the penal and probation measures applied, every time taking into account the circumstances of the case. The Ministry of Justice can only conduct information and education campaigns and training for judicial personnel<sup>92</sup>.

The issues of preventing violence on grounds of sex will be monitored by the Defender<sup>93</sup>.

## **b) Closing the gender pay gap**

The right to equal treatment of women and men at work is one of the guiding principles of labour law and non-discrimination in the European Union. In Polish law, the guarantee of the equal right for women and men to equal pay for work of equal value is enshrined in the Constitution and the Labour Code. Therefore, data published by the Central Statistical Office and the Supreme Audit Office, showing that a real inequality on grounds of gender in terms of remuneration for work (the so-called „wage gap”) is persisting in Poland, is disturbing.

The report of the Central Statistical Office on the remuneration structure indicates that the average pay of men in 2012 was 20% higher than the average pay of women. Men earn more than women in most of the public administration units, municipal companies and companies of the State Treasury examined by the Supreme Audit Office<sup>94</sup>. Due to the gender pay gap women may receive lower pensions. Studies by Eurostat show that in Poland the differences in pension benefits reached nearly 24% in favour of men. The European Commission emphasised that an important element of remedying the problem of the wage

<sup>90</sup> In the guidelines of 18 December 2013 concerning the rules of proceeding for common organizational units of the prosecutor's offices in relation to preventing domestic violence, as well as the guidelines of 21 December 2011, the Prosecutor General instructed to consider the merits of the application of the preventive measure in the form of an order to leave the premises occupied together with the victim in every case conducted against a person suspected of domestic violence, in the absence of evidence to file for the application of a preventive measure in the form of pre-trial detention. In the next guidelines of the Prosecutor General in this regard, of 1 April 2014 (ref. No.: PG VII G 021/14/14), this order was repeated (point 21).

<sup>91</sup> Letter of 3 April 2014.

<sup>92</sup> As a part of these activities, the Ministry developed and published a Guide for judges, prosecutors and probation officers related to the prevention of domestic violence, which was handed over to the judges adjudicating in penal departments and to probation officers.

<sup>93</sup> See points 24-25 of the *Final remarks on the seventh and eighth periodic report of Poland on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/POL/CO/7-8)*.

<sup>94</sup> See the report published on 1 February 2014 informing of the results of inspection *Ensuring the right to equal pay for men and women in the public sector* (ref. No.: 167/2013/P13151/LKR). In reference to the presented research results, the Defender asked the Supreme Audit Office to consider further detailed comparative inspections of salaries of employees of both sexes, including job evaluation (1.816.10.2014 of 16 April 2014).

gap is greater transparency of wages. Salary confidentiality and the lack of legislation on the transparency of salaries make it difficult to determine the inequalities in pay for the same work or work of equal value between men and women, who may not be aware of potential discrimination. Currently, there is no public awareness and knowledge regarding the concept of equal pay for work of equal value, and the modification of the remuneration system is not only dependent on the available knowledge on the job evaluation systems, but also on the attitudes of employers, trade unions and other employees. In many countries, regulations oblige employers to introduce systems of classification and job evaluation or monitoring of salaries and publish reports concerning remuneration.

The Defender asked the Minister of Labour and Social Policy<sup>95</sup> for information about the measures taken to promote the principle of equal pay for men and women for equal work or work of equal value, as well as information on whether a legislative initiative introducing an obligation of remuneration transparency, in the first place in relation to entrepreneurs implementing public procurement, to the labour law is being considered.

In reply<sup>96</sup>, it was indicated that tasks of the Ministry of Labour and Social Policy in the area of closing the gender pay gap which are to be implemented include development of the methodology for assessing the wage gap in enterprises and analysis of international law in relation to monitoring of the wage gap. Furthermore, actions aimed at promoting the issues of equal pay for men and women for work at the same positions and work of equal value are taken.

The matter will be the subject of further actions.

### **c) Increasing participation of women in public authority bodies from general elections**

In connection with the elections planned for 2014-2015<sup>97</sup>, the Defender called for special reflection on the matter of women's participation in elections and on the issue of exercising by them the right to stand for election. In her petition to the Government Plenipotentiary for Equal Treatment<sup>98</sup>, the Defender stressed that, based on numerous analyses, a conclusion on a relatively low level of participation of women in the composition of public authority bodies from elections can be drawn. Striving for changes in this area, comprehensive initiatives in the field of education and promotion, in particular addressed to potential candidates, but also political parties and electoral committees, should be prepared and implemented in order to highlight the issues of gender equality in various dimensions of their activities<sup>99</sup>. The Defender pointed out that the application of appropriate legal mechanisms can significantly contribute to the real guarantee of the gender equality principle and the increase in the involvement of women in the electoral

<sup>95</sup> I.816.10.2014 of 4 August 2014.

<sup>96</sup> Letter of 2 December 2014.

<sup>97</sup> Elections to the European Parliament, local, presidential and parliamentary elections.

<sup>98</sup> I.602.2.2014 of 17 January 2014.

<sup>99</sup> Education and promotion activities proposed by the Defender aimed at preventing the phenomenon of underrepresentation of women in the public sphere should be taken in particular as a part of implementation of the main objective no. 6 entitled Increasing participation of women in decision-making, and the specific objective no. 6.1 entitled Increasing the number of women in Parliament and local authorities, in the area of Equal treatment in access to goods and services of the National Action Plan for Equal Treatment for 2013-2016.



process. The quota system<sup>100</sup> currently applicable in the proportional elections is characterized by a limited efficacy, leading to a conclusion on the validity of supplementing it by adopting regulations with respect to the alternating placement of female and male candidates on electoral lists (the so-called “zipping” system). The Defender emphasised that the postulated legislative work in this area could be seen as an expression of the consequences of the legislator who, after all, has already taken the momentous decision to introduce the quota mechanism, recognizing the important reasons for its application and hoping to achieve the results desired.

In reply, the Government Plenipotentiary<sup>101</sup> shared the position of the Defender and informed about actions undertaken in this area. She noted, *inter alia*, that in addition to the parliamentary work on “zipping”, it is worth promoting soft regulations, such as intra-party regulations on determining the order of female candidates on electoral lists, which became the subject of her petition addressed to the heads of political parties.

In another petition to the Government Plenipotentiary for Equal Treatment,<sup>102</sup> the Defender pointed out that despite the local elections coming, in the public space and in the media there are no information campaigns related to the new solution in the field of electoral law, especially concerning the issues of gender equality, which may again result in a small number of women in elected bodies. Therefore, the Defender once again advocated undertaking education and information activities in this regard. Moreover, the Defender asked for taking a position on undertaking legislative action related to the issue of exercising the right to stand for election by women.

The Government Plenipotentiary for Equal Treatment<sup>103</sup> informed the Defender about the cooperation with NGOs, which work to increase participation of women in local and parliamentary authorities, including through the implementation of training initiatives addressed to female candidates.

In connection with the upcoming parliamentary elections, the Government Plenipotentiary is also engaged in activities for the adoption of statutory solutions concerning the introduction of the so-called “zipping” mechanism on electoral lists, which currently are being prepared by the Sejm of the Republic of Poland. The Government Plenipotentiary also urged the heads of political parties to take measures to balanced participation of women and men in the electoral process, including education and information activities.

The Defender monitors legislative and non-legislative actions in this area and analyses their effectiveness.

#### **d) Advertising campaigns violating women’s dignity**

In January 2013, based on received complaints, the Defender petitioned the Office of Competition and Consumer Protection in relation to sexist advertising campaigns<sup>104</sup>. In

<sup>100</sup> Pursuant to the Electoral Code, each electoral list submitted by the electoral committee in elections to the Sejm, the European Parliament, poviats councils, voivodship assemblies cannot contain less than 35% representatives of each sex.

<sup>101</sup> Letter of 11 February 2014.

<sup>102</sup> I.602.2.2014 of 7 August 2014.

<sup>103</sup> Letter of 9 September 2014.

<sup>104</sup> RPO-716405-I/12 of 14 January 2013.

reply, it was indicated that the basis for any actions of the President of the Office of Competition and Consumer Protection, in light of the Act on competition and consumer protection<sup>105</sup>, is a violation to the collective consumer interests. An advertisement offending human dignity may violate public interests, but it cannot be identified with the infringement of the collective consumer interests. Infringement of the collective consumer interests must be linked with the violation of their economic aspects. In the opinion of the Defender, interpretation of Article 24(1) of the Act on competition and consumer protection does not allow the conclusion that only practices infringing collective consumer interests of economic nature would be prohibited. In view of the above, the Defender addressed another petition to the President of the OCCP<sup>106</sup>, in which she stressed that consumer law grants protection to both economic and non-economic interests of consumers. One of the types of practices infringing collective consumer interests are acts of unfair competition. A manifestation of an act of unfair competition, pursuant the Act on combating unfair competition<sup>107</sup>, is an advertising offending human dignity. The President of the OCCP in the case of a conviction that a given practice is an act of unfair competition, within the meaning of the Act on combating unfair competition, has the authority to initiate administrative proceedings regulated by the Act on competition and consumer protection. The Defender made a request for taking a stance on the matter.

The President of the Office of Competition and Consumer Protection proposed<sup>108</sup> the initiative to organize a meeting with the Defender, the OCCP and the representatives of the Union of Associations Advertising Council, which would allow discussion and presentation of positions of the parties in relation to advertisements potentially violating human dignity. In the course of the meeting<sup>109</sup> it was emphasized that the Defender has no possibilities to indicate the complainant the means of action at his/her disposal in the case of a violation of hi/her constitutional rights by advertisers. Therefore, an analysis of the applicable statutory regulations should be conducted in order to assess whether they protect interests of consumers sufficiently. The Office of Competition and Consumer Protection maintained the position that it is not competent in cases of advertising messages violating the law and human dignity<sup>110</sup> and pointed to the activity of the Committee of Advertising Ethics in this area. Moreover, it was established that the Defender would be kept informed of the developed judicial decisions in consumer cases and the discrepancies appearing in them. Therefore, in the absence of a satisfactory solution, the case will still be monitored by the Defender.

<sup>105</sup> The Act of 16 February 2007 (Dz.U. No. 50, item 331, as amended).

<sup>106</sup> I.505.17.2014 of 9 April 2014.

<sup>107</sup> The Act of 16 April 1993 (Dz.U. of 2003, No. 153, item 1503, as amended).

<sup>108</sup> Letter of 4 July 2014.

<sup>109</sup> The meeting was held on 20 August 2014 at the seat of the Office of Competition and Consumer Protection, with the participation of, among others, Mr Stanisław Trociuk, Deputy Human Rights Defender, Mrs Dorota Karczewska, Vice-President of the Office of Competition and Consumer Protection, and Mr Konrad Drozdowski, Director-General of the Union of Associations Advertising Council.

<sup>110</sup> See point 23(c) of the *Final remarks on the seventh and eighth periodic report of Poland on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/CO/7-8)*.

### e) **Objection to a medical certificate and the execution of judgements of the European Court of Human Rights in *Tysic v. Poland* and *R.R. v. Poland* cases**

In 2013, the Defender carried out a control of the files of objections lodged to the Medical Committee for the Commissioner for Patients' Rights from 2011-2012, in relation to the explanatory proceedings regarding the execution of the judgement of the European Court of Human Rights in the case *Tysic v. Poland*<sup>111</sup> and in the case *R.R. v. Poland*<sup>112</sup>. The Defenders' analysis yielded a conclusion that the procedure is not used by pregnant women who, on the basis of the Act on family planning, human embryo protection and conditions of permissibility of abortion<sup>113</sup>, did not obtain a certificate of the occurrence of circumstances that would enable them the possible abortion in accordance with the Act or have problems obtaining referrals for prenatal examination. The practice of examining objections shaped this way allowed concluding that the judgements of the European Court of Human Rights in *Tysic v. Poland* and *R.R. v. Poland*, at the moment, have not been fully implemented in the absence of an effective procedure.

In reply to the petition addressed to the Minister of Health in 2013, the Defender was informed about inter-ministerial consultation and public consultation on the draft assumptions for the draft Act amending the Act on patients' rights and the Commissioner for Patients' Rights and certain other acts. The draft involved, *inter alia*, shortening the time for examination of an objection to 10 days and the elimination of the requirement to designate a legal provision which is the basis for the rights or obligations of the objecting party.

In 2014, once again the Defender sent to the Minister of Health<sup>114</sup> the report on the analysis of files of cases handled by the Commissioner for Patients rights along with recommendations for the necessary amendments to the Act on patients' rights and the Commissioner for Patients' Rights<sup>115</sup>, noting that she is still receiving signals from NGOs indicating that repeatedly women who have the right to object do not decide to do so, because they consider the procedure to be too complicated, lengthy and inefficient.

The Minister of Health<sup>116</sup> informed in his reply that draft assumptions for the draft Act amending the Act on patients' rights and the Commissioner for Patients' Rights and certain other acts will be soon submitted for examination by the Committee of the Council of Ministers. Monitoring of legislative work in this area is in progress.

### f) **Anti-mobbing and anti-discrimination procedures at the Police**

As a result of findings made in one of the cases related to the possible discrimination on grounds of sex, the Defender drew the attention of the Minister of the Interior<sup>117</sup> to the lack of anti-mobbing procedures in the labour regulations concerning Police officers which would enabling, among others, lodging a complaint to an independent body that could in-

<sup>111</sup> Judgement of 20 March 2007, complaint No. 5410/03.

<sup>112</sup> Judgement of 26 May 2011, complaint No. 27617/04.

<sup>113</sup> The Act of 7 January 1993 (Dz. U. No. 17, item 78, as amended).

<sup>114</sup> I.037.7.2014 of 30 May 2014.

<sup>115</sup> The Act of 6 November 2008 (Dz. U. of 2012, item 159, as amended).

<sup>116</sup> Letter of 18 September 2014.

<sup>117</sup> RPO-735572-III/13 of 5 August 2013.

investigate the matter. As a result of implementation of the recommendations<sup>118</sup> appropriate regulations were adopted<sup>119</sup>.

### **g) Discrimination on the grounds of sex in the recruitment process to serve in the Police**

The Defender received a complaint concerning the same tests of physical fitness for men and women in the recruitment process to serve in the Police, not taking into account biological differences between the sexes. It was argued that the provisions of the Ordinance of the Minister of the Interior on the recruitment procedure for candidates seeking admission to serve in the Police<sup>120</sup> raise concerns from the point of view of the provisions of the Constitution. They disproportionately restrict female candidates to the Police their right of access to public service on equal terms, resulting in a violation of the right to equal treatment in employment. Moreover, the restriction in question, contrary to constitutional requirements, took the form of an implementing act. Justifying the apparent equalization of physical fitness criteria with a particular flexibility or specificity of the Police service is also dubious from the point of view of the provisions of the Act on the implementation of some regulations of the European Union regarding equal treatment<sup>121</sup> (the so-called "indirect discrimination"). Both in the Police and in other formations subordinate to the Minister of the Interior, in particular the State Fire Service and the Government Protection Bureau, there are positions which require particular physical fitness of the officers. In such cases, the special nature of official duties carried out should determine the particular physical requirements, the same for both sexes. Appointments to such positions should be preceded by an internal examination of physical fitness. With this in mind, the Defender asked the Minister of the Interior<sup>122</sup> to present his position in this case and possibly to consider the possibility of amendments to the Ordinance in order to change the state of affairs described.

The Minister of the Interior<sup>123</sup> informed that the purpose of the challenged Ordinance is to secure the proper staff needs of the Police which translate into the assessment of a candidate's suitability to the service and are objectively justified. The National Police Headquarters performs a cyclic data analysis related to the rate of physical fitness tests passed by the candidates seeking admission to the Police. Bearing statistical data in mind, it should be noted that the changes introduced in the selection procedure to the Police on 1 January 2014 related to the physical fitness test do not have a negative influence on the number of female candidates receiving a positive result from this stage of the qualification procedure.

The Defender continues examining the Ordinance in terms of its compliance with the Constitution.

<sup>118</sup> The Minister of the Interior indicated in the letter of 16 September 2013 that appropriate actions will be taken.

<sup>119</sup> On 14 May 2014, the Internal anti-mobbing procedure for Police officers serving in the General Police Headquarters was introduced. On 1 July 2014, the Commander in Chief of the Police introduced the anti-discrimination procedures for the entire Police.

<sup>120</sup> Ordinance of 18 April 2012 (Dz.U. of 2012, Item 432, as amended, item 432, as amended).

<sup>121</sup> The Act of 3 December 2010 (Dz.U. No. 254, item 1700, as amended).

<sup>122</sup> III.801.1.2014 of 4 August 2014.

<sup>123</sup> Letter of 17 September 2014.

#### **h) Difficulties in taking care of children by female Police officers being single parents**

The Defender received complaints of Police officers being single mothers concerning the designation of their duties at night and on Sundays and holidays. According to the complainants, this practice is against the applicable labour regulations and violates their civil rights and liberties.

A Police officer is entitled to employee's rights related to parenthood specified in the Labour Code, unless the provisions of the Act on the Police provide otherwise<sup>124</sup>. The labour regulations provide for more favourable rules than the Labour Code<sup>125</sup>. In accordance with the Ordinance of the Minister of Interior and Administration on the distribution of service time of Police officers<sup>126</sup>, a Police officer who is the sole guardian of a child under the age of eight or a person requiring permanent care is exempt from duty at night and on Sundays and holidays. Obtaining a statement or consent of a Police officer to plan duty at this time is legally ineffective, because of the categorical wording of the provision. The Defender requested the Commander in Chief of the Police<sup>127</sup> to present his position on the matter and, in case he shares the Defender's reasoning, to appeal to the subordinate units of the Police with information about the absolute necessity to apply the existing regulations.

The Commander in Chief of the Police<sup>128</sup> shared the Defender's opinion in terms of the absolute obligation to apply the order of exempting from duty at night and on Sundays and holidays, referred to in the Ordinance of the Minister of Interior and Administration on the distribution of service time of Police officers. Furthermore, the Commander in Chief of the Police informed that he sent to all the subordinate units and organizational units a reminder to the superiors of Police officers about an absolute obligation to exempt from duty at night between 10 p.m. and 6 a.m. and on Sundays and holidays Police officers – who are pregnant women and being the sole carer of a child under the age of eight or a person requiring permanent care.

#### **i) Determination of marital status rights and discrimination of fathers with regard to the custody of children**

The Defender received a reply of the Prosecutor General<sup>129</sup> to the petition<sup>130</sup> of 2013<sup>131</sup> related to the practice of application of Article 86 of the Family and Guardianship Code<sup>132</sup> by prosecutors, pursuant to which a prosecutor may bring an action in any case to establish or deny paternity and to establish the ineffectiveness of acknowledgement of paternity – even if deadlines for those entitled to seek their rights on their own expired. The Defender

<sup>124</sup> The Act of 6 April 1990 (Dz.U. of 2011, No. 287, item 1687, as amended).

<sup>125</sup> Pursuant to the provisions of the Labour Code, an employee taking care of a child who has not turned 4 must not, without his/her consent, work overtime, at night, in the interrupted working time system, as well as be delegated outside the permanent place of work (Article 178).

<sup>126</sup> The Act of 18 October 2001 (Dz.U. No. 131, item 1471, as amended).

<sup>127</sup> III.801.5.2014 of 9 June 2014.

<sup>128</sup> Letter of 30 June 2014.

<sup>129</sup> Letter of 15 April 2014.

<sup>130</sup> IV.501.28.2014.

<sup>131</sup> Equality Information for 2013, p. 31.

<sup>132</sup> The Act of 25 February 1964 (Dz.U. of 2012, item 788, consolidated text).

receives many complaints from fathers questioning origin of a child, who raise the lack of possibility of bringing an action on their own due to the expiry of the deadlines provided for in the Family and Guardianship Code. There are also letters from men who believe to be the father of a child, but do not have any own authorization to establish this fact in court, because in the light of law another man is the child's father. In this context, the Defender signalled to the Prosecutor General the need to develop and implement the common practice supporting the exercise of the rights of an individual in cases concerning marital status rights. The case law of the European Court of Human Rights in Strasbourg also draws attention to the need for careful examination of individual cases, also in judgements against Poland.

The Prosecutor General presented to the Defender statistical data and practice concerning the petitions filed and the number of actions brought by the prosecutors' office. The most common reasons for the prosecutors' office denial to bring an action for a specific person were also indicated. However, the Defender's doubts concerning the lack of clear, unambiguous guidelines on the scope and level of detail of explanatory proceedings carried out by the prosecutors' office before making a decision and bringing an action were not dispelled. This is of vital importance, especially in those cases where the person concerned (the alleged father of a child) has never had and does not have authorization to bring an action independently in order to establish whether he is the biological father of the child. Therefore, the issue will continue to be monitored by the Defender.

#### **4. Preventing discrimination on the grounds of sexual orientation and gender identity**

##### **a) Discrimination on grounds of sexual orientation in health care**

The Human Rights Defender, on the basis of conducted social studies<sup>133</sup>, prepared a report entitled *Equal Treatment of Patients – Non-heterosexuals in Health Care. Analysis and Recommendations*<sup>134</sup>. The diagnosis included, in particular, the following issues: lower standards of medical care caused by stereotypical perceptions of non-heterosexual patients and their degrading treatment, violation of the patient's right to confidentiality of information related to him/her, reducing the presence of a close person while providing medical services without justification, and restricting access to medical records and information on the condition for a close authorised person (a partner of the same sex), failure to use the available means of action – reporting the case to competent authorities by persons experiencing unequal treatment (the so-called “underreporting”), insufficient legal protection measures.

<sup>133</sup> *Knowledge of doctors in the course of speciality on equal treatment of non-heterosexuals in medical practice* (BioStat, 2012) and *Equal treatment as perceived by non-heterosexual people in health care* (Laboratory of Social Studies, 2013).

<sup>134</sup> *Equal Treatment of Patients – Non-heterosexuals in Health Care. Analysis and Recommendations*, Equal Treatment Principle. Law and Practice, No. 14, Human Rights Defender Bulletin 2014 No. 7.

Taking into account the types of problems found, the Defender made recommendations on the need for taking various actions<sup>135</sup>. First of all, in the opinion of the Defender, consideration for the special problems of LGB people should be pursued in health programmes and policies. It is also necessary to carry out educational activities addressed to the medical staff related to the specific nature of treating LGB people and the content of the applicable legal regulations concerning patient rights<sup>136</sup>. In addition, it is necessary to popularize in the course of education the consideration for the current medical and psychological knowledge on the social functioning of sexual orientations, as well as specific barriers for LGB people and to raise standards of teaching midwives and nurses during their pre- and post-graduate education. Raising awareness of patients with respect to the protection measures which they are entitled to is still necessary.

The Defender also reported postulates to carry out work of a legislative nature, by considering amendments to the Act on the implementation of some regulations of the European Union regarding equal treatment to enable claiming compensation in the case of a violation of the principle of equal treatment in health care, including on grounds of sexual orientation, and amendments to the Act on patients' rights so that any discrimination, including on grounds of sexual orientation, was considered a violation of the patient's rights and to enable claiming compensation pursuant the Act on patients' rights. The need to remove provisions classifying homosexuality as a disorder, compared to rape or prostitution, from the applicable regulations is an urgent matter<sup>137</sup>.

The Defender will take actions aimed at disseminating the findings and implementing the recommendations<sup>138</sup>.

## **b) Monitoring hate crimes**

The Defender petitioned the Minister of the Interior<sup>139</sup> on the establishment of a system of integrated monitoring of hate crimes, including those motivated by homophobia. The system would be a source of current information about events, facilitating communication between the entities incorporated into the system, allow creating statistical summaries and reports, and contribute to effective response of the relevant public authorities<sup>140</sup>.

<sup>135</sup> See *op. cit.*, p. 44 *et seq.*

<sup>136</sup> In particular, regarding persons close to the patient and the possibility to authorize to receive information on the patient's condition and access to medical records of any person.

<sup>137</sup> See Ordinance of the Minister of Health on 29 October 2003 on the list of areas of nursing and the areas applicable in health care, in which specialization and qualification courses can be carried out, and the framework programmes of specialization for nurses and midwives (Dz.U. No. 197, item 1922, as amended) – annex No. 21 Framework programme of the specialist block of the speciality in the area of family nursing for midwives (3rd module of the Teaching Programme) and annex No. 23 Framework programme of the specialist block of the speciality in the area of gynaecological nursing for midwives (4th module of the Teaching Programme).

<sup>138</sup> The first presentation of the Report took place during a seminar at the Office of the Defender on 30 October 2014, titled "Full access – education of the health protection sector." It was also the beginning of the project implemented in cooperation with the Campaign Against Homophobia (under the same name), which aims at improving the quality and accessibility of health care for LGBT patients.

<sup>139</sup> I.816.15.2014 of 22 July 2014.

<sup>140</sup> More about the matter see I.1.(a) of this Information.

### c) Using graphic sign violating the dignity of homosexual persons

The Defender expresses her concern about the continuous presence of the graphic sign known as “no way for gay” in the public space. It should be noted, however, that it is possible to punish its presentation.

The District Court Katowice-Wschód in Katowice sentenced to a fine in the amount of PLN 100 a participant in counter-demonstration to the public gathering “National Coming Out Day 2013. Become a Hero/Heroine,” who presented a banner with the above sign in a public place. Initially, the Police discontinued the proceedings in the case of incitement to hatred pursuant to Article 256 of the Penal Code. However, after the intervention, the Defender<sup>141</sup> sent an effective motion for punishing the offence pursuant to Article 141 of the Code of Petty Offences, i.e. placing an obscene drawing in a public place. In her letter, the Defender referred to the view according to which the “no way for gay” sign is an obscene drawing as referred to in Article 141 of the Code of Petty Offences<sup>142</sup>.

### d) Consent to the acquisition of real property by a foreigner in a civil union with a Polish citizen

The Defender received a letter from a citizen of Chile who petitioned the Minister of the Interior for a permission to acquire real property, arguing that the entering into a civil union with a Polish citizen proves the existence of his relationship with the Republic of Poland, and thus entitles him as a foreigner to the acquisition of real property in Poland.

However, the Minister did not issue the consent justifying it with a legal nature of a civil union being different form marriage which, in the light of Article 18 of the Constitution of the Republic of Poland, is a union of a man and a woman, not a relationship of two men. The Voivodeship Administrative Court dismissed the complaint against the decision of the Minister<sup>143</sup>. Both the complainant and the Human Rights Defender filed for cassation against the judgement of the VAC<sup>144</sup>. In the cassation, the Defender argued that it is possible to confirm the ties of the foreigner to the Republic of Poland through the existence of a lasting relationship with a citizen of Poland, also of the same sex, based on emotional ties and a joint household, common dwelling, similar to marriage. The Defender accused the judgement, among others, of a violation of the Polish Constitution and the Convention for the Protection of Human Rights and Fundamental Freedoms by assuming that the right to private and family life may be limited when it is not required by public order reasons and the rights and freedoms of others, as well as by assuming that unequal treatment of individuals is possible without a sufficiently valid and reasonable cause. The Defender is waiting for the date of examination of the case to be arranged.

<sup>141</sup> I.613.2.2014 of 30 January 2014.

<sup>142</sup> Such an assessment was expressed, *inter alia*, by the Regional Prosecutor in Warsaw in an appeal of 28 November 2011 concerning the registration of the “no way for gay” sign as the symbol of the political party National Revival of Poland, which is pending before the Regional Court in Warsaw (file No. VII Ns Rej Ew Pzm 11/12).

<sup>143</sup> Judgement of 29 January 2014., file No. IV Sa/Wa 2457/13.

<sup>144</sup> IV.816.2.2014 of 24 March 2014.



### e) Bone marrow donation by homosexual men

The Defender received a complaint concerning registration of homosexual men as potential bone marrow donors. The complainant was disqualified as a donor, because he indicated in the questionnaire about his condition that he had sex with other men. The questionnaires published on the website of the National Blood Centre from the Regional Blood Donation and Treatment Centres in Katowice and Kielce include questions relating to sexual intercourse with men.

Criteria disqualifying bone marrow donors are established in the Ordinance of the Minister of Health on bone marrow donor centres<sup>145</sup>. However, there is no mention of neither sexual orientation of donors, nor risky sexual behaviour. According to international recommendations<sup>146</sup>, a bone marrow donor should be disqualified due to risky sexual behaviour, such as frequent change of partners, not sexual orientation.

Therefore the questions in the questionnaires used for potential bone marrow donors seem, to lead to a reduction of the opportunity to donate bone marrow by homosexual men, which may be a manifestation of discrimination on grounds of sexual orientation. Therefore, the Defender asked the Head of the National Blood Centre<sup>147</sup> for explanation.

In reply, the Ministry of Health<sup>148</sup> informed that the factors excluding a donor of hemopoietic cells are set out in the Annex to the Ordinance of the Minister of Health on bone marrow donor centres. These regulations do not specify sexual orientation as a criterion excluding potential bone marrow donor. Accordingly, the Ministry of Health asked the National Consultant in the field of haematology, who, pursuant to Article 16a(3) of the Act on the recovery, transplantation and storage of cells, tissues and organs<sup>149</sup>, supervises the activities of donor centres, for clarification. The received explanations emphasised that the questions of the questionnaire for potential bone marrow donors are not to discriminate a potential bone marrow donor, but to help eliminate persons exhibiting risky behaviour. This means that the sexual orientation alone should not be a reason to disqualify a potential bone marrow donor, and when there is suspicion that, regardless of sexual orientation, a person exhibits risky behaviour, caution should be exercised in classifying such person as a donor.

The Defender will monitor activities of the competent authorities in this matter.

### f) Gender recognition

In 2011, the Defender sent a petition to the Minister of Justice in relation to the need to regulate the situation of transgender persons, arguing that the currently applied gender recognition procedure is very burdensome for those interested, and the process is disproportionately long and emotionally burdening. The Defender also indicated international standards which should be taken into account in work on the comprehensive regulation of the issue, including case law of the European Court of Human Rights and the Court of Justice of the EU,

<sup>145</sup> Ordinance of 12 March 2010 (Dz.U. No. 54, item 330).

<sup>146</sup> E.g. guidelines of the World Marrow Donor Association (WMDA).

<sup>147</sup> I.812.2.2014 of 9 May 2014.

<sup>148</sup> Letter from the Director of the Health Policy Department of 10 June 2014.

<sup>149</sup> The Act of 1 July 2005 (Dz.U. No. 169, item 1411, as amended).

which implies that States are obliged to allow legal gender recognition, imposing requirements which can be fulfilled. After analysing the current legal status and examining the submitted postulates, the Defender formulated a recommendation to take work aimed at adopting a comprehensive statutory regulation relating to the situation of transgender persons.

In subsequent letters<sup>150</sup>, the Minister of Justice shared the Defender's view of the need for development and adoption of a legal act which would standardize the situation of transgender persons in a comprehensive way.

In 2014, work in this area was continued. In connection with the draft assumptions for the draft Act amending the Act – Code of Civil Procedure, the Act – Family and Guardianship Code, the Act on physician and dentist profession and some other acts submitted previously to the Defender, the Defender asked the Minister of Justice<sup>151</sup> for information on the current state of the legislative work on this project. In reply, the Minister of Justice<sup>152</sup> reported that legislative work on the draft assumptions in question is conducted and consulted in cooperation with the Ministry of Health and the Government Plenipotentiary for Equal Treatment. In the opinion of the Ministry of Justice, due to the matter of the proposed regulation, very sensitive in social terms, and the fact that so far the Polish legal system lacks similar regulations, the comments, often very extensive, to the draft assumptions in question require in-depth analyses of various, often contradictory, assessments and postulates. Currently, legislative work is also carried out on the Deputies' draft Act on gender recognition<sup>153</sup>, with the participation of a representative of the Ministry of Justice. This draft was referred to the extraordinary subcommittee appointed to examine the Deputies' draft Act on gender recognition.

The Defender will continue to monitor legislative work in this area.

### **g) Deprivation of parental rights of a transgender girl's mother**

The Defender received a complaint concerning a transgender fourteen-year-old girl, in relation to whom the guardianship court issued an order to place her in an educational care facility, *inter alia*, due to numerous absences from school resulting from the degrading treatment of the girl by her peers.

The Defender sent a request for change of the decision of the guardianship court to the District Court in Krakow<sup>154</sup>. In the opinion of the Defender, the court did not take into account the complexity of the child's situation, and placement in educational care facility, conducting socio-therapy for the so-called demoralized youth, will again expose her to difficult relationships with peers. The court shared the Defender's reasoning in the case completely and, complying with the Defender's motion, awarded custody of the child entirely to her mother<sup>155</sup>.

<sup>150</sup> Letter of 22 September 2011 (No.: DL-P-II-415-13/11/5) and of 15 October 2012 (No.: DPrC-I-415-1/12).  
<sup>151</sup> I.503.3.2014 of 30 May 2014.

<sup>152</sup> Letter of 18 September 2014.

<sup>153</sup> Sejm Paper No. 1469.

<sup>154</sup> IV.502.9.2014 of 4 April 2014.

<sup>155</sup> Decision of the District Court for Krakow-Krowdrza in Krakow of 23 May 2014, file No. III Nsm 90/14/K.

## 5. Preventing discrimination on the grounds of religion, denomination or beliefs

### a) Ritual slaughter

The Defender received complaints from the Muslim Religious Union in Poland and from the European Jewish Association to analyse the compliance of the current regulations on religious slaughter with the Polish Constitution. As a result of these complaints, the Defender addressed a petition to the Prime Minister<sup>156</sup> on the regulations related to the issue of ritual slaughter in force in Poland.

Until 31 December 2012, the issue of ritual slaughter on Polish territory was governed by the provision of the Ordinance of the Minister of Agriculture and Rural Development on the qualifications of persons entitled to the professional slaughter and conditions and methods of slaughter – killing of animals<sup>157</sup>. In the opinion of the Defender, it was necessary to take appropriate legislative work for a comprehensive regulation of ritual slaughter in Poland. Undertaking appropriate legislative actions, as well as finding the necessary balance between different reasons is the task of the Council of Ministers. Possible proposal to change the law should also comply with the EU law.

In reply, the Head of the Chancellery of the Prime Minister<sup>158</sup> informed that on 31 January 2014 the Government Legislation Centre submitted to the Ministry of Agriculture and Rural Development for further proceedings the draft Act amending the Act on the protection of animals, containing solutions in accordance with the assumptions of the draft Act on the protection of animals adopted by the Council of Ministers in 2012.

The Defender sent a motion to the Constitutional Tribunal<sup>159</sup> for a declaration of incompatibility of the provisions of the Act on the protection of animals<sup>160</sup> to the extent in which they do not allow particular forms of slaughter for the exclusive requirements of local religious communities and, at the same time, provide for penalty for the person slaughtering. In her motion, she stressed that ritual slaughter is practised in Judaism and in Islam. In the opinion of the Defender, the lack of regulations in Polish law, which would permit ritual slaughter solely for the needs of local religious communities, constitutes a violation of constitutional guarantees of freedom of religion. Ritual slaughter carried out for commercial purposes, on a massive scale, which is not a part of the sphere of freedom of religion and belief cannot, as far as the Defender is concerned, benefit from the constitutional protection.

The Constitutional Tribunal, on the basis of a motion filed by the Union of Jewish Religious Communities in the Republic of Poland<sup>161</sup>, found that Article 34(1) of the Act on the protection of animals, to the extent in which it does not allow for slaughtering animals in a

<sup>156</sup> I.7202.6.2014 of 22 January 2014.

<sup>157</sup> Ordinance of 9 September 2004 (Dz.U. of 2004, No. 205, item 2102, as amended).

<sup>158</sup> Letter of 12 March 2014.

<sup>159</sup> File No. K 32/14. See comments in Selected judgements of national and international courts in the area of equal treatment – judgement of the Constitutional Tribunal of 10 December 2014 in the case with file No. K 52/13, also related to ritual slaughter.

<sup>160</sup> The Act of 21 August 1997 (Dz.U. of 2013, item 856).

<sup>161</sup> Judgement of 10 December 2014, file No. K 52/13.

slaughterhouse according to specific methods prescribed by religious rites, is incompatible with Article 53(1), (2) and (5) of the Polish Constitution in conjunction with Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In addition, the Tribunal also ruled that Article 35(1) and (4) of the Act on the protection of animals, to the extent in which it provides for criminal liability for subjecting animals to slaughter in a slaughterhouse according to specific methods prescribed by religious rites, is incompatible with Article 53(1), (2) and (5) of the Constitution in conjunction with Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The petition submitted by the Defender awaits examination.

### **b) Availability of ethics lessons**

The Defender continues to monitor the problems with teaching ethics in Polish schools. In her petition to the Minister of National Education<sup>162</sup>, she assessed favourably the recent amendments to the Ordinance of the Minister of Education on conditions and method of organizing religious instruction in public kindergartens and schools<sup>163</sup>, which are to contribute to the implementation of the judgement of the European Court of Human Rights in Strasbourg in *Grzelak v. Poland*<sup>164</sup>. However, she stressed that there are still problems with the actual organization of lessons on ethics. Parents often do not know that the school organizes lessons on ethics or that there is a possibility of organizing interdepartmental or interclass groups. There are also cases of organizing lessons on ethics in remote parts of the city, in hours inconvenient for pupils, which is a real barrier hindering participation in ethics lessons.

In reply, the Minister of National Education<sup>165</sup> informed that, prior to the entry into force of the revised regulations, *Information on the principles of organizing religious and ethics instruction in the school year 2014/2015*, addressed to the education officers, governing authorities, headmasters of schools, parents and pupils, was published. The Ministry does not receive complaints related to evasion of organizing lessons in ethics by schools or local governments in the current school year. The conducted analysis shows, however, that the number of schools where ethics lessons are held increased by approximately 100% in comparison with the previous year. The organization of classes in the school is the responsibility of a headmaster, who adapts them to the accommodation, personnel capabilities and other conditions of work of a given school. Education officers are obliged to monitor the correctness of application of the law in force in schools, as a part of the exercised pedagogical supervision. The Minister of National Education also emphasised that along with the amendment to the Ordinance of the Minister of National Education on the conditions and method of organizing religious instruction in public kindergartens and schools, a legal instrument preventing the refusal to organize ethics lessons was introduced. The Defender continues to monitor ethics instruction in Polish schools.

<sup>162</sup> VII.7031.1.2014 of 22 October 2014.

<sup>163</sup> Resolution of 14 April 1992 (Dz.U. of 1992, No. 36, item 155, as amended).

<sup>164</sup> Judgement of 15 June 2010, complaint No. 7710/02.

<sup>165</sup> Letter of 26 November 2014.

### c) Availability of lessons on religion of religious minorities

Social studies<sup>166</sup> commissioned by the Defender and individual complaints indicate that in practice there are some problems related to the access to education in the area of minority religions.

One of the complaints<sup>167</sup> highlighted the issue of organization of religious instruction in a catechistical point outside of school, which children whose parents or guardians expressed a wish for their children to be taught religion of a given denomination are to attend. The Defender sent a letter to the governing authority of the school<sup>168</sup>, which expressed her concern that there are situations of unpunctual organization of religion lessons in a catechistical point, despite the fact that the governing authorities received information on such a need in advance, allowing taking appropriate actions. As a result of this situation, pupils who were to be covered by religious instruction, in accordance with the wish expressed by the law, had no catechist provided for from the beginning of the school year.

In reply, the governing authority<sup>169</sup> explained that it will undertake actions as soon as possible to reach agreement with the organizer of religious life of the religious minority and organize lessons in religion at a given level of education.

The Defender also received signals from the organizers of religious life of the religious minority<sup>170</sup> about the problems of believers and their children with obtaining marks for religion on school reports. While petitioning the school's headmaster<sup>171</sup> the Defender pointed out that if children of a minority religion are learning at school, and at the same time religion lessons are not organized, there are no legal obstacles to apply to the authority governing the school to conclude an agreement on the organization of religious instruction with the competent church authorities. Therefore, if parents express a desire for their children to be taught religion (of a particular denomination), the headmaster is obliged to take appropriate actions, in accordance with the regulations applicable in this area.

In reply, the headmaster informed<sup>172</sup> that measures leading to the conclusion of appropriate agreements related to the co-financing of catechistical points attended by pupils who practice minority religions will be taken. The school headmaster also proposed parents of children – followers of minority religions attending religion lessons in the catechistical point, including marks for religion in school reports.

<sup>166</sup> The studies entitled *Access to teaching of minority religions and ethics lessons*. Report of the Defender from the studies along with recommendations will be developed in 2015.

<sup>167</sup> VIII.5601.2.2014 of 4 November 2014.

<sup>168</sup> Letter of 14 November 2014.

<sup>169</sup> Letter of 26 November 2014.

<sup>170</sup> VIII.5601.1.2014 of 27 August 2014.

<sup>171</sup> Letter of 30 October 2014.

<sup>172</sup> Letter of 18 November 2014.

## 6. Preventing discrimination – general issues

### a) Amendments to the Act on the implementation of some regulations of the European Union regarding equal treatment

Already in May 2012, the Defender commented on the content and functioning in practice of the provisions of the Act on the implementation of some regulations of the European Union regarding equal treatment. The Defender pointed to shortcomings and weaknesses of the provisions of this Act, requiring intervention of the legislator. Statistical data of the Ministry of Justice relating to court cases in which the claim is based on the provisions of the Act can prove that victims of discrimination are given a tool with a low degree of efficiency. The Government Plenipotentiary for Equal Treatment, sharing the opinion on the validity of the proposed changes to the Act, indicated that she predicts the completion of her work on the draft amendment of the Act at the end of the first quarter of 2013. The Defender again petitioned the Government Plenipotentiary for Equal Treatment<sup>173</sup> with a request for information about the current status of work on the amendment of the Act. Furthermore, the Defender, in reply to the request of the Chair of the Justice and Human Rights Committee of the Polish Sejm<sup>174</sup>, expressed her opinion about the need for an urgent amendment to the Act and submitted an analysis from 2012, as fully recent<sup>175</sup>, for using in conducted work<sup>176</sup>.

The issue of amendment to the Act continues to be monitored by the Defender.

### b) Ratification of Protocol No. 12 to the European Convention on Human Rights

The Defender was informed by the Minister of Foreign Affairs<sup>177</sup> about work carried out by the government on the preparation of the ratification of Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>178</sup>. The Defender welcomed this decision, as leading to the introduction of a higher standard of protection against discrimination. The Defender gave the Minister of Foreign Affairs<sup>179</sup> her opinion on the ratification of the Protocol and, at the same time, asked for information on the results of further work in this area.

<sup>173</sup> I.816.3.2014 of 24 February 2014.

<sup>174</sup> Letter of 23 May 2014.

<sup>175</sup> Letter of 1 August 2014.

<sup>176</sup> See the legislative process on the Sejm paper No. 1051.

<sup>177</sup> I.816.11.2014 of 5 May 2014.

<sup>178</sup> Protocol No. 12 introduces a general prohibition of discrimination, which is not dependent on finding a breach of any other provision of the Convention by the European Court of Human Rights, into the rights and freedoms guaranteed in the Convention. Article 1 of the Protocol provides that "the enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status," and that "[n]o one shall be discriminated against by any public authority on [these] ground..." Until now, Poland has not been bound by any other instrument of international law that protects against discrimination in such a universal and general way.

<sup>179</sup> Letter of 7 August 2014.

### **c) Increasing legal protection against unequal treatment of persons employed on the basis of a civil law contract**

The Defender conducted explanatory proceedings in the case in which a person employed on the basis of a civil law contract was to be dismissed from work on discriminatory motives. The reply to the Defender's petition addressed to the Chief Labour Inspector emphasized that the National Labour Inspectorate monitors the compliance with the labour law, and the provisions of the Act on the implementation of some regulations of the European Union regarding equal treatment are not the labour law. Moreover, in the case of persons employed on the basis of a civil law contract, the Inspection may only examine occupational health and safety, and legality of employment. In the opinion of the Defender, the current state of disproportions in terms of available protection measures depending on the basis of employment should be removed and it is worth considering whether the provisions authorizing the National Labour Inspectorate to carry out inspection activities in the field of the compliance with the labour law should not also include an authorization to control the compliance with the Act on the implementation of some regulations of the European Union regarding equal treatment, prohibiting unequal treatment of natural persons performing their work based on a civil law contract.

The Defender turned to the Chair of the Labour Protection Council at the Polish Sejm<sup>180</sup> with a request to take a position on the possibility of initiation of the proposed legislative changes by the Labour Protection Council.

Furthermore, the Defender presented the issue of the need to increase the level of protection of persons employed under non-employment contracts to the Minister of Labour and Social Policy<sup>181</sup>. The Defender petitioned for the initiation of a debate on the creation of a system of non-employment protection and performance of the duty of a national control over the conditions of such work.

### **d) Anti-discrimination education**

The issue of how anti-discrimination education is provided in institutions of various kinds and levels continues to be monitored by the Defender. It is of particular importance, since the formation of appropriate attitudes – in particular, respect for the dignity of every human being – is one of the fundamental tasks of the educational process. In the opinion of the Defender, further efforts to support teachers in this regard should be made, taking into account the constitutional right of parents to educate their children according to their own beliefs.

In 2014, the Defender received requests related to curricular proposal entitled "Equality kindergarten. How to make pre-school education sensitive to sex," aimed at supporting teachers in the education free from stereotypes related to sexes and promoting equal opportunities for women and men. After the analysis of the controls of education officers, the Defender decided that the desire to ensure perception of sexes in a way free from stereotypes is consistent with the norms of the Constitution and international acts binding Poland. In addition, the disputed study is only a proposal which a pre-school educa-

<sup>180</sup> I.810.2.2014 of 3 July 2014.

<sup>181</sup> III.7041.33.2014 of 18 November 2014.

tion teacher may, but do not need to, take into consideration. The Defender petitioned the Minister of National Education<sup>182</sup> with a request to consider comments on the provision of anti-discrimination education, as well as to inform about the activities taken in relation to the curricular proposal “Equality kindergarten...”

The Minister of National Education<sup>183</sup> explained that the educational system in Poland is decentralized, and schools and teachers have autonomy, guaranteed by the Act on the School Education System<sup>184</sup>, as regards the choice of methods and curricula, as well as teaching resources and materials. The Minister responsible for education is obliged to design the core curriculum, in the form of an ordinance, defining skills which a pupil should have acquired after the end of each stage of education. Implementation of the core is obligatory for all schools and pre-school education institutions. Content contained therein may be extended by teachers in curricula which are introduced in a given kindergarten or, respectively, by a headmaster of a kindergarten or a school. The criteria which must be met by the curriculum are defined by Ordinance of the Minister of Education<sup>185</sup>. The so-called equality programmes are not pre-school education curricula within the meaning of the above Ordinance. Such programmes, if they are implemented in kindergartens, should – in accordance with the Act on the School Education System – be an integral part of the educational programme, covering all the content and activities of an educational nature carried out by teachers in the kindergarten. Educational programme is adopted, in consultation with the teachers’ meeting, in the case of community kindergartens, by the parents’ council, and in the case of other kindergartens, by an organ indicated in the statute of the kindergarten. This means that decisions concerning implementation of specific programmes with educational content, including the so-called equality programmes, are taken together by parents’ councils and teachers’ meetings, which are chaired by headmasters exercising pedagogical supervision and governing activities of the school or the kindergarten. If the above-mentioned curricula, educational programme or prevention programme were adopted in accordance with the applicable regulations, the teacher has the full right to implement them.

Pursuant to the provisions of the Ordinance of the Minister of National Education on pedagogical supervision<sup>186</sup>, one of the requirements imposed on kindergartens, schools and educational institutions is the implementation of anti-discrimination measures. Fulfilling this requirement is examined in the process of external evaluation by pedagogical supervision authorities. The Defender will monitor the results of evaluation in this field.

Moreover, the Minister informed that curricular proposal discussed was implemented in part or in whole only in 11 pre-school education institutions, in four voivodeships. No post-control recommendations were issued as a result of inspections carried out, which means that there were no activities inconsistent with the applicable law.

<sup>182</sup> I.800.1.2014 of 24 April 2014.

<sup>183</sup> Letter of 5 May 2014.

<sup>184</sup> The Act of 7 September 1991 (Dz.U. of 2004, No. 256, item 2572, as amended).

<sup>185</sup> The Ordinance of the MNE of 21 June 2012 in the matter of introduction in schools of pre-school education programmes and educational programmes and allowing handbooks for school use (Dz.U. of 2012, item 752).

<sup>186</sup> Ordinance of 7 October 2009 (Dz.U. No. 168, item 1324, as amended).



## II. ACTIVITY OF THE HUMAN RIGHTS DEFENDER TO SUPPORT, PROTECT AND MONITOR IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES AND TO PREVENT DISCRIMINATION ON GROUNDS OF DISABILITY

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### 1. Accessibility (Article 9 of the Convention)

#### a) Accessibility of websites of public institutions to people with disabilities

The Defender published a report entitled *Accessibility of websites of public institutions to people with disabilities. Analysis and Recommendations*<sup>187</sup>, which is a result of study on accessibility of approximately 3000 websites of public administration bodies, carried out by the Foundation Institute for Regional Development. The conclusions of the study raise concerns. None of the Internet portals under analysis was fully accessible to persons with disabilities and other people at risk of digital exclusion. The Ordinance of the Council of Ministers on the National Interoperability Framework, minimum requirements for public registers and exchange of information in electronic form, and minimum requirements for ICT systems<sup>188</sup> specifies the date of ensuring full accessibility of public websites by the end of May 2015. In the opinion of the Defender, it is therefore necessary to make increased efforts for the adaptation of public websites to the needs of people at risk of digital exclusion. The Defender asked<sup>189</sup> the Minister of Administration and Digitization for clarification what measures are planned to be taken in order to meet the deadline of ensuring full accessibility of public websites.

The Minister of Administration and Digitization assured<sup>190</sup> that as a part of implementation of own tasks and partnership in the initiatives of other entities, he promotes and popularises the principles of accessibility of Internet services. At the same time, given the importance of and priority given to the accessibility of websites, it is planned to carry out a series of activities aimed at achieving this strategic goal. The Minister pointed out, among others, to the initiative implemented as a part of the Committee of the Council of Ministers for Digitization to verify the ICT systems regulated by draft government documents in terms of achieving

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<sup>187</sup> *Accessibility of websites of public institutions to people with disabilities. Analysis and Recommendations*, Equal Treatment Principle. Law and Practice, No. 11, Human Rights Defender Bulletin 2013, No. 9.

<sup>188</sup> Ordinance of the Council of Ministers of 12 April 2012 (Dz.U. of 2012, item 526).

<sup>189</sup> I.600.5.2014 of 24 February 2014.

<sup>190</sup> Letter of 22 April 2014.

interoperability by using a predetermined check list. One of the verification criteria is also providing the requirement of presentation of information resources taking into account their accessibility for people with disabilities in accordance with the WCAG 2.0 standard at the AA level. The Minister expressed his conviction that the strategic directions of development of informatisation of the Polish public administration, as well as actions planned to implement them, will allow increasing the accessibility of Internet services for the needs of the disabled. At the same time, he declared his readiness to cooperate in the implementation of projects undertaken in the area in question. The Defender is planning to conduct another control of accessibility of websites of public institutions in the first half of 2015.

### **b) Accessibility of banking services to persons with a vision dysfunction**

The Defender pointed out that some banks offer blind and visually impaired persons access to cash held in bank accounts with the use of a cash card, despite the fact that in a given locality there is no cash machine adapted to this kind of disability. The Defender petitioned the President of the Polish Bank Association with a request for information<sup>191</sup> whether this issue has been recognized by the Association also in the context of improving the quality of service to persons with disabilities by banks, and what actions have been or will be taken in order to eliminate such an improper practice and ensure broad access to cash machines equipped with software providing sound and headphone inputs, which are common around the world, for blind and visually impaired bank customers.

In reply, the Polish Bank Association informed<sup>192</sup> that it developed the second edition of *Good practices in providing services to persons with disabilities by banks*, which was submitted to the Members of the PBA, with the recommendation for acquainting employees of banks with it appropriately and gradual implementation of developed solutions. As for the availability of cash machines adapted to the needs of blind and visually impaired people, the Polish Bank Association indicated that it has no relevant statistical data. However, it assured that banks modernize banking devices on a regular basis in such a way so that they can serve persons with disabilities, e.g. by installing cash machines with headphone inputs. The President of the Polish Bank Association also pointed out that good practices are aimed at increasing awareness among the representatives of the banking community, which in turn is to lead to the elimination of barriers to access to financial services.

## **2. Equal recognition before the law (Article 12 of the Convention)**

### **a) Reform of the institution of legal incapacitation**

The Defender referred to her petition of June 2012 raising the issue of the rights of legally incapacitated persons and their right to representation, including the practical and systemic problem of finding candidates for guardians and custodians of legally incapacitated persons. She also made reference to the legislative work on the new Civil Code, including

<sup>191</sup> V.7224.358.2014 of 3 September 2014.

<sup>192</sup> Letter of 27 January 2015.

the section on the capacity to perform acts in law, associated with the proposed departure from the institution of legal incapacitation and a complete change in the concept of participation of people with disabilities in the civil law turnover. In the course of the correspondence, the Defender received information about the consolidated draft assumptions for the draft Act amending the Acts: Civil Code<sup>193</sup>, Family and Guardianship Code<sup>194</sup>, Code of Civil Procedure<sup>195</sup>, the Act on supporting family and foster care system<sup>196</sup> and some other acts. The draft was agreed intra-ministerially and awaited approval of the Minister of Justice before being referred to public consultation, evaluation and inter-ministerial consultation. The Defender asked the Minister of Justice<sup>197</sup> for information on the current state of the legislative process related to this draft. The Minister of Justice informed<sup>198</sup> the Defender about the state of work on the package of amending acts. Currently, the draft assumptions for the draft Act amending the Act – Civil Code, the Act – Family and Guardianship Code, the Act – Code of Civil Procedure, the Act on supporting family and foster care system and some other acts – after inter-ministerial and social consultations – was again submitted for inter-ministerial consultation and additional consultation with the Minister of Finance; soon, it is to be passed on to the standing Committee of the Council of Ministers for consultation. Due to the importance of this matter, the Defender regularly monitors the state of legislative work and direction of the proposed changes.

### 3. Access to justice (Article 13 of the Convention)

#### a) Protection of mentally ill persons in court proceedings

The Defender's doubts were raised by the content of the drafted amendment of Article 48 of the Act on the Protection of Mental Health<sup>199</sup>, which should be mandatory as regards appointment of a legal representative for a mentally ill person being a party to the proceedings for involuntary placement in a psychiatric hospital. A possible change in the wording of the provision from "court may appoint" to "court shall appoint," while leaving the existing arbitrary conditions, would be – in the Defender's opinion – only an apparent change, resulting in no procedural consequences for the current judicial practice. The presented direction of changes, in fact, maintains the existing solution. For it cannot be said that explicitly mandatory assistance for the mentally ill, who are party to the proceedings for involuntary placement in a psychiatric hospital, is introduced, at the same time sticking with the previous solution making its appointment dependent on the court's assessment. In the opinion of the Defender, the provision should expressly specify that there must be a lawyer or a solicitor ap-

<sup>193</sup> The Act of 23 April 1964 (Dz.U. of 2014, item 121, consolidated text).

<sup>194</sup> The Act of 25 February 1964 (Dz.U. of 2012, item 788, consolidated text).

<sup>195</sup> The Act of 17 November 1964 (Dz.U. of 2014, item 101, consolidated text).

<sup>196</sup> The Act of 9 June 2011 (Dz.U. of 2013, item 135, consolidated text).

<sup>197</sup> IV.7024.26.2014 of 18 July 2014 and of 20 November 2014.

<sup>198</sup> Letter of 5 August 2014 and of 15 December 2014.

<sup>199</sup> The Act of 19 August 1994 (Dz.U. of 2011, No. 231, item 1375, consolidated text).

pointed for the person being a party to the proceedings. The Defender asked the Minister of Health<sup>200</sup> to take actions so that the proposed legal solutions were a real proposal of ensuring effective protection of procedural rights for mentally ill persons.

The Undersecretary of State in the Ministry of Health reported<sup>201</sup> that it is planned to introduce to the drafted assumptions of amendment to the Act on the Protection of Mental Health the change declared earlier, aimed at providing a guarantee of protection of procedural rights of persons with mental disorders, through the introduction of a mandatory appointment of their professional legal representatives by the court. The essence of the drafted regulation should be a change of Article 48 of the Act indicated above in such a way so that it would oblige the court to appoint a lawyer or a solicitor for the person being directly affected by the proceedings. The Defender continues her activity in this matter.

#### **4. Freedom from torture or cruel, inhuman or degrading treatment or punishment (Article 15 of the Convention)**

##### **a) Situation of persons with intellectual disability in prisons**

The matter of failure to ensure personal safety in pre-trial detention centres for intellectually disabled prisoners, as well as petitions received by the Office of the Defender regarding difficulties in the functioning of people with intellectual disability in the prison environment prove that there is a need for a reliable assessment of the preparation of prison staff to work with people with this kind of disability. Correction officers, physicians and officers of the security department, having direct contact with the prisoners, should have knowledge about the needs resulting from intellectual disability. The problem of the lack of understanding on the part of prison staff is recurring in petitions sent by prisoners with all kinds of disabilities. It is also very important to shape proper attitude of persons deprived of their freedom towards inmates with intellectual disability. In the Defender's opinion, guaranteeing the rights of persons with disabilities is possible, *inter alia*, by broadening the scope of training for employees of the Prison Service. The Defender asked the Director General of the Prison Service<sup>202</sup> to inform her of the position taken in the presented case.

In reply submitted to the Defender, the Director General of the Prison Service informed<sup>203</sup> that a new training programme in the Prison Service, which includes expanded content regarding, among others, persons with disabilities, is being developed. As a part of training, in all corps, officers are sensitized to the phenomenon of discrimination, the functioning of stereotypes and prejudices and shown the ways of preventing them. The Director stressed that the issues related to working with people with intellectual disabilities is discussed in great detail in officers' training in penitentiary speciality, and an important element of training for correction officers and psychologists is training skills of sharing information,

<sup>200</sup> V.5150.1.2014 of 30 January 2014.

<sup>201</sup> Letter of 13 February 2014.

<sup>202</sup> II.517.566.2014 of 24 February 2014.

<sup>203</sup> Letter of 30 April 2014.

insights and guidance in dealing with people with all kinds of difficulties (among others, emotional, behavioural). The Defender continues to monitor the activities of the Director General of the Prison Service in this matter.

### **b) Adaptation of penitentiary units and institutions for minors to the needs of persons with disabilities**

The problem was noticed during the inspection of penitentiary units conducted by the Defender acting as the National Preventive Mechanism. The issue diagnosed by the representatives of the National Preventive Mechanism focuses primarily on the lack of at least one cell for disabled people on wheelchairs or with other mobility problems in penitentiary units. However, it should be kept in mind that the existence of a cell properly adapted to the above-mentioned category of prisoners alone does not fulfil the condition for guaranteeing the possibility of serving a penalty of imprisonment by such persons. It is also necessary to adapt the nearest infrastructure of these cells to enable the exercise of such rights as the right to visit, the right to walk, the right to religious practices and the right to cultural and educational activities for prisoners with reduced mobility. During the preventive inspections, representatives of the National Preventive Mechanism also noted that juvenile detention centres and juvenile shelters are not adapted to the needs of people with disabilities. This situation may violate the European Convention on Human Rights and the Convention on the Rights of Persons with Disabilities. In the opinion of the Defender, up until the change in the provisions, actions facilitating persons with disabilities staying in the right conditions should be taken. The Defender asked the Minister of Justice<sup>204</sup> to express his position on this matter.

The Minister of Justice informed<sup>205</sup> that the Prison Service, according to the existing capabilities, is guided by the principle that the physically disabled convicts shall be placed in cells adapted to this purpose on the ground floor, with an independent access to the common rooms, prison yards, baths and prison out-patients' clinic. The Prison Service administers 156 penitentiary units. 58 units have separate cells for physically disabled persons, including those moving on wheelchairs. The needs of people with physical disabilities are taken into account in the implementation of current investment projects (construction of new buildings, renovations). Constant supervision over the observance of the rights of prisoners, including persons with physical disabilities, is exercised by a penitentiary judge. Periodically, the Ministry of Justice monitors the conditions in which people with disabilities are serving a penalty of imprisonment and the number of these people.

In relation to the existing facilities, the applicable provisions of the Act – Construction Law<sup>206</sup> do not contain the obligation to adapt them to the needs of physically disabled people. Provisions of the Act and the implementing rules issued on its basis apply to the situation where an investor intends to carry out construction works affecting the change in the technical conditions of a building, i.e. begin construction of a new building, its ex-

<sup>204</sup> KMP.571.26.2014 of 14 May 2014.

<sup>205</sup> Letter of 5 June 2014.

<sup>206</sup> The Act of 7 July 1994 (Dz.U. of 2013, item 1409, consolidated text).

pansion, rebuilding, superstructure or reconstruction of the existing building. Exclusion of the obligation to take into account the needs of persons with disabilities in the construction of prisons and pre-trial detention centres is related only to such situations. The Minister of Infrastructure, after consultation with the Minister of Justice, committed herself to providing the Commission for the Codification of Construction Law with an in-depth analysis of solutions for the protection of the rights of persons with disabilities to take them into account in the Urban Planning and Construction Code being currently developed.

The specific situation of persons deprived of their freedom remains a priority for the National Preventive Mechanism.

### **c) Deinstitutionalisation**

On 14 February 2014, a conference the theme of which was the use of the EU funds in the transition from institutional care to care provided at a local level, was held in the Office of the Defender. Participants in the discussion were representatives of the central and local government, the EU institutions and NGOs. During the meeting, experts presented the challenges faced by Poland in the field of deinstitutionalization of care and presented examples of good practice in a comparative perspective to other EU countries. The conference was the result of the Defender's meeting with the representatives of the European Expert Group on the Transition from Institutional to Community-based Care, acting at the European Commission.

## **5. Personal mobility (Article 20 of the Convention)**

### **a) Parking card for persons with disabilities**

In view of numerous applications of persons with disabilities for challenging to the Constitutional Court the provisions of the Act amending the Road Traffic Act and some other acts<sup>207</sup>, which amends, among others, regulations defining the rules for issuing parking cards, the Defender petitioned the Minister for Infrastructure and Regional Development<sup>208</sup>. The Defender pointed out that the applicants question the constitutionality of the provision of the Amending Act which stipulates the expiration of parking cards with effect from 1 December 2014. Some of the applicants believe that the provision which does not grant the right to a parking card people with mild disabilities, with reduced mobility, who have been entitled to the right to the parking card so far, is also unconstitutional. In the opinion of the applicants, the new regulations violate the constitutional principle of acquired rights. In the Defender's view, there are doubts whether by setting new criteria for obtaining the rights to the parking card, as a result of which some of the disabled persons previously owning the parking card have lost the right to use this document, the legislator caused permissible interference with the acquired rights of these people. Analysis of the records documenting the legislative

<sup>207</sup> The Act of 23 October 2013 (Dz.U. of 2013, item 1446 and of 2014, item 486).

<sup>208</sup> V.811.10.2014 of 22 October 2014.

process leads to the conclusion that the restriction of entities eligible to receive the parking card was aimed at ensuring that persons, who experience major problems with moving, have a real possibility to use the parking space meant for persons with disabilities by reducing the amount of parking cards in circulation, and particularly by eliminating forged cards and cards issued to persons who are no longer alive from circulation. However, the intention to rationalize the rules for issuing parking cards in order to eliminate abuse and ensure a real possibility to use the privileges of owning the card does not justify the abolition of acquired rights. In order to eliminate the irregularities, first of all, the legislator should apply means less interfering with the rights of citizens, and only when they prove ineffective use means with greater ailments.

The case is continued.

### **b) Rights of persons with disabilities in road traffic**

The Constitutional Tribunal examined the petition<sup>209</sup> of the Defender related to the limitation of the rights of drivers with disabilities to non-compliance with some road signs, such as no traffic or no waiting<sup>210</sup>. The Defender pointed out in her petition that the challenged provision of the Ordinance of the Minister of Infrastructure on detailed technical conditions for road signs and signals and road traffic safety equipment and their placement on roads<sup>211</sup> creates the possibility of introducing traffic organization which abolishes the right of parking card holders to non-compliance with some signs, contrary to the provisions of the Road Traffic Act. The Tribunal shared the position of the Defender and found that the challenged provisions are inconsistent with the Road Traffic Act<sup>212</sup> and the Constitution.

## **6. Freedom of expression and opinion, and access to information (Article 21 of the Convention)**

### **a) Implementation of the provisions of the Act on sign language**

The Defender published the report entitled *Service of Deaf and Deaf-blind Persons in Public Administration Offices. Analysis and Recommendations*<sup>213</sup>. The report was prepared on the basis of non-discrimination studies carried out in 2013 by a research company. The publication presents the state of implementation of the Act on sign language and other means of communication<sup>214</sup>, which aims to ensure functioning in society for deaf and deaf-blind persons on equal basis, by facilitating communication with the use of non-verbal languages. The studies pointed to the poor fulfilment of the obligations imposed by the Act by public administration bodies in relation to deaf persons and the marginal implementation of

<sup>209</sup> V.565.14.2014 of 19 March 2014.

<sup>210</sup> Judgement of 4 November 2014, file No. U 4/14.

<sup>211</sup> Ordinance of 3 July 2003 (Dz.U. of 2003, No. 220, item 2181, as amended).

<sup>212</sup> The Act of 20 June 1997 (Dz.U. of 2012, item 1137, consolidated text).

<sup>213</sup> *Service of Deaf and Deaf-Blind Persons in Public Administration Offices. Analysis and Recommendations*, Equal Treatment Principle. Law and Practice, No. 13, Human Rights Defender Bulletin 2014, No. 5.

<sup>214</sup> The Act of 19 August 2011 (Dz.U. of 2011, No. 209, item 1243).

the obligations in relation to deaf-blind persons. The report also contains conclusions and recommendations for appropriate changes both in the practice of the functioning of public administration bodies, and the necessary changes in the law. The draft report was consulted with members of the Team for Deaf People working at the Human Rights Defender.

## 7. Education (Article 24 of the Convention)

### a) Special scholarships for students with disabilities

The government draft Act amending the Act – Higher Education Law<sup>215</sup> and some other acts assumes that a subsidy for tasks related to creating conditions for full participation in the education process for students and Ph.D. students who are disabled persons will be limited only to people with disabilities whose disability has been confirmed by the certificate of the competent authority. Meanwhile, the Convention on the Rights of Persons with Disabilities ratified by Poland does not require formal confirmation of disability in the form of certificate or any other document from a public institution. Money from the subsidy is intended for all kinds of adjustments, which are to facilitate functioning for disabled students during their education at universities and in the academia. These benefits are not purely financial, but rather related to providing such services as adaptations of textbooks for a particular type of disability or providing support of sign language interpreter. There is little probability that such aid will be granted to a student or Ph.D. student who does not need it. Moreover, not all persons with disabilities have the appropriate certificates. The Defender shares the conviction about the need to control the real needs of people applying for funds from the subsidy. However, to confirm the condition of a given person, it seems enough to present a medical certificate or opinion of a mental health service in the case of persons with mental disorders. This will allow securing the correct spending of funds and will prevent students with disabilities from the necessity to attend to burdensome and lengthy formalities. The Defender requested the Minister of Science and Higher Education<sup>216</sup> for information about decisions on the introduction of proposed amendments to the governmental draft Act amending the Act – Higher Education Law and other acts.

The Minister of Science and Higher Education explained<sup>217</sup> that the amendment described in the Defender's petition stemmed from the Ministry's desire to standardize the provisions relating to students and Ph.D. students who are disabled. The effect of this amendment was to be an indication of the legislator's intention as to the way of documenting the disability for the purpose of subsidy for tasks related to creating conditions for full participation in the education process for students and Ph.D. students who are disabled. However, taking into consideration the postulates raised in the course of parliamentary work, the Ministry decided to abandon the drafted amendment in this regard.

<sup>215</sup> The Act of 27 July 2005 (Dz.U. of 2012, item 572, consolidated text).

<sup>216</sup> I.7036.35.2014 of 17 July 2014.

<sup>217</sup> Letter of 5 August 2014.



## **b) Accessibility of artistic education for persons with disabilities**

The Defender received complaints concerning the content of the letter of the Director of the Centre for Artistic Education sent to headmasters of artistic schools run by the Ministry of Culture and National Heritage, pursuing general education. In the opinion of the Director, provision of special education is possible only in special or integrative schools, and not in artistic schools. The arguments presented in the letter point to the lack of understanding of both judgements about the need for special and individual education, and the situation of artistically gifted children and youth with various types of dysfunctions. Conclusions and recommendations presented in the letter were contrary not only to the norms arising from the Constitution and the content of the educational laws, but also to the Convention on the Rights of Persons with Disabilities ratified by Poland. The constitutional principle of equality before the law requires from the government authorities equal treatment of each pupil or student having the appropriate certificate. Each school implementing the core curriculum of general education is obliged to implement the recommendations contained in such certificates. At the same time, the prohibition of discrimination expressed in the Constitution is a guarantee of education of children and youth with disabilities in artistic schools implementing the general education programme equally with their non-disabled peers. The constitutional norms guaranteeing everyone the right to education apply to all citizens, and thus also to persons with disabilities. No provision of a universally effective law limits children and youth with disabilities in the possibility to benefit from education in artistic schools due to any kind of disability. In accordance with the provisions of the Convention on the Rights of Persons with Disabilities, there should be no separate system of education for people with disabilities, and only additional forms of support within the general system of education. In the Defender's view, it was necessary to reach the headmasters of artistic schools run by the Ministry of Culture and National Heritage with a written information about the rights of children with special educational needs and the obligations of artistic schools related to these rights before the beginning of the new school year. Thus, the Defender requested the Minister of Culture and National Heritage<sup>218</sup> to take actions in order to clarify the matter in question.

The Minister of Culture and National Heritage ensured<sup>219</sup> that her ministry attaches great importance to ensuring equal opportunities for persons with disabilities in using the goods of culture and arts and the offer of cultural institutions, as well as artistic schools and universities. Children and youth with various disabilities take up education in artistic schools and often achieve great successes. Currently, more than 100 pupils with the certificate of the need for special education are learning in general education artistic schools. Artistic schools will implement, at the request of parents, recommendations as to the need for special education included in these certificates. Schools which in connection with this bear additional costs, like in the case of the need for individual education, may apply to the Centre for Artistic Education for additional funds. At the same time, the Minister expressed her belief that the letter from the Director of the Centre for Artistic Education addressed to the headmasters of

<sup>218</sup> I.7036.49.2014 of 8 August 2014.

<sup>219</sup> Letter of 29 September 2014.

artistic schools was prepared with care to ensure the best possible development opportunities for pupils with disabilities. However, given the doubts raised in the Defender's petition, the addressees of the letter will be sent an explanation regarding the position of the Ministry on the possibility of educating persons with disabilities in artistic schools. Therefore, the Defender considered the case to be positively concluded.

### **c) Education of the deaf**

The Office of the Defender hosted a conference devoted to the education of the Deaf organized by the Polish Association of the Deaf and the Human Rights Defender. The goal of the meeting was to provide knowledge about the specific nature of education of the deaf and the use of Polish Sign Language in the context of the right to education, pursuant to the Convention on the Rights of Persons with Disabilities. During the conference, a bilingual education model – a system of teaching Polish as a foreign language and Polish Sign Language to deaf pupils, was also discussed.

Furthermore, the Defender issued a report *Education of the deaf*<sup>220</sup> devoted entirely to the problem of access to education for deaf pupils and students. Its essential part is the diagnosis of the current situation, including, among others, issues associated with the failure to implement bilingual education. The report was published on the website of the Defender, together with a translation into Polish Sign Language<sup>221</sup>.

### **d) Accessibility of academic education for persons with disabilities**

At the request of the Defender, social studies entitled *Accessibility of academic education for the deaf, blind, persons with reduced mobility, the mentally ill* were conducted. The main objective of the study was to show the differences between universities in terms of accessibility of academic education for persons with various disabilities and indicate an exemplary approach of universities in this regard. The scope of the study included universities spread across the country – those where Offices for People with Disabilities are operating and those in which such units were not created. The study also assumed taking into account the perspective of students with disabilities, able-bodied students, university employees responsible for cooperation with persons with disabilities and lecturers. The final report of the study will be published in 2015.

## **8. Health (Article 25 of the Convention)**

### **a) Sign language interpreter during the medical appointment**

Deaf people, communicating with Polish Sign Language or Signed Polish, often encounter a communication barrier during a medical appointment. In such situations, the presence of a third party who could act as interpreter is necessary. This function is often performed by

<sup>220</sup> The report was prepared as a part of work of the Expert Committee on People with Disabilities at the Human Rights Defender.

<sup>221</sup> Report: <http://www.rpo.gov.pl/sites/default/files/Edukacja%20gluchych.pdf>; translation of the report on Polish sign language: <http://www.rpo.gov.pl/sites/default/files/Edukacja%20Gluchych%20PJM.pdf>

hearing children of deaf parents. In the opinion of the Defender, entrusting such a responsible role to minors may have a negative impact on their development, and leads to the violation of the Act on sign language and other means of communication<sup>222</sup>. This Act specifies that a person helping to take care of things, *inter alia*, in medical institutions, should be a person who turned 16. It is necessary to inform physicians about the age limit for the person serving as an interpreter. Therefore, medical institutions should be encouraged to use the services of a professional interpreter, familiar with specialist medical vocabulary, or the services of a video-interpreter. A deaf person is entitled to co-funding of the interpretation service from the State Fund for Rehabilitation of Disabled People (PFRON). It would be a great facilitation, if deaf persons were informed by medical institutions about this entitlement. Associations dealing with deaf people can help with finding a suitable interpreter working in a given region. The Defender requested the President of the Supreme Medical Council<sup>223</sup> to inform her about the activities undertaken in the presented case and to address the issues raised.

The President of the Supreme Medical Council assured<sup>224</sup> that the self-government of physicians and dentists undertakes activities to disseminate knowledge among the physicians about the regulations governing the use of an assisting person by the deaf. The content of the Defender's petition was posted on the website of the Polish Chamber of Physicians and Dentists and sent to all the presidents of regional chambers in the country in order to reach as many people as possible. The Defender continues to monitor the matter.

#### **b) Medical care for athletes with disabilities**

The Defender returned to the problem of providing medical care for competitors above the age of 23 selected to represent Poland on the Special Olympics. The solution proposed in previous correspondence, according to which the Special Olympics Poland can apply for funds from the Fund for Development of Physical Culture to provide medical care for this group of competitors, should be regarded as insufficient. Medical care for Polish representatives at the Olympic Games and Paralympic Games is, in fact, always guaranteed. Meanwhile, medical care for Polish representatives at the Special Olympics would depend on the allocation of funds from the Fund for Development of Physical Culture. The Defender asked the Minister of Sport and Tourism<sup>225</sup> for information on the position taken on the matter.

The Minister of Sport and Tourism explained<sup>226</sup> that there is no evidence to conclude that the provisions of the Act on sport<sup>227</sup> discriminate against the participants of programmes for people with intellectual disabilities, implemented by the Special Olympics Poland. This association is treated by the Ministry of Sport and Tourism in a special way, among others, by ensuring each year funds to subsidize the costs of any necessary medical examinations and other medical services for athletes, to the extent requested in the offers submitted by the association to the Ministry.

<sup>222</sup> The Act of 19 August 2011 (Dz.U. No. 209, item 1243)

<sup>223</sup> I.501.183.2014 of 11 June 2014.

<sup>224</sup> Letter of 26 June 2014.

<sup>225</sup> I.814.10.2014 of 2 July 2014.

<sup>226</sup> Letter of 23 July 2014.

<sup>227</sup> The Act of 25 June 2010 (Dz.U. of 2014, item 715, consolidated text).

The legislator awarded preferences regarding financing of costs of medical care from the part of the state budget which is at the disposal of the minister responsible for health matters, only to athletes selected for the national team in Olympic and Paralympic sports. In addition to competitors representing the Special Olympics Poland, the provisions of the above Act do not take into account also the financing of costs of medical care for members of national teams in non-Olympic sports and competitors with disabilities who are members of national teams in sports played at the Deaflympics and sports not included in the programme of the Paralympic Games and the Deaflympics. Both practising sport, and participation in world-class events by athletes implementing programmes of Special Olympics in Poland and other countries is significantly different from practising sports in the Olympic and Paralympic dimension. In the programmes of Special Olympics, sport is regarded as a form of psycho-physical rehabilitation and improvement of fitness necessary for independent performance of basic life functions. The Defender will continue to monitor the issue of equal treatment of disabled athletes.

### **c) Mental health protection in Poland**

The Defender published the report entitled *Mental health protection in Poland: challenges, plans, barriers, good practice*<sup>228</sup>. The aim of the publication, which was created as a part of work of the Expert Committee for People with Disabilities, is to draw attention to the dysfunctional condition of mental health protection in Poland and barriers blocking the implementation of the National Mental Health Protection Programme (NPOZP), as well as to show good practice in terms of support for mentally ill persons.

## **9. Work and employment (Article 27 of the Convention)**

### **a) Increasing employment of persons with disabilities**

The number of disabled persons with competences suitable for work in the offices of local government administration is constantly growing. Pursuant to the Act on Civil Service<sup>229</sup>, when the employment rate of disabled persons in an office is lower than 6%, a person with a disability participating in an open recruitment has priority in employment, if she or he is among the five best candidates. In practice, only in four voivodeship cities in city halls the employment rate of persons with disabilities exceeded the statutory level of 6%. Moreover, a very low percentage of employees in city halls are persons with a significant degree of disability. Meanwhile, the offices of local governments should not only strive to achieve and exceed this rate, but according to the provisions of the Convention, use all available measures to prevent discrimination against persons with disabilities in the labour market. An important role in promoting the increase in employment of persons with disabilities can be played by the Union of Polish Metropolises. The Defender requested the Head of the Union of Polish

<sup>228</sup> [https://www.rpo.gov.pl/sites/default/files/Ochrona\\_zdrowia\\_psychicznego.pdf](https://www.rpo.gov.pl/sites/default/files/Ochrona_zdrowia_psychicznego.pdf).

<sup>229</sup> The Act of 21 November 2008 (Dz.U. of 2014, item 1111, consolidated text).

Metropolises<sup>230</sup> to submit information on actions taken to increase employment of persons with disabilities in the offices of Polish metropolises.

The President of the Board of the Union of Polish Metropolises reported<sup>231</sup> that there are 12 committees functioning within the Union, including the Committee on Social Policy and Health. In 2014, the Committee debated, among others, the challenges stemming from the ratification of the Convention on the Rights of Persons with Disabilities by Poland. Until now, the Committee has not been dealing directly with the topic of employment of persons with disabilities. However, this topic will be introduced to its agenda at the next seminar of the Committee. Furthermore, the Office of the Union of Polish Metropolises forwarded the Defender's petition to the offices of member cities. The Defender will continue working on this issue.

### **b) Support for the mentally ill on the labour market**

Persons with disabilities are one of the groups particularly at risk of social exclusion. Among them, there are persons with mental illnesses and disorders, who are in the relatively worst situation. Social exclusion in the professional activity dimension and, consequently, also in the economic dimension, manifests itself in their case not only through difficulty in finding a job in general, but also through a low status of the occupations the execution of which is recommended to these people. The Defender released the report entitled *Support for mentally ill persons on the labour market*<sup>232</sup>, which is the result of social study, the main objective of which was to determine how the support and socio-professional activation of the mentally ill is carried out, with particular emphasis on the role of the voivodeship authority, as well as an indication of project implemented in Poland relating to the return and entry to the labour market of persons over mental crisis.

## **10. Adequate standard of living and social protection (Article 28 of the Convention)**

### **a) The right to care benefits**

On 5 December 2013, the Constitutional Tribunal examined the petition of the Defender related to the loss, on 30 June 2013, of the care benefits by some of the people receiving this benefit based on final and open-ended administrative decisions<sup>233</sup>. The Tribunal ruled on unconstitutionality of the challenged provisions of the Act amending the Act on family benefits and some other acts<sup>234</sup>. The judicial opinion pointed out the need for undertaking legislative work in order to restore the situation consistent with the Constitution. The Defender drew attention to the particularly difficult situation of those caring for persons with

<sup>230</sup> I.801.16.2014 of 11 June 2014.

<sup>231</sup> Letter of 22 July 2014.

<sup>232</sup> *Support for the Mentally Ill in the Labour Market. Analysis and Recommendations*, Equal Treatment Principle. Law and Practice, No. 15, Human Rights Defender Bulletin 2014, No. 8. The report is available in the electronic version on the website of the Defender under "Publications."

<sup>233</sup> File No. K 27/13.

<sup>234</sup> The Act of 7 December 2012 (Dz.U. of 2012, item 1548).

disabilities who lost the right to care benefits, and are not able to regain employment. Carers and their wards, in spite of the judgement of the Constitutional Tribunal, remain without an adequate financial security. The Defender requested the Minister of Labour and Social Policy<sup>235</sup> to submit information on the state of legislative work leading to the execution of the ruling in question and the anticipated date of entry into force of the new regulation.

The Minister of Labour and Social Policy reported<sup>236</sup> that in connection with the judgement of the Constitutional Tribunal the Ministry of Labour and Social Policy, in cooperation with the Chancellery of the Prime Minister, the Government Legislation Centre and the Ministry of Finance, is working on a bill restoring the right to the care benefits to persons who lost this right on 30 June 2013. The draft Act on family benefits and some other acts was submitted for inter-ministerial consultation and public consultation<sup>237</sup>. Implementation of the Tribunal's judgement was achieved with the Act on determination and payment of benefits for carers<sup>238</sup>, pursuant to which carers of disabled persons who lost the right to care benefits received a refund of the overdue money together with statutory interest. The Act does not restore the rights of carers of disabled adult persons to the care benefits, but introduced a new type of benefit meant specifically for this group – benefit for a carer.

## 11. Participation in political and public life (Article 29 of the Convention)

### a) Facilitating voting for persons with disabilities

Discussed under "Preventing discrimination on the grounds of age".

### b) Voting rights of legally incapacitated persons

In the Defender's opinion, the problem of voting rights of legally incapacitated persons requires urgent legislative action. Legally incapacitated persons are automatically deprived of their active and passive voting rights. The issue of deprivation of voting rights of legally incapacitated persons arouses controversy, among others, in the doctrine of the law, as well as among social organizations. Provisions of the Constitution deprive legally incapacitated persons of voting rights in the context of participation in a referendum, the right to elect the President of Poland, deputies, senators and representatives to local government bodies. However, they do not stand in the way of amending Article 10 § 2 point 3 of the Electoral Code<sup>239</sup> to the extent in which it deprives legally incapacitated persons of the right to elect deputies to the European Parliament. The Defender requested the Minister of Justice<sup>240</sup> to present his position on the above-described case.

<sup>235</sup> III.7046.12.2014 of 15 January 2014.

<sup>236</sup> Letter of 3 February 2014.

<sup>237</sup> <http://www.mpips.gov.pl/bip/projekty-aktow-prawnych/projekty-ustaw/polityka-rodzinna/projekt-ustawy-o-zmianie-ustawy-o-swiadczeniach-rodzinnych-oraz-niektorych-innych-ustaw---z-dnia-16-wrzesnia-2014-r/#akapit2> (access on 22 December 2014).

<sup>238</sup> The Act of 4 April 2014 (Dz.U. of 2014, item 567).

<sup>239</sup> The Act of 5 January 2011 (Dz.U. No. 21, item 112).

<sup>240</sup> I.602.1.2014 of 15 April 2014.

The Minister of Justice reported<sup>241</sup> that the Ministry prepared draft assumptions for the Act amending the Act – Civil Code, the Act – Family and Guardianship Code, the Act – Code of Civil Procedure, the Act on supporting family and foster care system and some other acts. One of the main objectives of the draft is to adapt national law to the standards of the Convention on the Rights of Persons with Disabilities ratified by Poland. The draft provides, in particular, for the abolition of the institution of legal incapacitation and adopts as a rule full legal capacity of persons with disabilities. The draft ignores the issues of voting rights of persons with disabilities. Entry into force of the drafted amendments will affect only indirectly voting rights of these people, because the constitutional barrier of incapacitation will fall as an obstacle to grant voting right to legally incapacitated persons.

In the context of the present position, the Defender will continue her activity to make systemic changes.

### **c) Control of polling stations**

The day before the local elections, the Defender carried out an inspection of the polling stations in terms of their adaptation to the needs of persons with disabilities. The visits covered 179 polling stations with the status of adapted to the needs of persons with disabilities, located in 26 cities. The main objective of the inspection was to assess whether these stations meet the requirements of the Ordinance of the Minister of Infrastructure on the premises of district electoral committees adapted to the needs of disabled voters<sup>242</sup>. As a result of the inspection, it was found that 84% of the controlled polling stations did not meet the conditions laid down in the Ordinance. The most common irregularities were, respectively: lack of marking on the edge of the stairs, the place ensuring the secrecy of voting not adapted, lack of additional lighting in the place ensuring the secrecy of voting, as well as the lack of marking on glass obstacles in the polling station. Only in 28 out of 179 controlled premises no irregularities were found.

### **d) Organization of assemblies**

The Constitutional Tribunal examined the combined petitions<sup>243</sup> of the Defender and a group of Deputies related to the provisions of the Law on Assemblies<sup>244</sup>. The Tribunal ruled that Article 3(1) of this Act to the extent in which it excludes the right to organize assemblies by persons without full legal capacity to perform acts in law is consistent with the Constitution and the Convention on the Rights of Persons with Disabilities. The Tribunal found that activities consisting in convening, and then chairing an assembly can be undertaken by persons who are able to cope with this task. For this reason, the introduction of restrictions on freedom of organising peaceful assemblies was regarded as justified, taking into consideration the need to protect public security and order, the principles of public morality and freedom and rights of others.

<sup>241</sup> Letter of 9 May 2014.

<sup>242</sup> Ordinance of 29 July 2011 (Dz.U. No. 158, item 938).

<sup>243</sup> Judgement of 18 September 2014, file No. K 44/12.

<sup>244</sup> The Act of 5 July 1990 (Dz.U. of 2013, item 397, consolidated text).

### e) Performance of public functions by persons with disabilities

The Constitutional Tribunal examined the petition<sup>245</sup> of the Defender concerning the deprivation of persons with disabilities of the possibility to carry out functions of a voivode, commune mayor, city mayor. The Tribunal found that the reason for the expiry of the mandate of a voivode is not every certificate of inability to work or to live independently, but only the one which was issued in relation to the person already selected for the office. The provisions of Electoral Code<sup>246</sup> stipulate that a certificate of inability should be for a period "at least until the end of the term of office". Since the period of inability was associated with the term of office of the voivode, the inability must be certified when the term of office of the voivode starts. Only then it will be known when it ends. At the same time, due to the fact that the way of understanding the challenged provision was a debatable matter, the Tribunal considered it necessary to clarify the correct way of its interpretation in its legal conclusion. In this understanding, the provision was examined in terms of its compliance with the Constitution.

Even though the challenged legal regulation was considered consistent with the Constitution, it has some legislative shortcomings. They do not determine its unconstitutionality, however, they need to be removed by the legislator. For this reason, the Tribunal decided that, based on this case, it will signal the parliament in a separate decision<sup>247</sup> the need to remove the legal loopholes, which is necessary for the cohesion of the legal system.

## 12. National implementation and monitoring (Article 33 of the Convention)

The Defender published a report of the Working Group for the Deaf at the Expert Committee on People with Disabilities entitled *Situation of deaf people in Poland*<sup>248</sup>, which is the first document in the Polish history prepared by deaf persons and giving an extensive account of their situation. The Defender performs a supervisory and inspiring function in supporting, protecting and monitoring implementation of the Convention on the Rights of Persons with Disabilities. The Convention emphasises the need for inclusion of persons with disabilities in the process of monitoring the implementation of their rights and freedoms. The report is an example of putting the standards of the Convention in practice, even if for the reason that the persons concerned were allowed to speak on the barriers faced by those who are deaf and hearing-impaired.

<sup>245</sup> Judgement of 23 January 2014, file No. K 51/12.

<sup>246</sup> The Act of 5 January 2011 (Dz.U. of 2011, No. 21, item 112).

<sup>247</sup> Decision of the CT of 11 February 2014, file No. K/51/12.

<sup>248</sup> [https://www.rpo.gov.pl/sites/default/files/Raport\\_Sytuacja\\_osob\\_poz%203\\_srodki\\_2%20XII.pdf](https://www.rpo.gov.pl/sites/default/files/Raport_Sytuacja_osob_poz%203_srodki_2%20XII.pdf).



### III. ACTIVITY OF THE EXPERT COMMITTEES

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There are three Expert Committees at the Office of the Defender, namely, the Expert Committee on Elderly People, on People with Disabilities, and on Migrants. They are advisory bodies composed of persons having academic or practical experience, usually resulting from being active in non-governmental organisations. The tasks of the expert committees include substantial support for actions undertaken by the Defender, among others, by proposing the priority directions of activity, preparation of analyses and monitoring of the observance of the principle of equal treatment, in particular on the grounds of age, disability, nationality, ethnic origin and religion. Activity of the committees is of a social nature.

#### 1. Expert Committee on Elderly People<sup>249</sup>

The Expert Committee continued its work related to ensuring proper care for the elderly in welfare care homes. As a result of these actions, a pilot study entitled *Implementation of medical activities in WCHs*, which will be continued and developed in 2015, was carried out. As a part of work of the committee, an expert analysis on the models of support for elderly persons in the local community in various European countries was also prepared. This material will support further actions to move away from institutional care to care provided at the level of local communities and develop solutions which can be applied in Polish conditions.

Furthermore, a Task Force for development of the so-called *Golden Book of Good Practices for Social Participation of Elderly Persons*, collecting examples of interesting activities of local governments and non-governmental organizations promoting social inclusion of persons of advanced years, is operating as a part of the Committee's work. In cooperation with the Gdańsk University of Technology, members of the Committee also developed a guide entitled *Accessible public space for the elderly*, which will be released in 2015.

Other activities of the Expert Committee on Elderly Persons are included under *Preventing discrimination on the grounds of age*.

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<sup>249</sup> Members of the Expert Committee on Elderly People: Barbara Szatur-Jaworska (Co-President), Barbara Imiołczyk (Co-President), Magdalena Kuruś (Secretary), Anna Chabiera (Secretary), Dorota Bieniasz, Barbara Bień, Piotr Błędowski, Wiesława Borczyk, Jarosław Derejczyk, Krzysztof Głomb, Stanisława Golinowska, Jerzy Hausner, Waldemar Hoff, Grzegorz Matejczuk, Joanna Mielczarek, Barbara Mikołajczyk, Jarosław Mojsiejuk, Krystyna Rawska, Grażyna Staniszevska, Hanna Szczebilewska, Beata Tokarz-Kamińska, Ewa Tułodziecka-Czapska, Gertruda Uścińska.

## 2. Expert Committee on People with Disabilities<sup>250</sup>

Members of the Expert Committee continued activities related to the monitoring of the implementation and promotion of the Convention on the Rights of Persons with Disabilities. The most important tasks of the Committee include cooperation in developing the concept and content of the *Report of the Human Rights Defender on the implementation of the Convention on the Rights of Persons with Disabilities by Poland in 2012-2014*. In 2014, in partnership with members of the Committee, a comprehensive survey devoted to the implementation of selected areas of the Convention on the Rights of Persons with Disabilities at the local level was also conducted. Results of the survey will be incorporated into the Reports referred to above<sup>251</sup>.

As a result of work of the Task Force for Deaf People, the reports entitled *Education of deaf person and Situation of deaf persons in Poland. Report of the Team for Deaf People at the Human Rights Defender* were published<sup>252</sup>.

Other activities of the Expert Committee on People with Disabilities are included under *Activity of the Human Rights Defender to support, protect and monitor implementation of the UN Convention on the Rights of Persons with Disabilities and to prevent discrimination on grounds of disability*.

## 3. Expert Committee on Migrants<sup>253</sup>

During the meetings of the Expert Committee on Migrants, issues related to the legal situation of stateless persons in Poland and the changes postulated in this regard were discussed. In addition, members of the Committee were dealing with the issues of preventing violence of the close persons directed against women forced to migrate, as well as the draft amendment of the provisions of the Act on supporting family and foster care system related to this subject.

<sup>250</sup> Members of the Expert Committee on People with Disabilities: Monika Zima-Parjaszewska (Co-President), Barbara Imiołczyk (Co-President), Anna Błaszczak (Secretary), Barbara Abramowska, Ireneusz Białek, Dominika Buchalska, Mateusza Brząkowski, Piotr Kowalski, Paweł Kubicki, Marta Lempart, Bartosza Marganiec, Dagmara Nowak-Adamczyk, Małgorzata Radziszewska, Katarzyna Roszewska, Elżbieta Sadło, Halina Szpilman, Scholastyka Śniegowska, Michała Urban, Aleksander Waszkielewicz, Paweł Wdówik, Ewa Wojdyr, Marek Wysocki, Jacek Zadrozny, Jarosław Zbieranek, Anna Figurniak, Sylwia Górka, Dorota Siwiec.

<sup>251</sup> Results of the survey are also available in electronic version at: [ankieta.pelnoprawni.gov.pl](http://ankieta.pelnoprawni.gov.pl)

<sup>252</sup> Reports in electronic version, together with a translation into sign language, are available at: [rpo.gov.pl](http://rpo.gov.pl) under "Publications".

<sup>253</sup> Members of the Expert Committee on Migrants: Krystyna Iglicka (Co-President), Barbara Imiołczyk (Co-President), Malika Abdoulvakhabova, Maciej Bohosiewicz, Amb. Ksawery Burski, Irena Dawid-Olczyk, Paweł Dąbrowski, Maciej Duszczyk, Grzegorz Dziemidowicz, Justyna Frelak, Katarzyna Gmaj, Aleksandra Grzymała-Kazłowska, Maria M. Kenig-Witkowska, Witold Klaus, Tomasz Knothe, Agnieszka Kunicka, Magdalena Lesińska, Katarzyna Łakoma, Sławomir Łodziński, Katarzyna Przybysławska, Irena Rzeplińska, Tomasz Sieniow, Teresa Sotowska, Marcin Sośniak, Dariusz Supel, Maciej Szcząska-Wójcik, Ton Van Anh.

The Committee continued its activities concerning education of juvenile foreigners and implementation of the Defender's recommendations presented in the report issued in 2013, entitled *Execution of the Rights of Juvenile Foreigners to Educatio*<sup>254</sup>. Actions taken by the Defender of the community of the Romanian Roma in Wrocław were also consulted.

Other activities of the Expert Committee on Migrants are presented under *Preventing discrimination on grounds of race, ethnicity or nationality*.

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<sup>254</sup> The Report is available at: [https://www.rpo.gov.pl/sites/default/files/RAPORT-RZECZNIKA-PRAW-OBY-WATELSKICH-Realizacja-prawa-maloletnich-cudzoziemcow-do-edukacji%20.png\\_.pdf](https://www.rpo.gov.pl/sites/default/files/RAPORT-RZECZNIKA-PRAW-OBY-WATELSKICH-Realizacja-prawa-maloletnich-cudzoziemcow-do-edukacji%20.png_.pdf)

## IV. INTERNATIONAL ACTIVITY OF THE HUMAN RIGHTS DEFENDER IN THE AREA OF EQUAL TREATMENT

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The most important field of activity of the Defender in the area of equal treatment in the international arena is cooperation within the European Network of Equality Bodies (EQUINET), of which the Defender has been an active member since 2011. The EQUINET brings together 41 national bodies for equal treatment from thirty-one countries. It serves as a platform for cooperation and mutual assistance in matters of legal interpretation and practical implementation of the EU directives on equal treatment.

Cooperation with the EQUINET allows the Defender to constantly improve knowledge and skills of employees responsible for the implementation of activities related to the principle of equal treatment and non-discrimination. Representatives of the Defender participated in a series of training courses, seminars and conferences, including *Equinet High-Level Legal Seminar on Equality Law*<sup>255</sup>, *Equinet High-Level Seminar on Gender Equality – Gender Equality in the Access to Goods and Services: the role of Equality Bodies*<sup>256</sup>, *Equinet Training on LGBTI issues*<sup>257</sup>, *Equinet Gender Equality training on sexual harassment and harassment*<sup>258</sup>, *Equinet Training on Positive Action Measures*<sup>259</sup>.

In cooperation with the EQUINET, the Defender also organized an international seminar entitled *Equinet Gender Equality training on sexual harassment and harassment*, devoted to the issues of harassment and sexual harassment as forms of discrimination. The seminar was attended by over 50 participants from all Member States of the European Union and associated countries. Moreover, repeatedly, representatives of the Defender had the opportunity to present activities undertaken in Poland to implement the principle of equal treatment and non-discrimination. Among others, study conducted by the Defender in the field of equal access of non-heterosexual persons to health care services presented at the seminar *Equinet Training on LGBTI issues* met with appreciation.

Representatives of the Defender also take an active part in work of three working groups of the EQUINET, involved in the analysis of anti-discrimination legislation in the Member States (*Working Group on Equality Law*), equal treatment of men and women (*Working Group on Gender Equality*) and a communication strategy in the area of equal treatment (*Working Group on Communication Strategies & Practices*). The result of this work was, *inter alia*,

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<sup>255</sup> 19 February 2014.

<sup>256</sup> 24 April 2014.

<sup>257</sup> 17-18 June 2014.

<sup>258</sup> 23-24 September 2014.

<sup>259</sup> 16-17 October 2014.

publication devoted to preventing discrimination: *Equality Bodies and the Gender Goods and Services Directive*, the co-authors of which are the employees of the Office of the Defender. A representative of the Defender is also a member of the nine-person Executive Board of this organization.

Moreover, the Defender is actively cooperating with other organizations and institutions dealing with the issues of equal treatment. The Defender received in her office representatives of the European Commission against Racism and Intolerance (ECRI) of the Council of Europe<sup>260</sup>, which submitted its comments and observations on the implementation of the principle of equal treatment and non-discrimination in Poland. In addition, the Defender's representative – at the invitation of the European Institute for Gender Equality (EIGE), was an expert at a seminar on the issues of reconciliation of social and professional roles and non-discrimination of parents of both sexes in the labour market (*work-life balance*)<sup>261</sup>.

The Defender is also conducting intensive bilateral cooperation. At the invitation of the Ombudsman of the Czech Republic, a representative of the Defender participated in a conference devoted to the reconciliation of social and professional roles (*work-life balance*), where she presented experience of the Human Rights Defender so far and preliminary results of studies in this area<sup>262</sup>. The Defender also hosted in her office the representatives of the Ombudsman of Georgia and Georgian NGOs. The meeting was devoted, in particular, to the issue of equal treatment of persons with disabilities and the performance of the function of an independent body for supporting, protecting and monitoring the implementation of the Convention on the Rights of Persons with Disabilities by the Defender<sup>263</sup>.

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<sup>260</sup> 25 June 2014.

<sup>261</sup> 27-28 November 2014.

<sup>262</sup> 23-24 October 2014.

<sup>263</sup> 24 June 2014.

## V. ACTIVITY OF OTHER PUBLIC BODIES IN THE AREA OF EQUAL TREATMENT

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### 1. Selected judgements of national and international courts in the area of equal treatment

In view of the fact that the Act on the Human Rights Defender makes information about the observance of the principle of equal treatment in the Republic of Poland an essential element of the Defender's annual information, selected judgements of national and international courts on this matter are presented below, including those that do not directly relate to Poland. It should be noted that the views presented in the judgements of European courts have significant influence on the level of protection of the rights of an individual also in Poland and constitute an important source of information for the Parliament.

#### A. Selected judgements of national courts

##### **Article 256 of the Penal Code, in the part containing the phrase "incites to hatred," is consistent with the Constitution**

Judgement of the Constitutional Tribunal of 25 February 2014 (file No. SK 65/12).

*It is impossible to avoid using unspecified and vague phrases in the provisions of law, because they are created using words of the common Polish language, generally ambiguous, not sufficiently specified and clear. While the legislator should in any case strive to disambiguate the words used, the occurrence of unspecified and vague words or phrases may be even advisable to ensure the necessary flexibility of laws, so that it was possible to categorize individual features of specific events on their basis.*

The constitutional complaint raised that the phrase "incites to hatred" in Article 256 § 1 of the Penal Code, is unclear, because it is not known whether this includes only incitement to the manifestation of hatred (direct incitement to hatred) or stirring up hatred by propagating negative statements about certain groups of people as well (indirect incitement to hatred). In practice, determination whether the offence of incitement to hatred on the grounds of national, ethnic, racial, religious differences or lack of any religious denomination was committed depends on the assessment whether the behaviour of the offender, for example, criticizing the representatives of a given nation, was connected with the intention to incite to hatred, or was a permissible criticism or neutral presentation of given issue.

In the opinion of the Constitutional Tribunal, the unspecified and vague nature of the challenged phrase does not reach a level that would have to be regarded as inconsistent with the principle of the specificity of legal provisions. The meaning of the challenged phrase "*incites to hatred*" can be determined primarily by reference to the meanings of words in this expression in the general (common) Polish language. Additionally, this phrase is specified by the normative context created by the provisions of the Penal Code. There are also procedural

guarantees of giving the phrase “*incites to hatred*” the meaning which will be in line with constitutional and international law standards protecting human rights. Such guarantees are appeal proceedings and the ability to adopt resolutions clarifying legal issues by the Supreme Court.

### **Performance of public functions by persons with disabilities**

Judgement of the Constitutional Tribunal of 29 January 2014 (file No. K 51/12).

*Certificate of inability to work issued in relation to a person occupying the office of voiv is equivalent to pronouncing incapacity to perform the duties of voiv*<sup>264</sup>.

### **Organisation of assemblies by legally incapacitated persons and minors**

Judgement of the Constitutional Tribunal of 29 September 2014 (file No. K 44/12).

*Exclusion of the possibility of organizing assemblies by minors and legally incapacitated persons does not violate the essence of freedom of assembly. This solution protects persons without full legal capacity to perform acts in law from the obligations and the regime of legal responsibilities related to the function of organizer of assemblies. At the same time, it does not limit these persons' ability to exercise the freedom to participate in peaceful assemblies*<sup>265</sup>.

### **Care benefits for parents raising more than one child with a disability**

Judgement of the Constitutional Tribunal of 18 November 2014 (file No. SK 7/11)

*In a particularly difficult situation of a family raising more than one child with a disability, resignation from work by one parent may often prove to be insufficient, as this carer is not able to effectively care for two or three disabled children at the same time. Hence, in such a situation, law should create the possibility of resigning from work also for the other parent, enabling him or her to receive the care benefits.*

### **Ritual slaughter**

Judgement of the Constitutional Tribunal of 10 December 2014 (file No. K 52/13)

*Polish society generally accepts slaughtering of livestock in order to obtain food. Total prohibition of one of its methods (the ritual method), protected under the freedom of religion, is not necessary to protect morality. Freedom of religion is not only guaranteed constitutionally and conventionally, but is also a fundamental moral value in Polish society*<sup>266</sup>.

### **Jurisdiction of labour courts to consider cases of discrimination and mobbing of officers**

Resolution of the Supreme Court of 6 February 2014 (file No. II PZD 2/12).

*The labour court has jurisdiction to consider the case of the officer of the State Fire Service for compensation and redress in connection with the breach of personal rights due to discriminatory and mobbing actions in the organizational unit in which he is or was serving.*

<sup>264</sup> For more information, see II.11(e) of this Information.

<sup>265</sup> For more information, see II.11(d) of this Information.

<sup>266</sup> For more information, see I.5(a) of this Information.

### **Seeking compensation for breach of the prohibition of discrimination in the judicial service**

Judgement of the Supreme Court of 27 March 2014 (file No. III PK 87/13).

*Seeking compensation for breach of the prohibition of discrimination in the field of pay and the principle of equal treatment in the judicial service (Article 5 of the Labour Code in connection with Article 18<sup>3a-3d</sup> of the Labour Code) by the judge for whom the rate of basic salary was determined in accordance with the provisions on the remuneration of judges of a given court is unfounded, because these torts of the labour law do not exist in official relations of judges of common courts, where salaries are determined by strict mandatory provisions on the remuneration of judges.*

According to the provisions on remuneration of judges, a judge has the right to equal pay for performing the judicial service according to the equal principles of basic salary of judges of common courts, which are differentiated only by seniority of the service or the judicial functions performed<sup>267</sup>. In the case of violation of the provisions on remuneration of judges, the judge should question the lowered remuneration by bringing an action for remuneration, and not for compensation.

### **Obtaining protection guaranteed by employee social insurance as the goal of concluding employment contracts**

Judgement of the Court of Appeal in Łódź of 14 May 2014 (III AUa 1254/13).

*Pregnant women are entitled to protection from being denied employment because of pregnancy, and the refusal to establish an employment relationship, dictated by such cause, shall be treated as discrimination based on sex.*

In the opinion of the Social Insurance Institution (ZUS), signing an employment contract and submitting it for insurance were apparent actions, taken only in order to obtain the employee title for insurance and benefit from social insurance benefits in connection with pregnancy (Article 83 § 1 of the Civil Code), as evidenced by a short period between employment of the woman, and the occurrence of inability to work due to illness falling at the time of pregnancy.

The court found that while entering into an employment contract the parties are guided by different individual motives which must be distinguished from a typical goal of this legal act. In particular, it is difficult to recognize that the desire of the pregnant woman for obtaining social security benefits is against the law. Conclusion of the employment contract during pregnancy alone, even if the main motive was to obtain a maternity allowance, is neither reprehensible, nor against the law. On the contrary, such behaviour is reasonable and justified both from the personal and social point of view. Obtaining protection guaranteed by employee social insurance is a legal objective of concluding employment contracts. It may even be the main motive for the choice of performing work under an employment relationship, instead of performing work on other legal grounds.

<sup>267</sup> Article 91 § 1 and 2 of the Act of 27 July 2001 – Law on Common Courts Organisation (Dz.U. of 2013, item 427, as amended).



### **Claims relating to unequal treatment in employment**

Judgement of the Supreme Court of 18 September 2014 (file No. III PK 136/13).

*Not every behaviour of an employer in terms of inconsistent (unequal) treatment of employees must take the form of discrimination within the meaning of the provisions of the Labour Code (Article 11<sup>3</sup>). This means that Article 18<sup>3d</sup> of the Labour Code guaranteeing an employee in relation to whom the employer violated the prohibition of discrimination the right to compensation in an amount not less than the minimum remuneration for work (without having to prove damage) does not apply.*

Article 18 § 3 of the Labour Code applies to “normal” unequal treatment of an employee (Article 11<sup>2</sup> of the Labour Code), regardless of the (discriminatory) criteria, since the effect of invalidity of contractual provisions is related to such an unequal treatment. Thus, in the case of application of Article 18 § 3 of the Labour Code (cf. also Article 9 § 4 of the Labour Code), an employee may demand to be granted powers which he or she was deprived of in the employment contract, i.e. the application of Article 18 § 3 Labour Code and consideration for the effect of a breach of the principle of equal treatment in employment resulting from it consists in an increase of the benefits owned to the employee treated worse.

### **Discrimination by association and seeking claims for breach of the principle of equal treatment**

Judgement of the District Court for Warszawa-Śródmieście in Warsaw of 9 July 2014 (file No. VI C 402/13).

*Discrimination also involves assigning a given feature to a person and for the occurrence of discrimination having this feature is irrelevant. This phenomenon is called discrimination by association, i.e. linking a given person – because of the subjective standpoint – to a group of discriminated persons.*

*A person in relation to whom the principle of equal treatment was violated may lodge claims for pecuniary prejudice, as well as harm suffered. The court is not obliged to award compensation in every case of harm in the form of the breach of personal rights.*

In cases concerning discrimination, first and foremost, these provisions of the Code of Civil Procedure which allow regarding as established the facts relevant for the case, if such a conclusion can be drawn from other established facts, should be applied. This is a rule of applying *prima facie*, passing on the burden of proof on the defendant to demonstrate his/her lack of discrimination. Thus, a person who is considered to be discriminated against should provide the court with facts from which the existence of direct or indirect discrimination may be presumed. The defendant must prove that there was no breach of the principle of equal treatment.

The reversed burden of proof, acting in favour of the plaintiff, refers only to events generating damage. The plaintiff's side should, therefore, prove property loss (including non-property, in connection with the demand to pay compensation) and the relationship between the event and the damage.

### **The concept of cohabitation**

Judgement of the Court of Appeal in Warsaw of 26 June 2014 (file No. I ACa 40/12).

*Currently, the concept of cohabitation means permanent cohabitation of two people, regardless of their gender.*

The court noted that constitutional considerations, i.e. the obligation of equal treatment established in Article 32 of the Polish Constitution and the corresponding prohibition of any discrimination, including on the grounds of sexual orientation, supported the recognition that by refusing to provide the plaintiff and his partner with insurance cover, the defendant committed discrimination on the grounds of sexual orientation. The consequence of discriminatory actions was a violation of the dignity of the plaintiff.

### **Termination of a contract by the employer as a result of application for paternity leave by the employer**

Judgement of the District Court in Warsaw of 2 June 2014 (file No. VII P 240/12).

*Termination of an employment contract due to submission of an application for paternity leave must be regarded as particularly reprehensible, because it discourages parents from exercising their rights aimed at appropriate exercise of parental authority.*

The plaintiff turned to the employer with a request for granting him a paternity leave pursuant to Article 182<sup>1</sup> § 1 of the Labour Code. The defendant gave him leave, immediately after that making a declaration of termination of the employment contract without notice pursuant to Article 30 § 3 of the Labour Code. The employer argued before the court that the reason for the dismissal was improper performance of business duties. After the hearing of evidence, the court found that the application for leave was a direct cause of the dismissal and considered the defendant's actions unlawful.

### **Interpretation of the term “the nearest primary school” and provision of education for pupils with disabilities**

Judgement of the Voivodeship Administrative Court in Warsaw of 14 April 2014 (file No. II SA/Wa 2048/13).

*The nearest primary school, within the meaning of the Act on the School Education System, is the institution which has the right conditions to enable the education of children with a specific type of disability.*

The court considered the complaint of a parent of a child with a disability who tried to get free transport to primary school. Since in geographic terms the nearest facility did not meet the requirements for the education of children with this type of disability, the parent requested making transport to the nearest school in which the required standards are respected available. However, the commune mayor informed him that the commune provides transportation only to the nearest primary school in geographic terms.

The court ruled that the expression “the nearest primary school” should be interpreted for each individual case, taking account of the type of disability of a given child. Both the element of geographical location (the distance from home to school), and the element of conditions of a particular educational institution for education of children with a specific type of disability is important.

## B. Selected judgements of international courts

### Hate crimes

Judgement of the European Court of Human Rights of 11 March 2014, complaint No. 26827/08 (Abdu versus Bulgaria).

*The High Contractory Parties secure to everyone within their jurisdiction the rights and freedoms set forth in the Convention and are obliged to take steps to ensure that these individuals are not subjected to ill-treatment, even administered by private individuals.*

The Court noted that while examining the acts of violence which are under suspicion of racist motivation, the authorities have an obligation to take all reasonable steps to determine whether the violence was racially motivated. Equal treatment of cases of racial violence and cases without such an element is equivalent to “turning a blind eye” to the specific nature of such acts, which are particularly destructive to fundamental rights.

### Domestic violence

Judgement of the European Court of Human Rights of 28 January 2014, complaint No. 26608/11 (T.M. and C.M. versus the Republic of Moldova).g *The failure to protect women against domestic violence by the State violates their right to equal protection by the law. This failure does not have to be intentional.*

The Court, bearing in mind that women are particularly at risk of domestic violence and often refrain from reporting such incidents, decided that it is for the national authorities to determine whether a given situation requires more intensive reaction of the State. Moreover, national authorities should at least inform the victims of the available means of protection.

### Discrimination in employment

Judgement of the Court of Justice of the European Union of 6 March 2014, case C595/12.

*A woman on maternity leave shall be entitled, after the end of her period of maternity leave, to return to her job or to an equivalent post on terms and conditions which are no less favourable to her and to benefit from any improvement in working conditions to which she would have been entitled during her absence.*

Article 15 of Directive 2006/54/EC must be interpreted as precluding a national legislation which excludes, for reasons relating to the public interest, woman on maternity leave from a vocational training, which is an integral part of her employment and which is compulsory to be able to be appointed definitively to a post as a civil servant and benefit from an improvement in her employment conditions, at the same time, ensuring her right to participate in the next training organized the date of which is nevertheless uncertain.

### Parental leave

Judgement of the Court of Justice of the European Union of 27 February 2014, case C588/12.

*When a worker employed under a full-time contract of indefinite duration has unlawfully been dismissed, during part-time parental leave, a fixed-term protective award must be determined on the basis of the full-time salary of that worker.*

A fixed-sum protective award payable to a worker on part-time parental leave, where the employer unilaterally and without compelling or sufficient reason terminates that worker's full-time contract of indefinite duration, cannot be determined on the basis of the reduced salary earned by that worker at the date of the dismissal<sup>268</sup>.

### **Maternity leave**

Judgement of the Court of Justice of the European Union of 13 February 2014, cases C512/11 and C513/11.

*The framework agreement, implemented by Council Directive 92/85, is a commitment of the social partners to implement, by establishing minimum requirements, measures to support equal opportunities and equal treatment of men and women by offering them an opportunity to reconcile their work and family responsibilities.*

Directive 96/34/EC<sup>269</sup> must be interpreted as precluding a provision of national law, pursuant to which a pregnant worker who interrupts a period of unpaid parental leave within the meaning of that directive to take, with immediate effect, a maternity leave within the meaning of Directive 92/85/EC<sup>270</sup>, does not benefit from the maintenance of remuneration to which she would have been entitled had that period of maternity leave been preceded by a minimum period of work.

### **Dissolution of marriage due to gender reassignment**

Judgement of the European Court of Human Rights of 16 July 2014, complaint No. 37359/09 (*Hämäläinen versus Finland*).

*Transsexuality may constitute a sufficient reason for dissolution of marriage, even when persons in a relationship do not see a reason for divorce or other termination of the relationship.*

The Court found that the Convention does not impose on States parties thereto the obligation to introduce marital equality into their legal systems, and therefore these States have a wide margin of appreciation. In the opinion of the Court, the condition for the transformation of a marriage into a civil partnership for legal gender recognition of transsexual persons is not excessive or disproportionate, if the system of national law offers same-sex relationships protection almost identical to the protection given to married couples.

<sup>268</sup> An opposite measure is precluded by clause 2.4 of the Framework Agreement on parental leave concluded on 14 December 1995, which is annexed to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and ETUC, as amended by Council Directive 97/75/EC of 15 December 1997, perceived both in the light of the objectives pursued by this framework agreement and in conjunction with clause 2.6 of this act.

<sup>269</sup> Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ L 145, p. 4).

<sup>270</sup> Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC).

### **Restrictions on freedom of religion in the public space**

Judgement of the European Court of Human Rights of 1 July 2014, complaint No. 43835/11 (S.A.S. versus France).

*A general policy or measure which have damaging and disproportionate impact on certain groups may be considered discriminatory, even when they are not aimed specifically at this group and are not meant to discriminate against it. However, this takes place only where there is no objective and reasonable justification for such a policy or measure, and so when they do not pursue a legitimate aim and there is no reasonable proportion between the means employed and such a goal.*

The Court emphasized that in a democratic society, where many religions intermingle, it is permissible to limit the manifestation of a particular religion or belief because of the objective of reconciling the interests of all groups and ensuring that all beliefs are respected. Limitations of rights of this type can be considered proportional only in situations of a threat to the general public safety, which must be proven by the State introducing such restrictions.

### **Obesity can be synonymous with “disability” within the meaning of the EU law**

Judgement of the Court of Justice of the European Union of 18 December 2014, case C-354/13.

*Although no general principle of EU law itself prohibits discrimination on the grounds of obesity, this ailment falls within the concept of “disability”, if in certain circumstances, it hinders the full and effective participation of the person concerned in professional life on equal basis with other workers.*

The Court of Justice pointed out that no provision of the treaties or provision of European Union secondary legislation as regards employment and occupation prohibits discrimination on the grounds of obesity as such<sup>271</sup>. However, the Court explained that the concept of “disability” within the meaning of Directive 2000/78 must be understood as referring to a limitation which results in particular from long-term physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on equal basis with other workers. The Court stressed that this concept must be understood as referring not only to the impossibility of exercising a professional activity, but also to a hindrance to the exercise of such an activity. It would be incompatible with the objective of the Directive, if the cause of disability would affect its use.

### **Involuntary placement in a welfare care home**

Judgement of the European Court of Human Rights of 25 November 2014, complaint No. 31199/12 (K.C. versus Poland).

*Continuing placement of the complainant in a welfare care home in the absence of periodic verification of her condition is against the law and not justified in the light of Article 5(1)(e) of the Convention.*

<sup>271</sup> In particular, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, p. 16) does not mention obesity among the grounds of discrimination, and the scope of this directive cannot be expanded on discrimination on grounds other than those listed therein exhaustively. The provisions of the Charter of Fundamental Rights of the European Union are likewise inapplicable in such a situation.

The Court found that the placement of the complainant, suffering from, among others, organic personality disorder, schizophrenia and disorder of the central nervous system confirmed, in a welfare care home originally constituted a deprivation of liberty of a persons with a mental disability, pursuant to Article 5(1)(e) of the Convention. Nevertheless, the national law does not provide for mandatory periodic health checks of the complainant, and hence the legitimacy of this measure. However, the Court did not support the complainant's allegations related to the violation of Article 5(4) of the Convention through the lack of possibility to appeal to the court to determine the lawfulness of deprivation of liberty.

### **Discrimination on the grounds of age**

Judgement of the Court of Justice of the European Union of 19 June 2014, joined cases from C501/12 to C506/12, C540/12 and C541/12.

*As a rule, justifications based on an increase in financial burdens and possible administrative difficulties cannot justify failure to comply with the obligations arising out of the prohibition of discrimination on the grounds of age laid down in Article 2 of Directive 2000/78.*

The Court has held that the individuals harmed have a right to reparation where three conditions are met: the rule of EU law infringed must be intended to confer rights on them; the breach of that rule must be sufficiently serious; and there must be a direct causal link between the breach and the loss or damage sustained by the individuals.

### **Limitation on the grounds of age in access to public functions**

Judgement of the Court of Justice of the European Union of 13 November 2014, case C-354/13.

*The act which sets the maximum age for recruitment of local police officers at 30 years is incompatible with European Union law. The introduction of a maximum age leads to unjustified discrimination.*

In the opinion of the Court, there is no evidence that the particular physical capacities required for the post of local police officer are inevitably related to a particular age and are not found in persons over a certain age. As a result, there is no basis to claim that the objective of safeguarding the operational capacity and proper functioning of the local police service makes it necessary to maintain a particular age structure, which in turn requires the recruitment exclusively of officials under 30 years of age. Therefore, the establishment of a requirement in the form of a maximum age is disproportionate. At the same time, the Court noted that eliminatory physical tests for candidates would make it possible to attain the objective of ensuring, in a less binding manner than the fixing of a maximum age limit, that local police officers possess the particular level of physical fitness required for the performance of their professional duties. Furthermore, the Court also expressed the view that there is nothing in the materials submitted to the Court showing that the fixing of a maximum age for recruitment is appropriate and necessary in light of two legitimate objectives of social policy, i.e. the training requirements of the post in question and the need for a reasonable period of employment before retirement<sup>272</sup>.

<sup>272</sup> The Court of Justice of the European Union ruled referring to Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, p. 16).

## 2. Selected controls, inspections and other actions taken by the public authorities in the area of equal treatment<sup>273</sup>

### 1. Government Plenipotentiary for Equal Treatment<sup>274</sup>

In 2014, the Plenipotentiary focused on work towards the ratification of the so-called Istanbul Convention<sup>275</sup> and the Convention on Human Rights in Biomedicine<sup>276</sup>.

As a part of actions for the elimination of violence against women, the Plenipotentiary took under her patronage and participated in *16 days against violence against women*<sup>277</sup>. She also began implementation of the project entitled *Rights for victims of sexual violence: a new systemic approach. Comprehensive information services, training and actions*, and the project the aim of which is to try to eliminate harmful stereotypes and support equality between women and men.

Due to the low representation of women in decision-making bodies in business and local governments, as well as in the Polish Parliament, the Plenipotentiary was undertaking actions to ensure a balanced participation of women and men in the electoral process and decision-making in business.

The Office of the Plenipotentiary also continued implementation of the project *Equal Treatment as a Standard of Good Governance in the Regions*.

Moreover, an online *Guide for carers of elderly persons*<sup>278</sup>, which provides, among others, information on the rights of seniors and their carers, the support offered by the National Health Fund, the Social Insurance Institution, welfare care centres and NGOs, was launched.

Full information on the actions taken in 2014 will be included in the report on the activity of the Government Plenipotentiary for Equal Treatment<sup>279</sup>.

### 2. Supreme Audit Office<sup>280</sup>

In 2014, the Supreme Audit Office carried out eight inspections concerning the observance of the principle of equal treatment of, *inter alia*, persons with disabilities, persons at

<sup>273</sup> Full summary of information received by the Defender is available at <http://rpo.gov.pl/pl/rowne-traktowanie>.

<sup>274</sup> Letter of 6 February 2015.

<sup>275</sup> Convention of the Council of Europe on preventing and combating violence against women and domestic violence.

<sup>276</sup> Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine and the Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning of Human Beings.

<sup>277</sup> The Human Rights Defender also joined in this action – in the Office of the Defender in Warsaw and the Local Representatives of the Defender, for 16 days the employees gave free legal advice to women experiencing violence.

<sup>278</sup> Available at <http://www.rownetraktowanie.gov.pl/poradnik-dla-opiekunow-osob-starszych-0>.

<sup>279</sup> The Plenipotentiary is obliged to submit the report and the Report on the implementation of the National Action Plan for Equal Treatment, pursuant to Article 23 of the Act of 3 December 2010 on the implementation of some regulations of the European Union regarding equal treatment (Dz.U. No. 254, item. 1700, as amended), to the Council of Ministers by the end of March 2015.

<sup>280</sup> Letter of 15 January 2015.



risk of social exclusion, national and ethnic minorities, repatriates and refugees, and unequal treatment on the grounds of age<sup>281</sup>.

The inspection entitled *Implementation of Poland's migration policy with regard to foreigners declaring the Polish origin*<sup>282</sup>, indirectly associated with the issues of the observance of the principle of equal treatment of persons applying for repatriation, was finalised with information on the results of the inspection<sup>283</sup>.

Procedures connected with inspections related to: social assistance for refugees, provision of public service to persons using sign language, rights and needs of the Roma minority in Poland, social readaptation of persons sentenced to imprisonment for many years<sup>284</sup>, assistance for adult wards of foster care in becoming independent<sup>285</sup> and the principle of equal treatment and discrimination on the grounds of age<sup>286</sup> are still carried out. The information on these inspections will be made public in the first half of 2015.

As a part of the inspection entitled *Social assistance for refugees*<sup>287</sup>, the Supreme Audit Office assessed the effectiveness of county family assistance centres and centres for refugees in the area of integration assistance. The analysis of the inspected area shows that there are cases of failure to provide assistance in the forms indicated in the Act on social assistance, which has a significant impact on the functioning of the whole group, in particular children of refugees. Another problem are also lengthy procedures for refugee status, which authorise to receiving aid.

The inspection entitled *Providing public service to persons using sign language*<sup>288</sup> showed that the main problems are the lack of access to sign language interpreters and discrimination in access to public services, including education and culture. During the inspection entitled *Undertaking and carrying out tasks by public administration for the rights and needs of the Roma minority in Poland*<sup>289</sup>, the Supreme Audit Office will assess the correctness of implementation of the respective statutory tasks by public administration bodies.

The Supreme Audit Office also conducted the inspection entitled *Medical care of persons advanced in years*<sup>290</sup>. Currently, in Poland, elderly persons have limited opportunities to benefit from specialized geriatric assistance in outpatient and hospital care. There is a lack of both geriatric staff and base. The ability of elderly persons to self-manage the treatment process is limited and requires institutional support. In the opinion of the Supreme Audit Office,

<sup>281</sup> In seven cases, the inspections were conducted in the second half of 2014, and their results have not been made public yet, and in a few of them the inspection process has not been completed.

<sup>282</sup> Inspection P/13/020.

<sup>283</sup> Information on the inspection results is published on the website of the Supreme Audit Office (<http://www.nik.gov.pl/kontrola/wyniki-kontroli-nik/kontrola,13362.html>).

<sup>284</sup> Inspection P/14/044.

<sup>285</sup> Inspection P/14/045.

<sup>286</sup> Including the inspection entitled *Functioning of palliative and hospice care in the Dolnośląskie Voivodeship*, P/14/118.

<sup>287</sup> Inspection P/14/049.

<sup>288</sup> Inspection P/14/105.

<sup>289</sup> Inspection P/14/119.

<sup>290</sup> Inspection P/14/062.



in terms of access to medical services, an acceptable criterion should be the patient's clinical condition and prognosis, and not the age limit.

### 3. National Broadcasting Council<sup>291</sup>

A number of solutions aimed at supporting the prevention of all forms of discrimination were introduced in the Office of the National Broadcasting Council. Among other things, the position of an expert for freedom of speech was created, the availability of the website of the National Broadcasting Council was audited<sup>292</sup>, a separate e-mail – skargi@krrit.gov.pl – designed for audience of programmes was introduced and an electronic inbox was launched. Permanent monitoring of the implementation obligations related to the availability of programmes for people with disabilities by broadcasters is carried out.

Activities of the National Broadcasting Council related to combating hate speech and manifestations of discrimination in the media were included in the *Regulatory Strategy for 2014-2016*<sup>293</sup>. The main objectives include promoting the idea of equality in the media, *inter alia*, by examining the presence and the way of presenting women in the media<sup>294</sup>, and establishing and taking into account the principle of equality as one of the selection criteria of public media authorities<sup>295</sup>.

There was a wide social response<sup>296</sup> to the spot "Closest strangers"<sup>297</sup> broadcast in the programmes of Telewizja Polska S.A. After the analysis, the National Broadcasting Council concluded that there was no breach of the Act on radio and television, and thus no basis for the imposition of a penalty on the broadcaster.

### 4. Ombudsman for Children<sup>298</sup>

The Ombudsman for Children submitted his comments on the entitlement to fare discounts applicable in public transport. The Ombudsman noted that children with the Polish citizenship learning abroad or in schools at the diplomatic agency of a foreign state in Poland, having school ID issued in a foreign language, are not eligible for a reduced fare. The Ombudsman is of the opinion that the discounts should apply to all children, including those with the documents in a foreign language.

<sup>291</sup> Letter of 15 January 2015.

<sup>292</sup> Including implementation of guidelines the Council of Ministers of 12 April 2012 *on the National Interoperability Framework, the minimum requirements for public records and exchange of information in electronic form and the minimum requirements for information and communication systems*, among others, a special form facilitating the submission of complaints was made available.

<sup>293</sup> The document adopted on 18 March 2014.

<sup>294</sup> Studies were conducted during the campaign to the European Parliament and the local authorities from the perspective of the presence of women.

<sup>295</sup> In 2014, supervisory boards in 19 public media companies were appointed. Currently, women represent more than ¼ (25.25%) of the composition of the newly appointed boards.

<sup>296</sup> The National Broadcasting Council received 72,128 protests, of which 58,342 before the spot appeared on the air.

<sup>297</sup> The spot presented a same-sex couple which faces various barriers in everyday life related to the absence of appropriate legal regulations.

<sup>298</sup> Letter of 15 January 2015.

The Ombudsman keeps receiving complaints from parents who were not granted an addition to the family allowance for child care during the period of parental leave for each child. This leads to unequal treatment of families with more than one child born during a single childbirth.

The Ombudsman also received complaints about insurance companies offering family insurance which pass over adoption of a child as an insurance event.<sup>299</sup> Such behaviour, in the opinion of the Ombudsman, is against the constitutional principle of protection of parenthood and the principle of equality.

Cases of discrimination against transsexual youth were also reported to the Ombudsman. The allegations concerned the lack of understanding of the problem by the local community, the use of inadequate measures (e.g. recommendation of individual education), difficulties with placement in institutional foster care (due to the gender division) and relationships with peers.

The Ombudsman was examining cases concerning the unequal position of fathers in relation to mothers in the judicial practice of courts regulating the situation of a child when the parents part. The Ombudsman, noting the frequent violations of the rights of children to be brought up by both parents, submitted drafted amendment to Article 58 and Article 107 of the Family and Guardianship Code<sup>300</sup> to the Senate Legislation Committee and the Family and Social Policy Committee. Moreover, the Ombudsman was dealing with cases concerning discrimination of fathers in respect of the right to determine the child's parentage. What is important in this matter is the lack of powers of the biological father to challenge paternity of the mother's husband or the person who fathered the child before the head of the civil registry office<sup>301</sup>.

## 5. Commissioner for Patients' Rights<sup>302</sup>

Through a free helpline, the Commissioner received signals from transsexual persons related to the problem of identifying transsexualism in the hospital discharge summary reports<sup>303</sup>. The issue of restrictions on access to health services in gynaecology for persons who have undergone the sex-change phase from male to female was also indicated. These individuals, before changing the register data (gender determination, PESEL), have a limited access to the services provided by a gynaecologist, despite having the status of an insured person.

The interests of the Commissioner also focused on the case of a disabled patient who was denied a medical check-up in a therapeutic entity due to the presence of her assistance dog. In a special announcement, the Commissioner reminded that the applicable provisions

<sup>299</sup> Such complaints were also coming in to the Polish Insurance Ombudsman (letter to the Human Rights Defender of 19 January 2015).

<sup>300</sup> The Act of 25 February 1964 (Dz.U. of 2012, item 788).

<sup>301</sup> Cf. I.3(i) of this Information.

<sup>302</sup> Letter of 16 January 2015.

<sup>303</sup> The reports referred to the Ordinance of the Minister of Health of 21 December 2010 on the types and scope of medical records and the methods of processing them (Dz.U. of 2014, item 177).

clearly indicate the possible of the presence of an assistance dog of a disabled person in public utility places, including institutions of a medical profile.

The area of analysis of the Commissioner were also the applications of deaf patients and phone notifications from carers and members of families of deaf persons. As a part of these signals, the problem of communication between employees of entities providing health care services and deaf patients was raised. These objections were related mainly to the lack of opportunities to communicate with the patients, the patients' problem with obtaining information about their condition, giving consent to the provision of health care services and refusal to admit a patient without the assistance of a sign language interpreter. The Commissioner will continue activities in this matter, in particular in order to amend the regulations in this area.

The subject of the Commissioner's activity is also the issue of access for persons above the age of 60 to health services in the area of psycho-geriatric care.

## **6. Polish Insurance Ombudsman<sup>304</sup>**

The issue of unequal treatment is incidental in the complaints addressed to the Ombudsman<sup>305</sup>.

The Ombudsman received two complaints which raise the complaint about the refusal to join the group insurance in connection with the disability of the applicant. Both cases, after the intervention by the Ombudsman, were finalised with a positive settlement by the insurance company.

Another complaint contained allegations of discrimination against persons living in same-sex relationships while offering and concluding health insurance for customers of one of the banks. Definition of a partner used in the insurance does not include same-sex relationships, which – in the opinion of the Ombudsman, may constitute discrimination on the grounds of sexual orientation<sup>306</sup>.

Furthermore, the Commissioner noticed the occurrence of age limits in personal insurance at the conclusion of insurance contracts, which are often used in relation to the occurrence of certain events. These cases are often associated with the bancassurance products, i.e. insurance contracts sold through banks and financial intermediaries.

## **7. National Labour Inspectorate<sup>307</sup>**

The National Labour Inspectorate, as a result of the received complaints, information and signals of potential irregularities, conducted the so-called thematic inspections. The issue of equal treatment was raised in four thematic areas: control of the observance of the provisions of the Act on employment promotion and labour market institutions by employment agencies, control of the observance of the provisions of law in respect to temporary

<sup>304</sup> Letter of 19 January 2015.

<sup>305</sup> In 2014, in total, 15,428 written complaints in the field of business insurance were received.

<sup>306</sup> Case in progress.

<sup>307</sup> Letter of 12 February 2015, ref. No.: gnp-306-0799-1-2/15.

employees, control of the legality of employment and other paid work of Polish citizens, and control of the legality of employment, other paid work and work performed by foreigners. The National Labour Inspectorate also implemented preventive and training activities<sup>308</sup> in the area of equal treatment and non-discrimination in the labour market<sup>309</sup>.

## 8. The Police<sup>310</sup>

The Police is actively participating in the implementation of the *National Programme for Equal Treatment for 2013-2015* and carries out its own initiative.

The Police took steps to strengthen the effectiveness of prosecution of hate crimes. The Department for Combating Cybercrime of the Criminal Service Bureau of the General Police Headquarters conducts ongoing monitoring of the Internet in relation to publication of "hate speech" – posted on fora and websites, that can fulfil the criteria of prohibited acts typified in Articles 256, 257 and 119 of the Penal Code. From 1 October 2014, units for combating cybercrime, which are also involved in monitoring "hate speech", have been operating in all the Voivodeship Headquarters of the Police. The project "Horizontal Retrospective Education" was launched, and as a part of it workshops for staff in the Police entitled *Understand Evil* will be organised for two years. The classes are to inform the target group of 200 commanders on the issues of psychology of evil, aggression, including torture and other forms of inhuman treatment. The classes will be accompanied by a study on the so-called "community conspiracy of silence". At the central level, *the Police Platform Against Hatred*<sup>311</sup>, the aim of which is to concentrate the efforts of law enforcement bodies and NGOs on preventing crime motivated by social prejudices, was established.

The Police has also developed a tool for estimating the level of life and health risk in relation to domestic violence and algorithms indicating the methods of conduct during the Police intervention. The prepared guide is a practical tool used by Police officers intervening in relation to the occurrence of domestic violence, for example Police officers of patrol and intervention units or community support officers.

The Commander in Chief of the Police appointed on the central level the Team for the Strategy of Equal Opportunities in the Police, whose aim is to ensure equal employment opportunities for all persons employed in the formation. Moreover, the anti-mobbing and anti-discrimination procedures have been implemented.

## 9. Border Guard<sup>312</sup>

The accusation of violation of the principle of equal treatment by the officers occurred in isolated complaints addressed to the authorities of the Border Guard<sup>313</sup>.

<sup>308</sup> *Inter alia*, together with the International Labour Organisation and the Ministry of the Interior, the project *Rights of migrants in practice*.

<sup>309</sup> *Employment agency and Temporary employment*, relating to providers of employment agency service, and *Legality of employing foreigners, Only legally – a guide for persons taking up employment, Do you work in Poland? Work legally, Employment agency and working abroad*.

<sup>310</sup> Letter of 14 January 2015.

<sup>311</sup> The Human Rights Defender is supporting this initiative.

<sup>312</sup> Letter of 15 January 2015.

<sup>313</sup> The Commander in Chief received two complaints. In one case, the complainant reported on illegal

It should also be noted that in 2014 Decision No. 121 of the Commander in Chief of the Border Guard on the introduction of the procedure in cases of violation of the principle of equal treatment<sup>314</sup> entered into force. The anti-discrimination and anti-mobbing procedure was implemented through changes in work regulations of the Border Guard organizational units based on the provisions of the Act on the implementation of some regulations of the European Union regarding equal treatment and the provisions of the Labour Code.

## 10. Office for Foreigners<sup>315</sup>

Bearing in mind the tasks of the Office related to the examination of applications for refugee status on the territory of Poland from persons who declare to have experienced serious harm in the country of origin by persecution or other forms of discrimination and because of a conflict, it should be noted that in the first stage of the proceedings applicants with the special needs are determined. This category of persons with special needs includes, *inter alia*, persons of non-heterosexual orientation.

From among the complaints received by the Head of the Office in 2014, four concerned violation of the principle of equal treatment or discrimination, with one complaint concerning the problem of discrimination<sup>316</sup>, and three improper and unequal treatment<sup>317</sup>. As a result of the preliminary investigations conducted the complaints were considered unfounded.

The Office is carrying out constant activities to recognize persons who suffered physical, psychological or sexual violence, as well as provide them with the right conditions for questioning in the course of proceedings for granting the refugee status. In 2014, the Office continued its activities related to the Agreement on standard procedures in identifying, preventing and responding to cases of sexual violence or violence on the grounds of sex against foreigners staying in centres for applicants for the refugee status<sup>318</sup>.

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detention during customs clearance, violation of human rights (physical and psychological torture) and verbal and physical abuse. In the second complaint, the allegations concerned behaviour of Border Guard officers during control of the legality of stay on the territory of Poland and expulsion. The complainants' claims were not confirmed and the complaints were considered unfounded. The Commander in Chief of the Warmińsko-Mazurski Border Guard Division received three complaints, which contained the claim of discrimination and violation of the principle of equal treatment. After their examination, the complaints in question were considered unfounded.

<sup>314</sup> Decision of 30 June 2014 (Dz.Urz. of the General Border Guard Headquarters of 2014, item 86). This decision introduced the ability to report conduct filling the criteria of unequal treatment to the superiors competent in personal matters and to examine such reports by committees appointed by the supervisors competent in personal matters.

<sup>315</sup> Letter of 15 January 2015.

<sup>316</sup> The complainant claimed discrimination against his person as a foreigner.

<sup>317</sup> The first one concerned mistreatment of a foreign pupil at school, the second one mistreatment of a foreigner while remaining in the procedure for granting refugee status, and the third one was related to mistreatment in the centre in Linin.

<sup>318</sup> In 2014, in the framework of implementation of the Agreement, 82 Meetings of Local Cooperation Teams were held (in 2013, there were 22 meetings). 16 cases of violence were found, including 13 related to domestic violence, 2 marriages with a person under the age 16, 1 suspicion of sexual ha-

The Office also participated in the following projects: “Give them a chance! Legal and informational assistance to persons with special needs seeking protection in Poland and preventing sexual violence on the grounds of sex in centres for applicants for the refugee status”, “From tolerance to integration”, aimed at building the attitude of openness towards foreigners and combating all forms of discrimination, racism and xenophobia in the communities in which the centres for foreigners operate, and “Improving the efficiency of migration management”.

Employees of the Office participated in training courses corresponding to the needs of substantial and functional tasks carried out by them, i.e., in particular, linguistic, cultural, related to human trafficking. These training courses are also implemented with foreign partners, including the European Asylum Support Office (EASO).

### 11. Office of Competition and Consumer Protection<sup>319</sup>

The President of the Office intervenes within his competence whenever there is a suspicion that a service provider violates economic interests of consumers, regardless of the motives of entrepreneurs committing such violations. In most cases, although discriminatory actions of service provider may constitute a violation of the public interest, they are not infringing the collective consumer interests pursuant to the Act on competition and consumer protection<sup>320</sup>. The concept of public interest is not synonymous with the concept of the collective consumer interests. An example of such an action can be, e.g., an advertisement insulting the audience as human beings, containing religious, national references, etc.

In the case of service provider's actions such as refusal to sell goods or services, *inter alia*, on discriminatory motives, usually, such actions constitute a violation of individual consumer interests. The President of the Office of Competition and Consumer Protection has no possibility to enforce individual claims of consumers and is not entitled to act administratively on behalf of and for any of the parties to the dispute arising from the civil law relationship.

### 12. Office of Electronic Communications<sup>321</sup>

Every year, the President of the Office of Electronic Communications carries out inspections aimed at obtaining information whether the operator providing universal postal services (the appointed operator) ensures access to the provided services to persons with disabilities<sup>322</sup>. The existing data on the inspected post offices indicates that adaptation of urban and rural offices is at a similar level, it has not improved significantly compared to the previous years and may be still deemed insufficient. In 2014, the Office of Electronic Com-

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rament. Victims of events were provided with appropriate assistance and care.

<sup>319</sup> Letter of 15 January 2015.

<sup>320</sup> The Act of 16 February 2007 on competition and consumer protection (Dz.U. No. 50, item 331, as amended). According to Article 24 of that Act, the practice infringing collective consumer interests shall mean any unlawful activity of an undertaking detrimental to these interests, in particular application of clauses entered in the register of prohibited clauses of standard forms of agreements, a breach of the duty to provide consumers with reliable, truthful and complete information, unfair market practice or other acts of unfair competition.

<sup>321</sup> Letter of 14 January 2015.

<sup>322</sup> According to Article 62 of the Act of 23 November 2012 Postal Law (Dz.U. of 2012, item 1529).

munications received 5 complaints concerning unfair treatment and discrimination in using postal services. These complaints were related, *inter alia*, to architectural barriers which prevent persons with disabilities from access to the provided postal services.

It should be noted that on 10 October 2014 the provisions governing the exercise of the obligation to provide facilities for people with disabilities by all providers of publicly available telephone services by adapting their offers, services and websites entered into force<sup>323</sup>.

As regards the provision of telecommunications services, in 2014, the Office received 3 complaints of users against telecommunication operators concerning non-compliance with the principles of equal treatment and discrimination<sup>324</sup>. As a part of the explanatory proceedings conducted by the Office of Electronic Communications, the use of improper practices was not confirmed and complaints were considered unfounded.

The President of the Office, guided by the need for equal treatment and non-discrimination, is also conducting the Telecommunication services certification programme in order to support equal and effective competition in the provision of telecommunication services, as well as provide the users with the best possible protection against abuse, including cybercrime. The Programme includes three categories: *Safe Internet*, *Senior* and *Comparison of Offers*.

In the course of the conducted proceedings, the Office of Electronic Communications identified the problem of unethical behaviour of sales representatives, acting for and on behalf of various providers of stationary telecommunication services, which affects in particular elderly persons. Due to the large scale of the phenomenon, the Office thoroughly analyses the received complaints<sup>325</sup>. Moreover, the Office of Electronic Communications, in cooperation with county and municipal Consumer Ombudsmen, prepared and carried out an information and education campaign *Trust, but Verify*, which contributed to the increase in consumer awareness of their rights and obligations in the market of telecommunication services.

### 13. Energy Regulatory Office<sup>326</sup>

The problems in the observance of the principle of equal treatment were noticed by the Energy Regulatory Office in 2014, in matters related to the change of the electricity and gas provider and against the background of the contracts ensuring supply of fuel and energy. Increasing numbers of sellers operating in a competitive market are not always fair in their fight for clients, which manifests itself in reprehensible practices described by the consumers in their complaints about energy companies submitted to the Office. The addressees of the presented practices were, in particular, elderly persons, which qualifies this behaviour as

<sup>323</sup> Ordinance of the Minister of Administration and Digitization of 26 March 2014 on detailed requirements relating to the provision of facilities for disabled persons by the providers of publicly available telephone services (Dz.U. of 2014, item 464).

<sup>324</sup> Allegations were related to preventing foreigners from concluding contracts for the provision of telecommunication services via Internet, application of procedures that prevent deaf, hearing-impaired persons from concluding contracts for the provision of telecommunication services.

<sup>325</sup> In 2014, based on the received consumer complaints, the Office of Electronic Communications directed 9 notifications on the suspicion of committing a crime, including 2 notifications concerning 61 consumers.

<sup>326</sup> Letter of 14 January 2015.

discrimination on the grounds of age or on the grounds of disability (e.g. of hearing, sight). The analysis of complaints and signals from consumers was the basis for the publication of information material concerning the dishonest activities of some sales representatives of electricity suppliers<sup>327</sup>.

The Energy Regulatory Office also notes the lack of equal treatment of electricity consumers as regards calculating and collecting the sanction fees for termination of electricity sales agreement before the expiry of its validity. The analyses of the documents presented at the request of the President of the Energy Regulatory Office show that in many cases, after the intervention by the Office, companies decide to withdraw from collecting this fee *ad hoc*, whereas these decisions concern only some of the cases reported to the President of the Energy Regulatory Office and are not based on uniform criteria.

#### **14. Central Statistical Office<sup>328</sup>**

The surveys conducted by the Central Statistical Office included a number of social features, such as sex, age, disability, place of residence, due to which the results of the surveys of the CSO can be a tool for monitoring equal treatment. One of the most important surveys in this area was the European Health Interview Survey, which included, among others, data on self-assessment of health condition and disability, the occurrence of serious health problems, the use of medical services, taking medications and selected elements of lifestyle. Data will be developed according to socio-demographic characteristics: sex, age, education, marital status, labour market status<sup>329</sup>. Furthermore, for the first time, a survey on trade union activities was carried out, as a part of which data about members and persons doing community work for the unions with division by sex was collected.

<sup>327</sup> See <http://www.ure.gov.pl/pl/urząd/informacje-ogolne/aktualnosci/5934,Uwaga-na-nieuczciwych-sprzedawcow.html>.

<sup>328</sup> Letter of 14 January 2015.

<sup>329</sup> Publication of *Health Condition the Polish Population in 2014* is scheduled for 2016.



## VI. CONCLUSIONS AND RECOMMENDATIONS ON ACTIONS REQUIRED TO ENSURE THE OBSERVANCE OF THE PRINCIPLE OF EQUAL TREATMENT

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In the opinion of the Defender, despite the adoption of the Act on the implementation of some regulations of the European Union regarding equal treatment (the Act on equal treatment), **guarantees of effective protection, equal for all, against discrimination have not been sufficiently provided in Poland.** Therefore, an urgent amendment to the Act on equal treatment is necessary, in particular the provision of equal protection for all groups at risk of discrimination.

The Defender also critically evaluates the effectiveness of judicial measures intended for protection and prevention of violations of the principle of equal treatment. Information available to the Defender indicates that since the day of adoption of the aforementioned Act, only a few legal proceedings have been initiated on its basis throughout the country. This number is by far disproportionate to the actual extent of discrimination in Poland. Meanwhile, the sanctions for the breach of the principle of equal treatment – pursuant to the EU regulations – should be effective, proportionate and dissuasive. Additional problem remains the unreliable system for collecting data on cases of violation of the principle of equal treatment pending before common courts. Data provided by the Ministry of Justice is characterized by a large number of errors, and information on the actual number of such cases is collected individually by the Defender and NGOs. This makes conducting a reliable monitoring of the practice of application of the Act on equal treatment difficult.

Until now, **Poland has not ratified Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, formulating a general prohibition of discrimination.** Meanwhile, ratification of the Protocol would allow strengthening protection against discrimination in Poland substantially.

### 1. Preventing discrimination on the grounds of race, ethnicity or nationality

In terms of specific problems, the need to create a system of integrated monitoring of hate crimes, which would largely contribute to the increase in knowledge on the scale of violence motivated by prejudice, and consequently to the appropriate responses to cases of discrimination, should be indicated. The continuation of activities aimed at proper preparation of the relevant authorities and government services to respond to racist or xenophobic incidents is also extremely important.

The Defender welcomed the completion of work on the ratification of the Council of Europe Convention on Cybercrime and the Additional Protocol, extending its effect on crimes

on racist or xenophobic grounds, and further improvement in the organizational arrangements relating to the prosecution of hate crimes on the Internet.

**The problem of living conditions and access to basic social rights of the Roma minority remains unsolved.** The Defender postulates the creation of a consistent algorithm for conduct in the case when larger groups of migrants requiring special care from the state appear in Poland. A group of migrants – citizens of the European Union who, for various reasons, are not able to regulate their stay on Polish territory also requires comprehensive actions.

In the area of education of children staying in centres for foreigners, it is necessary to make every effort to ensure their right to education and fulfilment of the learning obligation, including learning the Polish language. The proposal, formulated repeatedly by the Defender, for the introduction of a statutory ban on placing juveniles and their guardians in guarded centres also remains justified.

## 2. Preventing discrimination on the grounds of age

**One of the fundamental problems in the health care system and protection of the rights of elderly persons are difficulties in access to health care services financed from public funds and the need for the patients to await treatment for a long time.** At the execution of the right to health protection, public authorities are required to establish a public health service system, which will implement the real accessibility of health care services to the fullest extent possible. The omission of the special needs of elderly persons in this system may be an indirect discrimination on the grounds of age. There is also a need to **create appropriate institutional and legal framework at the central level to care for people with Alzheimer's disease.**

In the opinion of the Defender, it is advisable to **introduce further measures supporting participation in the electoral process of the citizens with special needs**, including the elderly and persons with disabilities. In particular, the proposal to extend the circle of voters eligible for the postal ballot procedure should be considered, as well as the introduction of a statutory obligation for communes to organize free transport for elderly voters and voters with disabilities to the polling stations. The right solution would also be the introduction of a procedure allowing public authorities to efficiently inform each of the voters about the most important issues related to elections in the form of an individual notice.

The Defender continues noting cases of **discrimination against elderly persons in access to publicly offered services**, particularly in the financial sector. The age limits persisting in the legal system related to the ability to perform certain functions or to exercise certain professions, e.g. by court enforcement officers, also raise doubts.

## 3. Preventing discrimination on the grounds of sex

In the area of protection of women's rights, **the problem of domestic violence and violence on the grounds of sex remains unresolved.** Knowledge of the employees of the

services preventing and combating violence against women is still insufficient. This is a significant problem, especially in the context of a relatively small number of victims who decide to report violence. It is necessary to link all state activities aimed at counteracting negative stereotypes with the policy of preventing and combating violence, which occurs not only in private, but also in public life. In the opinion of the Defender, so far, a coherent long-range state policy in the area of preventing and combating violence on the grounds of sex has not been created. The legal acts in force and other programming documents related to preventing and combating violence should take into account the specific nature of violence on the grounds of sex, age and disability. Furthermore, taking into account the overall number of proceedings and convictions for abuse, measures in the form of an order to leave the premises occupied jointly with the victim and the prohibition of approaching the victim are not used optimally.

In Poland, **a real inequality on the grounds of gender in terms of remuneration for work (the so-called “wage gap”)** is persisting. The report of the Central Statistical Office on the remuneration structure indicates that the average pay of men was 20% higher than the average pay of women. Men earn more than women in most of the public administration units, municipal companies and companies of the State Treasury. Due to the gender pay gap women may receive lower pensions. Studies by Eurostat show that in Poland the differences in pension benefits reached nearly 24% in favour of men.

**The proportion of women in the composition of public authority bodies form election** is also relatively small. The quota system currently applicable in the proportional elections is characterized by a limited efficacy, leading to a conclusion on the validity of supplementing it by adopting regulations with respect to the alternating placement of female and male candidates on electoral lists (the so-called “zipping”).

The Defender also notes **problems of women – officers of uniformed services**. Among others, the issue of the same tests of physical fitness for men and women in the recruitment process to serve in the Police, not taking into account biological differences between the sexes, requires careful analysis. The Defender has also received complaints of Police officers being single mothers concerning the designation of their duties at night and on Sundays and holidays. The Defender welcomes the adoption of anti-mobbing and anti-discrimination internal procedures concerning Police and Border Guard officers.

#### 4. Preventing discrimination on the grounds of sexual orientation and gender identity

Specific issue of violation of the rights of non-heterosexual and transgender persons are repeating **cases of aggression and violence motivated by homophobia and transphobia**. Preventing this kind of violence is even more challenging by the lack of reliable data on the scale of the problem. For these reasons, it is necessary to establish a system of integrated monitoring of hate crimes taking into account the specific nature of crimes committed against non-heterosexual and transgender persons. The consequence of the monitoring should be a significant reduction in the number of cases which were never reported to law enforcement authorities and an increase in detection of the perpetrators of such crimes.

**A comprehensive legal act on gender recognition** of transgender persons and legal consequences of such recognition still has not been adopted. Meanwhile, the legal loophole existing in this regard contributes to social exclusion of transgender persons and is a serious obstacle to the execution of their rights. It is important not only to simplify the legal procedure for gender recognition, but also to create guarantees for the respect of dignity and personal integrity of transgender persons.

**A number of significant problems was also diagnosed in the area of access of non-heterosexual persons to health care.** The major ones include: lower standards of medical care caused by stereotypical perceptions of non-heterosexual patients and their degrading treatment, violation of the patient's right to confidentiality of information related to him/her, refusal of the presence of a close person while providing medical services without justification and restricting access to medical records and information on the condition for a close authorised person (a partner of the same sex), failure to use the available means of action – reporting the case to competent authorities by persons experiencing unequal treatment (the so-called “underreporting”), insufficient legal protection measures. Therefore, changes in practice of health care units and in the education system of the employees of these units appear necessary, so that the rights of non-heterosexual persons as patients were not violated, and the process of diagnosis and treatment was conducted with respect for their dignity.

## **5. Preventing discrimination on the grounds of religion, denomination or beliefs**

The Defender positively assesses **changes in the conditions and manner of providing a course in ethics in public schools.** However, the practice of applying the new regulations requires regular monitoring, because there are still problems with providing the lessons on ethics.

The Defender also notes problems with providing lessons on minority religions in public school, as well as with obtaining grades in minority religion classes on school reports.

## **6. Preventing discrimination on the grounds of disability and implementation of the Convention on the Rights of Persons with Disabilities**

Ratification of the Convention on the Rights of Persons with Disabilities by Poland affirmed the right of persons with disabilities to full and equal enjoyment of all human rights and fundamental freedoms and respect for their inherent dignity. However, results of studies and analyses carried out by the Defender indicate that in order to implement of these rights it is necessary to move away from focusing on the medical aspects of disability in favour of integration and social activity. For this purpose, it is necessary, *inter alia*, to **develop and implement a uniform system of certification as regards the functioning of persons with**

**disabilities in all areas of life**, including education, labour, social security and health care. This system should be based on a functional diagnosis of persons with disabilities, using a definition based on the social model of disability.

One of the priority issues, requiring urgent intervention of the legislator, remains **the abolition of the institution of legal incapacitation in its present form and replacing it with a system of supported decision-making** which, respecting the will and preferences of persons with disabilities, at the same time, provides them with protection against exploitation and abuse, without depriving of the legal capacity to perform acts in law. The problem of legal incapacitation is also connected with the issue regulation of the Family and Guardianship Code, which discriminates against people with disabilities in their right to enter into marriage and start a family, as well as the problem of automatic deprivation of legally incapacitated persons of their voting rights. Appropriate changes in these areas should allow for the withdrawal of Poland's reservations and interpretative statement to the Convention on the Rights of Persons with Disabilities.

**The practical problem is still the execution of the rights of pupils with disabilities to inclusive education**, so that the largest possible group of pupils with disabilities was learning in public access schools as close to their place of residence as possible. It is also necessary to **undertake actions to implement the rights of deaf and deaf-blind persons to communicate with the public administration bodies by means of non-verbal communication methods**, as well as for the general possibility to learn Polish Sign Language and Polish language as an additional language.

In the context of the persisting problems connected with care provided to persons with disabilities in welfare care homes, activities related to **moving away from institutional care to care provided at the local level (the so-called "deinstitutionalisation")** should be intensified.

The Defender also notes with a great concern the **difficulties in the functioning of persons with intellectual disabilities in the prison environment**, which prove that there is a need for a reliable assessment of the preparation of prison staff to work with people with this kind of disability.

Until now, **Poland has not ratified the Optional Protocol to the Convention on the Rights of Persons with Disabilities**. Ratification of the aforesaid Protocol would allow persons with disabilities whose rights were violated fighting for their rights before the UN Committee on the Rights of Persons with Disabilities.

## ANNEX 1.

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### **Defender's studies and reports on equal treatment published in 2014**

In 2014, the Defender published three independent reports with recommendations on problems related to discrimination.

*Equal Treatment Principle – Law and Practice* series included the following publications:

1. *Service of Deaf and Deaf-blind Persons in Public Administration Offices. Analysis and Recommendations;*
2. *Equal Treatment of Patients – Non-heterosexuals in Health Care. Analysis and Recommendations;*
3. *Support for the Mentally Ill in the Labour Market. Analysis and Recommendations.*

Within the framework of performing the task related to conducting independent studies on discrimination, the following studies were commissioned in 2014:

*Accessibility of academic education for the deaf, blind, persons with reduced mobility, the mentally ill.* The aim of the study was to show the functioning of disabled students at universities, taking into account the four types of disabilities distinguished (vision dysfunction, hearing dysfunction, physical disability and mental illness), as well as to develop standards of activities for higher education institutions for their accessibility to students with disabilities.

*Reconciling family and professional roles. Equal treatment of young parents on the labour market.* The main objective of the study was to identify factors limiting professional activation of women – young mothers and factors limiting the execution of the right of men – young fathers to become involved in family life, related to difficulties in reconciling professional and family roles. The factors were identified at the level of organizational practices, individual strategies of parents and at the level of the created and implemented social policy, taking into consideration views of trade unions and employers' organizations.

*Accessibility of lesson on minority religions and lessons on ethics within the school education system.* The goal of the study was to develop a diagnosis of the situation regarding access to lesson on religion of minority Churches and religious associations in and outside the education system, as well as access to lessons on ethics, by analysing the views of headmasters and experiences of people who sought to provide with a course in ethics in public schools.

The results of the studies carried out in 2014 will be published in 2015 in the form of a report in the series *Equal Treatment Principle – Law and Practice*.



