

# 25<sup>th</sup>

anniversary of the HUMAN  
RIGHTS DEFENDER

On 15 July 1987 Sejm passed the Act on the Human Rights Defender  
On 1 January 1988 the Human Rights Defender was established

#### LIST OF DEFENDERS:



**Ewa Łętowska**  
(1987–1992)



**Tadeusz Zieliński**  
(1992–1996)



**Adam Zieliński**  
(1996–2000)



**Andrzej Zoll**  
(2000–2006)



**Janusz Kochanowski**  
(2006–2010)



**Irena Lipowicz**  
from 2010

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# REPORT on the Activity OF THE OMBUDSMAN IN POLAND IN THE AREA OF EQUAL TREATMENT

in **2012**

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

25<sup>th</sup>  
anniversary  
Ombudsman  
in Poland  
1988-2013

Warsaw, August 2013



foto. BRPO

Irena Lipowicz  
Human Rights Defender  
(Ombudsman in Poland)

Pursuant to the Act on the implementation of some regulations of the European Union regarding equal treatment, the Human Rights Defender was entrusted with the tasks related to the implementation of the principle of equal treatment.

**HUMAN RIGHTS DEFENDER BULLETIN 2013, No 3  
SOURCES**

**Report on the Activity of the Human Rights Defender  
(Ombudsman in Poland)  
in the Area of the Equal Treatment in 2012  
and the Observance of Equal Treatment Principle  
in the Republic of Poland**

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**Published by:**

Office of the Human Rights Defender

al. Solidarności 77, 00-090 Warszawa

[www.rpo.gov.pl](http://www.rpo.gov.pl)

Department of Social Issues in Office of the HRD :

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Warszawa 2013

Cite as:

<b>HRD Bulletin. Sources 2013, nr 3</b>
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**ISSN 0860-7958**

Submitted for typesetting in July 2013 r.

Authorised for publication in August 2013 r.

Edition: 500 copies

**Cover design:**

ADV. Michał Gońda Agencja Reklamowa

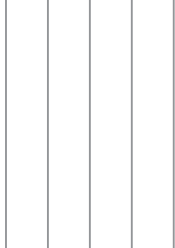
[www.adv.net.pl](http://www.adv.net.pl)

Grażyna Dziubińska

**DTP, proofreading, printing and binding:**

ARW A. Grzegorzcyk

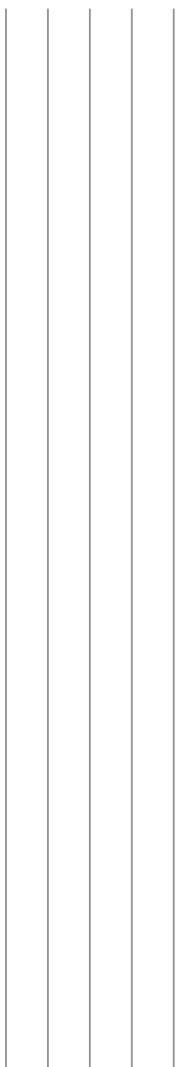
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# REPORT on the Activity of the Ombudsman in Poland in the Area of Equal Treatment in 2012 and the Observance of Equal Treatment Principle in the Republic of Poland

This Information implements Article 212 of the Constitution of the Republic of Poland of 2 April 1997 (Dz. U. No 97, item 483, as amended), which stipulates that the Human Rights Defender shall each year present information to the Sejm and Senate about his/her activities and the observance of human and citizen freedoms and rights, including, pursuant to Article 19(1)(1)-(3) of the Act of 15 July 1987 on the Human Rights Defender (Dz. U. of 2001 No 14, item 147, as amended), the information about the conducted activities in the field of equal treatment and the results thereof; the observance of the principle of equal treatment in the Republic of Poland, as well as conclusions and recommendations concerning actions that should be taken in order to ensure observance of the principle of equal treatment. Furthermore, the Information implements Article 19(2) of the Act on the Human Rights Defender which imposes an obligation to make the Information public.

Full text of the “Report on the Activity of the Human Rights Defender in 2012...” is available in Polish on [www.rpo.gov.pl](http://www.rpo.gov.pl)

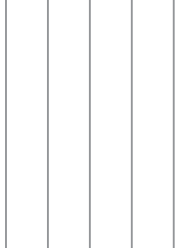




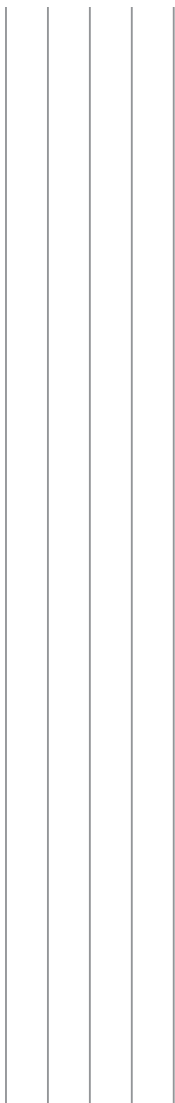
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**REPORT on the Activity  
of the Ombudsman in Poland  
in the Area of Equal Treatment in 2012  
and the Observance of Equal Treatment Principle  
in the Republic of Poland**







## Introduction

2012 was the second year when the Human Rights Defender (hereinafter “the Defender”) performed the tasks she was entrusted with pursuant to the Act on the implementation of some regulations of the European Union regarding equal treatment<sup>1</sup>.

The provisions of this Act are based on three EU directives: Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. The Directives impose an obligation on Member States to designate an independent body for the promotion, analysis and support of equal treatment, with its competences including:

1. providing independent assistance to victims of discrimination in pursuing their complaints about discrimination;
2. conducting independent surveys concerning discrimination;
3. publishing independent reports and making recommendations on any issue relating to discrimination;
4. exchanging available information with corresponding European bodies.

The Directives granted Member States discretion with regard to determining the position and organisational structure of such body or bodies. The body may form part of agencies with responsibility at national level for the defence of human rights or the safeguard of individuals’ rights and be independent.

Pursuant to the Act on equal treatment, the basic responsibilities of the Defender continue to cover the examination of submitted applications, including complaints about the violation of the principle of equal treatment, and relevant actions in accordance with the Act on the Human Rights Defender. The Defender has also been committed to carry out very broadly defined new tasks in the area of implementation of the equal treatment principle. These include:

1. analysis, monitoring and support of equal treatment of all individuals;
2. independent studies on discrimination;
3. drafting and publishing independent reports and making recommendations regarding discrimination-related issues,

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





4. performing additional information-related obligations towards the parliament which consist in providing annual information on the Defender's activity in the area of equal treatment and its results, as well as the information about the observance of the principle of equal treatment, and the conclusions and recommendations on actions to be taken in order to ensure that the principle of equal treatment is observed.

The Defender regularly cooperated in the area of equal treatment with domestic non-governmental organisations, as well as with foreign and international bodies and organisations, to protect human and civil freedoms and rights and to observe the equal treatment principle.

No comprehensive assessment of the effects of the regulation was carried out when drafting the Act on equal treatment, with the general assumption being that the new tasks would be funded from the Defender's budget. As a result of this negligence, the Defender did not receive budget funds for the performance of the new task in 2011.

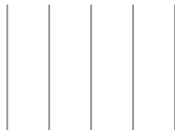
Despite the lack of such funds, the Defender established the Antidiscrimination Law Division within the organisational structure of her Office. The Division is a part of the Constitutional and International Law Department. Furthermore, three expert committees were established in the Office of the Defender, namely, Expert Committee on Elderly People, Expert Committee on People with Disabilities and Expert Committee on Migrants. The committees support the Defender by means of i.a. analyses and monitoring of equal treatment of persons and the ban on discrimination on grounds of age, disability, nationality, ethnic origin and religion or belief.

The funds for tasks in the area of equal treatment were allocated in 2012.

In the period covered by the Information, the number of complaints submitted to the Defender and concerning the principle of equal treatment has increased (by almost 90%). The Defender received 1960 complaints concerning broadly defined problems of equal treatment, including discrimination on grounds of disability (1097 cases), discrimination on grounds of religion or denomination (158 cases), discrimination on grounds of age (57 cases), discrimination on grounds of nationality (54 cases), discrimination on grounds of sex (52 cases), discrimination on grounds of sexual orientation (21 cases), discrimination on grounds of race or ethnic origin (16 cases), discrimination on grounds of political views (6 cases) and discrimination on grounds of gender identity (4 cases).

The Defender processed 652 complaints and she informed the applicants about the measures they have the right to undertake in 458 cases. Additionally, in 3 cases the applicants were asked to complement their applications and 15 cases were referred to competent bodies. No actions were undertaken in 26 cases. Among all the cases that had been examined by the Defender, a solution favourable for the applicant was reached in 24.1% of cases and in almost 34.4% of cases the applicants' allegations were not confirmed. Furthermore, in 2012 the Defender directed 67 problem-related addresses on broadly defined principle of equal treatment to competent bodies.

In the second year of the performance of tasks resulting from the Act on equal treatment by the Defender, two thematic reports were published, namely, *Guarantees of Exercising Voting Rights by Seniors and by Disabled Persons. Analysis and Recommendations* and *Equal*





*Opportunities in Access to Education of Persons with Disabilities. Analysis and Recommendations.*

The Defender also commissioned the following social studies:

(a) *Perception of elderly persons by young people, perception of young people by elderly persons.*

(b) *Violence against elderly women and women with disabilities.*

(c) *Elderly people in the financial services market.*

(d) *Doctors in the process of specialisation and non-heterosexuals.*

The results of the studies will be published as part of the reports on counteracting discrimination scheduled for 2013.

Another important project implemented by the Defender in cooperation with numerous non-governmental organisations focuses on preventing discrimination on grounds of race, religious denomination, ethnic origin and sexual orientation. The aim of the project is to create a manual for Police officers, entitled “Anti-discrimination measures in the Police units’, in cooperation with the Plenipotentiary of the Police Commander-in-Chief for Human Rights’ Protection. The editing work is underway and the manual will be published in the second half of 2013.

The Defender also carried out educational activities in the area of equal treatment, including trainings for, among others, assistants to the Sejm deputies and senators, students working in university legal counselling centres and representatives of non-governmental organisations.

The cooperation with equality bodies in the European Union Member States and with the European Network of Equality Bodies (EQUINET) continued.



# I. Activity of the Human Rights Defender in the area of equal treatment and the results of the activity

## A. General motions of the Human Rights Defender and selected individual cases

### 1. Preventing discrimination on grounds of race, nationality or ethnic origin

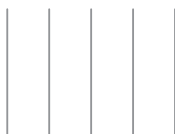
#### *(a) Preventing racism, xenophobia and the related intolerance*

In the report entitled “Preventing violence motivated by race, ethnic origin and nationality”, the Defender presented recommendations aimed at combating all forms of racial discrimination, intolerance and xenophobia. The Defender proposed to establish a unified database registering hate crimes with the use of violence, to carry out studies aimed at determining the real scale of violence on grounds of race, to continue trainings for officers of state services, in particular the Police, and to undertake activities disseminating knowledge about hate crimes. The state authorities, in particular courts, prosecution offices and the Police, should create and implement a social policy ensuring protection of the human rights of all inhabitants of the country, regardless of their nationality or ethnic origin, including protection against violence. The Defender addressed the Commander-in-Chief of the Police<sup>2</sup> with a request for information about the measures taken to combat crimes motivated by racism, xenophobia and intolerance.

In reply<sup>3</sup>, the Plenipotentiary of the Police Commander-in-Chief for Human Rights’ Protection ensured that the Police regularly undertook numerous activities at central and local levels to effectively reduce the incidence of racism, xenophobia and intolerance. The activities are mainly addressed to the Police officers (education, awareness raising, amendments to regulations), but often have also an external dimension. Immediately after the publication and presentation of the report in the Office of the Defender, the concept of the document was presented to the Commander-in-Chief of the Police. The information about the document was sent to the Police units with request to submit comments on its possible implementation.

<sup>2</sup> RPO-707583-I/12 of 17 July 2012 and 18 July 2012.

<sup>3</sup> Letter of 20 August 2012.





In reply to the petition to the Minister of Justice concerning the activities of the ministry aimed at combating crime motivated by racism, xenophobia and intolerance, the Minister stated<sup>4</sup> that counteracting violence motivated by intolerance, xenophobia and racism was the subject of constant interest of the Ministry. He added that the competences of the Minister do not allow him to intervene in court decisions. The government plans to introduce legal norms imposing an obligation on the Minister of Justice to develop, in consultation with the Minister of the Interior, the assumptions for main objectives of the penal policy, which would then be adopted by the Council of Ministers. The assumptions will cover, *inter alia*, the issues raised in the report of the Defender. The activities of the ministry aimed at combating racism, xenophobia and intolerance included a verification of the methodology of collecting information about hate crimes. Until now it has not been possible to arrange the date according to the motives of crime. The gap is to be filled by, *inter alia*, extended statistical records in penal proceedings concerning indictable offences. The Ministry also receives statistical records in the cases concerning discrimination in employment. New solutions, including the Integrated Accounting and Human Resources System, are to expand the existing database. The National School of Judiciary and Public Prosecution, reporting to the Minister of Justice, offers trainings for the personnel of courts and prosecution offices on counteracting discrimination or trafficking in human beings. Such topics are also included in trainings for legal trainees. Similar activities were also planned for 2013. The trainings are also organised for officers and employees of the Prison Service. Furthermore, the personnel of prisons and pre-trial detention centres also implements programmes addressed to specific groups of inmates which promote tolerance, teach how to solve conflicts without aggression and respect for other people's rights.

In his reply concerning the measures taken by the prosecution offices to combat crimes motivated by racism, xenophobia and intolerance, the Prosecutor General informed<sup>5</sup> that fight against racist crime was one of the priorities of his office. The prosecution offices always react to such crimes with great determination. Pending penal proceedings are also analysed to determine whether the prosecution offices may undertake non-penal measures to proscribe organisations guided by anti-Semitic or racist ideology.

In 2011, the Prosecutor General prepared a publication on hate crimes, based on the analysis of the files of criminal cases concerning crimes motivated by racism or xenophobia which were discontinued or where the preparatory proceedings were not initiated. The publication was distributed among all Appellate Prosecution Offices with an instruction to send it further to district and regional prosecution units reporting for use in their everyday work. It was also published in the "Prosecution and Law" monthly in February 2012. In 2012, a report summing up the studies on the prosecution practices in cyber racism cases was sent to all Appellate Prosecution Offices. In 2011, the trainings for prosecutors included training on hate crimes.

The issue is monitored by the Defender as one of her priorities.

<sup>4</sup> Letter of 13 August 2012.

<sup>5</sup> Letter of 10 August 2012.



*(b) Situation of Polish citizens in the Netherlands*

Extensive media coverage was given to the website promoted by the Dutch Party for Freedom and its leader, encouraging to notify undesired behaviour of and offences perpetrated by immigrants from Central and Eastern European countries. The website has received over 40,000 notifications. According to the polls quoted by the media, about two-thirds of the Dutch are unhappy with the influx of immigrants from Poland. The scale of the phenomenon is also the result of prejudice and stereotypes invoked by the Party for Freedom and the related circles. The Defender asked for information<sup>6</sup> whether the Dutch Equal Treatment Commission can carry out social and educational campaigns aimed at strengthening openness of the Dutch society to immigrants and asked for an opinion on the said website.

The Chairperson of the Dutch Equal Treatment Commission informed<sup>7</sup> that the Commission shared the concerns of the Defender regarding the contents of the website of the Dutch Party for Freedom registering complaints for the citizens of the Central and Eastern European countries. The Commission published its opinion on this matter. The Commission examines the complaints on discrimination in employment and in access to goods and services. However, the Commission cannot intervene in the contents of the website of the Dutch Party for Freedom. In 2012, the Netherlands Institute for Human Rights will begin to operate. One of its research projects will focus on the status of the citizens of the Central and Eastern European countries in the Dutch labour market. The Dutch government takes numerous measures aimed at preventing the exploitation of workers. The Institute will verify whether they are sufficient. The issue is being monitored by the Defender.

*(c) Access to sport competitions for minors residing permanently in Poland on the basis of a settlement permit*

The Defender receives complaints regarding the problem of access to national athletics competitions for minors permanently residing in Poland on the basis of a settlement permit. The minors cannot participate in the competitions due to the lack of the Polish citizenship. The problem concerns the minors whose one parent obtained the Polish citizenship in line with a summary procedure pursuant to the Act on repatriation<sup>8</sup>. The Defender pointed out that the persons holding a settlement permit have the same rights as Polish citizens with regard to, *inter alia*, right to work, economic activity, right to social benefits or education. The Constitution of the Republic of Poland<sup>9</sup> guarantees the freedoms and rights ensured by the Constitution to everyone being under the authority of the Polish State. The Constitution also guarantees equal access to cultural goods. One of the aspects of the constitutional right to equal access to cultural goods is the access to physical culture which constitutes a part of broadly defined national culture protected by law. The differentiation of access to sport competitions solely on the basis of nationality may breach the freedom of access to cultural

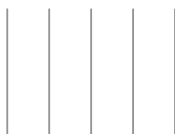
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<sup>6</sup> RPO-697344-I/12 of 6 March 2012.

<sup>7</sup> Letter of 13 April 2012.

<sup>8</sup> Act of 9 November 2000 (Dz.U. of 2004 No 53, item 532, as amended).

<sup>9</sup> Act of 2 April 1997 (Dz.U. of 1997 No 78, item 483, as amended).





goods. The Defender addressed the Minister of Sport and Tourism<sup>10</sup> with a request to consider amending the order on the conditions of participation of talented young athletes in the trainings in order to ensure equal treatment of all citizens.

In reply<sup>11</sup>, the Minister explained that the organisational rules of the Programme of training and sport competitions for talented youth are laid down in the ordinance of the Minister of Sport and Tourism, issued at the end of each year with effect in the following year. In view of the significance of the issue raised by the Defender, the legal regulations of the Minister of Sport and Tourism will be amended to include provisions which will allow the minors, who are holders of a permit to settle in Poland due to the fact that one of their parents has obtained Polish citizenship, to participate in trainings and sport competitions, as of 1 January 2013.

*(d) Publishing the information on the nationality of perpetrators of criminal offences by some media*

The Defender's Office received a complaint from the Roma People Association in Poland concerning the practice of certain media which publish information on the nationality of perpetrators of criminal offences or of persons suspected of having committed such acts, if the persons are of Roma origin. Such information in publications which describe events that are in no way related to the nationality of persons involved contributes to stigmatisation of the members of the Roma minority. It also strengthens the negative image of the Roma people in the society. This image is most often the basis of xenophobic attitudes and intolerance among a part of the Polish society. The Defender submitted a request<sup>12</sup> to the Polish Media Ethics Council to rule whether the said practice was compliant with the principle of respect and tolerance stipulated in the Media Ethics Charter.

In his reply<sup>13</sup>, the Chairman of the Media Ethics Council shared the Defender's concern about the press publications which described the Roma people as perpetrators of crimes or offences. The Media Ethics Council pointed out that such practices breached the principles of ethical journalism, reflected badly on the authors, and undermined the authority of the media. The Media Ethics Council tries to react to xenophobia in the media, not only with respect to the Roma people. The interventions of the Media Ethics Council are successful only when they concern specific press articles (radio or TV programmes) and point to the statements which breach the principles of the Media Ethics Charter.

*(e) Dissemination of knowledge about the Roma minority*

In the opinion of the Defender the implementation of government programmes for the Roma minority, in particular the "Programme for the Roma community in Poland" brought about positive results. The addition of topics concerning language, culture, traditions and

<sup>10</sup> RPO-693052-I/12 of 12 March 2012.

<sup>11</sup> Letter of 12 April 2012.

<sup>12</sup> RPO-696705-V/12 of 23 April 2012.

<sup>13</sup> Letter of 22 May 2012.



history of national and ethnic minorities to the school curricula of specific subjects has an indisputable impact on the attitudes of students and pupils. However, the issues are discussed generally, without presenting specific minorities, whereas special measures are needed to improve the particularly unfavourable situation of the Roma community by eliminating negative stereotypes. Therefore, the Defender once again proposed to include the basic facts about the history and culture of the Roma people in the school textbooks and to introduce such topics to the curricula of selected school subjects. The relevant information should also be included in the Scholaris programme which offers teaching materials and aids for teachers. The Defender addressed another request to the Minister of National Education<sup>14</sup> to comment on the proposal to take actions aimed at disseminating basic information about the Roma minority and changing the negative image of this minority.

The Minister provided information<sup>15</sup> about various currently implemented projects concerning the Roma minority. In 2011, the Centre for Education Development implemented a project entitled “Multiculturalism in school practice” the aim of which was to establish a support system for schools working with pupils coming from national and ethnic minorities (research, a network of experts – coordinators, cascade trainings, an educational package of the Council of Europe was translated). Moreover, a publication of the Centre for Citizenship Education entitled “Common Past – Common Future” (auxiliary materials for teachers) containing basic information about the Roma minority was published on the Scholaris website. The section with external resources containing links to websites focusing on the Roma-related issues was extended. The editorial team of the Scholaris website will regularly acquire and publish the already existing publications and lesson scenarios. To this end, the team contacted the Roma associations. Teachers may use not only the Scholaris website, but also the websites of the Roma organisations, in particular the Roma Community Website <http://harangos.pl>, which, apart from information about the Roma history and culture, presents also the list of over 180 publications on the subject. The issues concerning the observance of the rights of national, ethnic and religious minorities are presented in particular in the civics textbooks. The textbooks extensively describe negative national and ethnic stereotypes, including also stereotypes about the Roma minority. It was also noted that it was the teachers who decided how the issues concerning national and ethnic minorities would be presented.

## 2. Preventing discrimination on grounds of disability

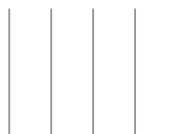
### (a) *Universal design*

The accessibility of public space for persons with disabilities is one of the main determinants of their activity in the society. According to the Convention on the Rights of Per-

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<sup>14</sup> RPO-682473-V/11 of 3 February 2012.

<sup>15</sup> Letter of 24 February 2012.





sons with Disabilities<sup>16</sup>, such accessibility is best ensured by universal design, i.e. solutions usable by all people to the greatest extent possible, without the need for adaptation or specialised design. The Committee of Ministers of the Council of Europe in the Resolution on the introduction of the principles of universal design<sup>17</sup> supported the idea of introducing the principles of universal design into the curricula of all occupations working on the built environment. Despite the relevant regulations in the Polish law concerning the use of the built environment by persons with disabilities, the majority of buildings and facilities built in Poland in recent years are only adapted to the needs of persons using wheelchairs, with only a small percentage of them being adapted also to the needs of other groups of disabled persons. The Defender is of the opinion that the subjects presenting the principles of universal design should be introduced into the curricula of the faculties related to creation of the built environment. The Defender filed a request to the Minister of Science and Higher Education<sup>18</sup> to present an opinion on this issue.

The Minister informed<sup>19</sup> that the amendment to the Higher Education Law<sup>20</sup> had entered into force on 1 October 2011. The amendment provides for formulating the education standards as a set of rules on the studies educating teachers and preparing to practice other occupations for which the requirements concerning the education process and its effects have been defined in the European Union legislation (for example, a profession of an architect). “Architecture” is the main field of study to obtain qualifications related to creating the built environment. The curriculum for this field of study was defined in the Ordinance of the Minister of Science and Higher Education on educational standards for veterinary studies and architecture.<sup>21</sup> Another field of study related to creating the built environment is “Construction”. Higher education institutions have the opportunity to supplement the curriculum so that each student achieves the expected learning results. Thus, there are no obstacles for education to be enriched by universal design principles that are important from the point of view of all users of the designed objects, including persons with disabilities. The Defender’s proposal could be reinforced further, if the Defender directly addressed the rectors of universities offering studies in this field.

The accessibility of public space for persons with disabilities is one of the main determinants of their activity in the society. Universal design is the best form of ensuring such accessibility. The Convention on the Rights of Persons with Disabilities defines the term as the solutions that are usable by all people to the greatest extent possible, without the need for adaptation or specialised design. The term refers to products, environments, programmes and services and does not exclude assistive devices for particular groups of persons with

<sup>16</sup> Convention of 13 December 2006 (Dz.U. of 2012 item 1169).

<sup>17</sup> Resolution of 15 February 2001. ResAP(2001)1.

<sup>18</sup> RPO-701167-I/12 of 8 August 2012.

<sup>19</sup> Letter of 31 August 2012.

<sup>20</sup> Act of 27 July 2005 (Dz.U. of 2012 item 572, as amended)..

<sup>21</sup> Ordinance of 29 September 2011 (Dz. U. of 2011 No 207, item 1233).





disabilities. Although Polish Construction Law<sup>22</sup> includes a requirement to ensure conditions enabling disabled persons, in particular those on wheelchairs, to use public utility buildings and residential multi-family buildings, the majority of architects do not know how to design the built environment to make it usable to all people and accessible for disabled persons, without the need for adaptation or specialised design. The Defender filed a request to the Head of the Conference of Rectors of Polish Universities of Technology<sup>23</sup> to consider the introduction of subjects presenting the principles of universal design into the fields of study related to design of the built environment. The Defender also declared that the Office of the Defender was ready to cooperate with universities to promote universal design.

The Defender plans to meet with the rectors of Polish universities of technology to discuss the issue.

*(b) Universal design in the construction law*

The Construction Law<sup>24</sup> includes a requirement to ensure conditions enabling disabled persons to use public utility buildings and residential multi-family buildings. However, the provision does not require new buildings and facilities to be built in line with the principles of universal design. The design of the buildings is such that they are only seemingly adapted to the needs of persons with disabilities or include solutions resulting in discomfort of such persons, e.g. platform lifts which cannot be used by persons on wheelchairs without help from another person. The Defender supported the proposal of the Government Plenipotentiary for Equal Treatment to introduce regulations imposing an obligation to adapt the existing buildings to the needs of persons with disabilities and to carry out a mandatory architectural design audit after renovation or completion of construction to verify the accessibility of the building for persons with various types and degrees of disability. Another favourable solution would be to introduce a requirement to consult building designs with the community of disabled people. The Defender submitted a request to the Minister of Transport, Construction and Maritime Economy<sup>25</sup> to consider the introduction of amendments to the Construction Law aimed at explicit inclusion of the principles of universal design.

In his reply<sup>26</sup>, the Minister emphasized that each case of non-compliance with the building standards and a breach of binding regulations is investigated by the construction supervision inspectorates. Upon request of an investor, the competent authority carries out an obligatory construction site inspection to verify whether the construction complies with the terms and conditions laid down in the construction permit. The provisions of the Construction Law require taking into account the accessibility of buildings for disabled persons at the stage of both their designing and construction, which is subject to inspection.

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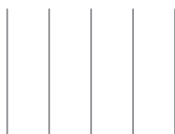
<sup>22</sup> Act of 7 July 1994 (Dz.U. of 2010, No 243, item 1623, as amended).

<sup>23</sup> RPO-701167-I/12 of 22 October 2012.

<sup>24</sup> Act of 7 July 1994 (Dz.U. of 2010, No 243, item 1623, as amended)..

<sup>25</sup> RPO-715377-I/12 of 19 November 2012.

<sup>26</sup> Letter of 27 December 2012.





The provisions of the Construction Law and the implementing regulations which ensure that disabled persons can use and have access to various devices related to buildings and the surrounding environment<sup>27</sup> are compliant with the principles of universal design and do not exclude their application. The introduction of universal design as the only binding principle will reduce the possibilities of implementing various projects due to specific design problems that may occur.

Therefore, no additional legal regulations are planned which would define the principle of universal design as the only form of ensuring accessibility of public space for disabled persons.

*(c) Adaptation of railway stations, platforms and railway rolling stock to the needs of persons with disabilities*

The cases examined by the Defender revealed the problem of adapting railway stations, platforms and rolling stock to the needs of persons with disabilities. The status quo in this respect is consolidated by the applicable law. The legislator indefinitely lifted the obligation of railway companies and station managers to ensure the accessibility of stations, platforms, rolling stock and other facilities for disabled people in the framework of urban, suburban and regional rail passenger services to persons with reduced mobility.

The secondary legislation of the European Union grants the Member States considerable discretion with regard to regulations ensuring protection of rail passengers' rights in urban, suburban and regional rail passenger services. However, recitals of the preamble to the Regulation (EC) No 1371/2007 of the European Parliament and of the Council<sup>28</sup> suggest that the discretion should be limited in time. Nevertheless, in the opinion of the Defender, the regulatory discretion of the legislator should be analysed taking into account constitutional constraints. In its rulings the Constitutional Tribunal emphasizes that the Constitution is superior to and takes precedence before all legal acts in force in the Polish legal system, including also the EU law. Therefore, using the regulatory discretion offered by the secondary legislation of the European Union, the Polish legislator must be subject to constraints stemming from the Constitution. According to the Constitution, the assistance provided to disabled persons by public authorities should ensure their subsistence, adaptation to work and social communication. Thus, the Constitution also provides grounds for the obligation to create appropriate infrastructure allowing disabled persons to travel and establish contacts. Having considerable regulatory discretion, the legislator went beyond its limits by failing to specify the time within which railway stations, platforms and rolling stock should become accessible for disabled persons. In this segment of the railway market, the legislator released itself from the obligation to take actions to facilitate social communication of disabled persons.

<sup>27</sup> Ordinance of 12 April 2002 (Dz.U. of 2002, No 75, item 690, as amended).

<sup>28</sup> Regulation of 23 October 2007 (OJ L 315, 3.12.2007).



The legislator also breached the provisions of the Convention on the Rights of Person with Disabilities.<sup>29</sup> The Convention stipulates that to enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, i.a. to transportation.

Therefore, the Defender lodged a motion to the Constitutional Tribunal to declare Article 2a of the Act on rail transport invalid<sup>30</sup> with Article 2 in conjunction with Article 69 of the Constitution of the Republic of Poland and Article 9(1)(a) of the UN Convention on the Rights of Persons with Disabilities.

The case is pending before the Constitutional Tribunal.

*(d) Right to obtain reliable information about accessibility and adaptation of tourist accommodation facilities*

In her inquiry to the President of the Office of Competition and Consumer Protection, the Defender pointed to the practice which may infringe the collective interests of disabled consumers with respect to their right to obtain reliable information about accessibility and adaptation of tourist accommodation facilities. The current Act on tourism services<sup>31</sup> does not include a provision imposing an obligation on tour operators or travel agents to inform their customers on whether a given facility is adapted to the needs of disabled persons and does not determine the required scope of information, if such is provided. According to the Defender, the current wording of the Act on tourism services requires appropriate legislative work in order to clearly define the above information obligation and its scope which would meet one of the objectives of the consumer rights i.e. providing consumers with access to complete, reliable and true information about goods and services of their interest, and would contribute to better protection of disabled persons against unfair practices of enterprises. The Defender submitted a request<sup>32</sup> asking the President of the Office of Competition and Consumer Protection to take a position on this issue.

The President of the Office of Competition and Consumer Protection<sup>33</sup> did not agree with the Defender that legislative work was needed to ensure adequate protection to disabled persons using tourism services. In the opinion of the President, the said practices of tour operators may be efficiently challenged, in particular based on the Act on counteracting unfair market practices.<sup>34</sup> As regards the civil law, the interests of disabled persons intending to conclude an agreement on a tourist event are to some extent protected also by the Act on tourism services which allows to include special requirements, communicated by the customer to the tour operator and accepted by the tour operator, in the agreement. This opinion is shared by the Minister of Sport and Tourism. The President of the Office of Competition

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<sup>29</sup> Convention of 13 December 2006 (Dz.U. of 2012 item 1169).

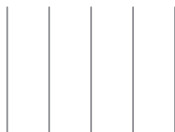
<sup>30</sup> RPO-715862-V/12 of 12 November 2012.

<sup>31</sup> Act of 29 August 1997 (Dz.U. of 2004, No 223, item 2268, as amended).

<sup>32</sup> RPO-688218-V/11 of 12 January 2012.

<sup>33</sup> Letter of 17 February 2012.

<sup>34</sup> Act of 23 August 2007 (Dz. U. of 2007 No 171, item 1206).





and Consumer Protection instituted explanatory proceedings on the practices infringing collective consumer interests. Since the controlled entity immediately took action to remove untrue information about the hotel being adapted to the needs of disabled persons, the President of the Office of Competition and Consumer Protection closed the proceedings. The Defender has used all available means of intervention in this case.

*(e) Implementing regulations to the Act on sign language*

The Act on sign language and other means of communication<sup>35</sup> entered into force on 1 April 2012. The minister in charge of social security was obligated to issue an ordinance determining the scope and operating rules of the register of interpreters of the Polish Sign Language (PJM), Signed Polish (SJM) and the communication system for deafblind persons (SKOBN) and an ordinance laying down the rules of co-financing of PJM, SJM and SKOBN trainings for persons with permanent or temporary difficulties in communication by the State Fund for Rehabilitation of Disabled Persons (PFRON). Although seven months had passed since the Act on sign language had been adopted, none of the said ordinances was issued. The delay in issuing implementing regulations to the Act on sign language will result in disabled persons being unable to use the assistance of the selected sign language interpreter or guide-interpreter for another several months. It means further limitation on the use of rights and freedoms by persons with disabilities. The Defender asked the Government Plenipotentiary for Disabled Persons<sup>36</sup> to provide explanations concerning the progress of work on draft ordinances and the planned date of its completion. Furthermore, the Defender asked for information about the activities undertaken to establish the Polish Council of Sign Language. For the Act on sign language to be effective, it is of utmost importance to disseminate the information about new rights granted to disabled persons.

The Government Plenipotentiary for Disabled Persons informed<sup>37</sup> that the draft Ordinance on the register of interpreters of the Polish Sign Language, Signed Polish and the communication system for deafblind persons had been consulted with other ministries and social partners. The draft Ordinance on co-financing the trainings in the Polish Sign Language, Signed Polish and the communication system for deafblind persons is currently under consultation with other ministries and social partners. The order on the method and procedure of operation of the Polish Council of Sign Language<sup>38</sup> was published in the Official Journal of the Minister of Labour and Social Policy. An announcement about recruitment of the members of the Council was published on the website of the Ministry of Labour and Social Policy and in the Public Information Bulletin. The Act on sign language does not authorise the minister in charge of social security of the Government Plenipotentiary for Disabled Persons to control whether the public administration authorities meet their obligation consisting in dissemination of information about the services enabling communication. However, a petition to public administration authorities implementing the Act on sign lan-

<sup>35</sup> Act of 19 August 2011 (Dz.U. of 2011, No 209, item 1243, as amended).

<sup>36</sup> RPO-654691-I/10 of 21 March 2012.

<sup>37</sup> Letter of 17 May 2012.

<sup>38</sup> Order of 23 March 2012 (Dz.U. MPiPSP. of 2012 No 4).



guage was drawn up, reminding them about the necessity to disseminate information about the Act. The Council of Ministers will present the information about the application of the said Act in the previous year as part of the information of the government of the Republic of Poland on activities undertaken in a given year to implement the resolution of the Sejm – Charter of Disabled Persons’ Rights<sup>39</sup>.

The Defender monitors the issue. Furthermore, a Section for Hearing Impaired Persons, whose members include deaf persons, was established at the Expert Committee on People with Disabilities at the Office of the Defender.

*(f) Failure to include deaf persons among members of the Polish Council of Sign Language*

The Defender received almost a thousand complaints about the decision of the Minister of Labour and Social Policy on appointment of the members of the Polish Council of Sign Language, who do not include any deaf persons using the Polish Sign Language. The failure to include deaf persons as members of the Council demonstrates a greater problem of failing to involve persons with disabilities in various activities of the state, which is in breach of the standards required by the Convention on the Rights of Persons with Disabilities<sup>40</sup>. The Council should consist mainly of deaf persons and possibly also specialists with no hearing impairment. Moreover, the announcement on the website of the Ministry of Labour and Social Policy about the appointment of the members of the Polish Council of Sign Language was not presented in the Polish Sign Language or the Signed Polish. Therefore, the Defender filed a request to the Minister<sup>41</sup> to present the reasons for not including deaf persons among the members of the Council and the actions planned by the Ministry of Labour and Social Policy in order to adjust the composition of the Polish Council of Sign Language to the provisions of the Convention.

The Government Plenipotentiary for Disabled Persons explained<sup>42</sup> that from among the candidates for the Council members who met formal requirements only two persons were hearing impaired. Therefore, the minister in charge of social security could not appoint a Council consisting mainly of deaf persons. However, due to resignation of two members of the Council and following the evaluation of candidates in line with statutory requirements, the minister in charge of social security appointed another two deaf persons to the Council. Therefore, the Defender accepted the explanations of the Plenipotentiary and considered the case to be closed.

*(g) Lack of regulations adjusting the form of examinations to the needs of persons with various disabilities*

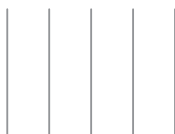
The Defender received a complaint from a disabled person concerning the discrimination resulting from the lack of regulations allowing to adjust the form of the legal counsel examination to individual needs of that person. The problem should be analysed in the con-

<sup>39</sup> Act of 1 August 1997 (Dz. U. of 1997 No 50, item 475).

<sup>40</sup> Convention of 13 December 2006 (Dz.U. of 2012 item 1169).

<sup>41</sup> RPO-719226-I/12 of 19 December 2012.

<sup>42</sup> Letter of 27 February 2013.





text of all examinations, both entry examinations and those required to complete the general barrister's, legal advisor's and notary's training, which do not provide for solutions adjusting their form to the needs of persons with various disabilities. Such solutions are also lacking in the case of examinations for court-certified translators. The form of examination should be adjusted to the degree and type of disability of the person taking the exam. The regulations regarding this issue should be comprehensive and provide for the possibility to extend the duration of the examination, alternative forms of presenting questions and cases and alternative methods of providing answers by persons who are unable to write. The lack of regulations adjusting the form of examinations to the needs of persons with various disabilities must be considered incompliant with the Convention on the Rights of Persons with Disabilities<sup>43</sup>. It is also incompliant with the principle of equality and freedom to choose and to pursue an occupation of one's choice. The Defender asked the Minister of Justice<sup>44</sup> to amend the legislation in order to adjust the form of the examinations to the needs of persons with disabilities.

The Minister of Justice<sup>45</sup> agreed with the Defender that the legislation on examinations for legal professions required analysis and modification. Reading questions and writing down the answers during the exam takes more time for disabled persons. Thus, the duration of the examination should be extended to ensure equal opportunities with regard to obtaining professional qualifications. Therefore, the work began on drafting amendments to the relevant ordinances of the Minister of Justice regarding the duration of examinations. The draft amendments provide for extending by half the duration of examinations for disabled persons within the meaning of the Act on vocational and social rehabilitation and employment of disabled persons.<sup>46</sup> The draft amendments are ready for public consultation.

The Minister also noted that numerous legal professions must be practiced by persons who are able to read the text, hear the testimony or accept a statement without any help from another person. Therefore, persons with certain types of disability cannot work as judges, prosecutors, notaries public or even court-certified translators. Practitioners of these professions must work with numerous written documents, assess their authenticity, sign the documents, be able to react immediately under stress, etc. Therefore, the overall modification of the rules governing the professional examinations is impossible. The only solution available is the amendment of certain ordinances which is currently underway.

The Defender's postulates were taken into account with regard to adjusting the examination to enter and complete legal advisor's and barrister's training.<sup>47</sup>

#### *h) Presentation of persons with disabilities in the media*

The Defender received a number of complaints showing insufficient commitment of the public media to improve the openness and build a positive image of persons with disabilities.

<sup>43</sup> Convention of 13 December 2006 (Dz.U. of 2012 item 1169).

<sup>44</sup> RPO-707225-I/12 of 27 August 2012.

<sup>45</sup> Letter of 24 September 2012.

<sup>46</sup> Act of 27 August 1997 (Dz.U. of 2011, No 127, item 721, as amended).

<sup>47</sup> Ordinance of 12 December 2012 (Dz.U. of 2012 item 1453 and 1454).



One of the negative examples was that the Paralympic Games were not transmitted. Another issue is consolidating the image of persons with disabilities as recipients of charity. There is also a trend that consists in patronizing treatment of persons with disabilities by journalists (e.g. calling them by their first name). In accordance with its mission, public TV should present disability to create a modern approach to the subject, pursuant to the Convention on the Rights of Persons with Disabilities.<sup>48</sup> The Defender therefore asked the President of *Telewizja Polska S.A.*<sup>49</sup> to pay special attention to the problem of the image of people with disabilities in public television and to take action to disseminate information on the Convention on the Rights of Persons with Disabilities.

The President of *Telewizja Polska S.A.* declared<sup>50</sup> that as the public broadcaster TVP strived to fulfil its duties towards the society, also by raising awareness of the public on the issues related to persons with disabilities. Detailed reports on this area of activity are annually transferred to the National Broadcasting Council as an appendix to the general report. TVP implements a project to ensure that its offer is available to viewers with sensory disabilities. These are mainly programmes with subtitles for the hearing impaired – mainly Polish films and series, and programmes broadcast in prime time – available on major channels (TVP1, TVP 2, TVP Info), on regional TVP and specialised channels. *Telewizja Polska S.A.* is the only station in Poland that ensures access of the disabled to current news – every day, the main news service of *Wiadomości*, sport and weather forecast are subtitled. Programmes with conveniences for the disabled are available at the TVP website on an ongoing basis. The website offers a library of over 100 items (films, series, programmes) with audio description and several hundred subtitled for the hearing impaired. Work was initiated to ensure that soon the entire portal TVP.pl would be friendly for the visually impaired. TVP is the only TV station in Poland which provided accounts of the London Paralympic Games on a regular basis, both in special programmes and in other news services. Yet, for financial reasons, TVP was unable to acquire full television rights to the Paralympic Games.

The Defender plans to meet with TVP representatives to discuss the issue.

*i) The disabled serving in local authority bodies*

Pursuant to Article 492(1)(6) of the Electoral Code,<sup>51</sup> expiry of the mandate of a *voit* (mayor) takes place as a result of a decision on his/her incapacity to work or inability to live independently under the procedure specified in the regulations on pensions from the Social Insurance Fund for a period of at least until the end of his/her term. In the opinion of the Defender presented the application to the Constitutional Tribunal,<sup>52</sup> the above regulation is inconsistent with the constitutional right of access to public service on equal terms. The above provision of the Electoral Code is also incompatible with the

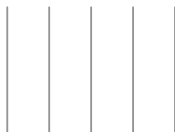
<sup>48</sup> Convention of 13 December 2006 (Dz. U. of 2012, item 1169).

<sup>49</sup> RPO-711163-I/12 of 23 October 2012.

<sup>50</sup> Letter of 7 November 2012.

<sup>51</sup> Act of 5 December 2011 (Dz. U. [Journal of Laws] of 2011, No 21, item 112, as amended).

<sup>52</sup> RPO-707447-I/12 of 3 December 2012.





Convention on the Rights of Persons with Disabilities<sup>53</sup> which requires States-Parties to guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected.

The case is pending before the Constitutional Tribunal.

### 3. Preventing discrimination on grounds of age

#### a) *Age limit for pharmacy managers*

The cases under examination show that there is a problem of a general nature concerning the provision of the Pharmaceutical Law<sup>54</sup> whereby a pharmacy manager must be a pharmacist under 65 years old with at least 5 years of professional experience in a pharmacy or three-year's experience in a pharmacy when his/her major was retail pharmacy. With the approval of the voivodeship pharmaceutical inspector, issued at the request of the interested manager, after consultation with the regional Chamber of Pharmacists, the pharmacy manager who turns 65 may be granted permission to work until 70. In view of changes in the retirement age, which will be set at least at 67, the solution of the Pharmaceutical Law is considered inadequate with socio-economic realities, as well as the requirements of the law. The Defender's view on the subject is consistent with the position of the Polish Pharmaceutical Chamber, which proposed an amendment to the Pharmaceutical Law towards adjusting the age limit for a pharmacy manager to the new retirement age and making the continuation of his/her work dependent on the health condition of the pharmacist and the opinion of the pharmacists' self-government. The Defender requested the Minister of Health<sup>55</sup> for his position on the possibility to amend the regulations on the age limit for pharmacy managers.

The Minister replied<sup>56</sup> that the Pharmaceutical Law will be amended to accommodate the Defender's request. The Minister of Labour and Social Policy drafted a modification aimed at eliminating the age restrictions on pharmacy managers and included it in the draft Act on adapting certain acts to the provisions on the postponed retirement age of men and women. The provision on the Pharmaceutical Law challenged by the Defender was amended by the Act on amending certain acts due to the postponed retirement age.<sup>57</sup> This way, the problem was solved.

<sup>53</sup> Convention of 13 December 2006 (Dz. U. of 2012, item 1169).

<sup>54</sup> Act of 6 September 2001 (Dz. U. of 2008, No 45, item 271, as amended).

<sup>55</sup> RPO-678657-V/11 of 13 November 2012.

<sup>56</sup> Letter of 7 January 2013.

<sup>57</sup> Act of 23 November 2012 (Dz. U. No 2012, item 1544).





## 4. Preventing discrimination on grounds of sex

### a) *The image of women in commercials*

The complaints filed to the Defender frequently concern the problem of discriminatory content of TV commercials. Women tend to be treated like objects in this context. This concerns instances of treating women as sexual objects, assigning them clearly stereotypical social roles and promoting distorted health and beauty models. This may result in discrimination of women in the labour market and in public life. According to the Act on broadcasting,<sup>58</sup> the National Broadcasting Council safeguards the freedom of speech in radio and on television, the independence of broadcasters and interests of viewers, and ensures an open and pluralistic nature of radio and television. The Council's tasks include, *inter alia*, supervision of broadcasters and examination of the content of TV and radio programmes within the limits defined by the Act. Commercial content may not be discriminatory on grounds of race, sex, nationality, ethnic origin, religion or beliefs, disability, age or sexual orientation. In relation to the above, the Defender requested the Chairperson of the National Broadcasting Council<sup>59</sup> for information whether the Council has taken any action to prevent the dissemination of content that may offend and humiliate women and perpetuate stereotypes about their social role, particularly in commercials.

The chairperson explained<sup>60</sup> that the Council had no authority to influence the authors of commercials or campaigns broadcast by the radio (and TV) stations. It may not influence the content of commercials that have not been broadcast either, due to the ban on preventive censorship of mass media. The contents of commercials (mainly TV commercials) may be defined as discriminatory depending on the sensitivity of the viewer, which is why such commercials should be dealt with by self-regulatory bodies such as the Media Ethics Council or the Advertising Council. The National Broadcasting Council takes steps when a specific commercial undoubtedly breaches the norms inscribed in the Act on broadcasting. That was the case with the commercial of Mobilking – a mobile communications provider. The commercial, broadcast by several TV stations, depicted women, their intellectual and physical capacity, in an unfavourable way. The Chairperson of the National Broadcasting Council ordered broadcasters to stop broadcasting the commercial.

### b) *The right to excuse male police officers raising a child from service*

The Defender lodged a complaint to the Constitutional Tribunal<sup>61</sup> about Article 8(1) and (3) of the Ordinance of the Minister of the Interior and Administration on the specific rights and responsibilities and the course of the service of police officers<sup>62</sup> to the extent in which it waives the right to excuse from duty a male police officers raising

<sup>58</sup> Act of 29 December 1992 (Dz. U. of 2011, No 43, item 226, as amended).

<sup>59</sup> RPO-628976-I/09 of 16 January 2012.

<sup>60</sup> Letter of 7 February 2012.

<sup>61</sup> RPO-704778-III/12 of 22 October 2012.

<sup>62</sup> Ordinance of 2 September 2002 (Dz. U. of 2002, No 151, item 1261).



a child together with a woman who is not a police officer, as the Defender considered it incompatible with Article 81(1) and Article 79(1) of the Act on the police<sup>63</sup> in conjunction with Article 188 of the Labour Code<sup>64</sup> and Article 33 in conjunction with Article 32, as well as Article 92(1) of the Polish Constitution.

According to the relevant provisions of the Ordinance, the condition for excusing a male police officer from duty is having a child with a woman who is also a police officer, or the male officer must be the sole caregiver of a child aged up to 14. Yet, if the mother is not a police officer, the male officer is not eligible to be excused from duty. Due to the content of the statutory authorisation, it does not include specification of the right to be excused from duty in a way different than provided for in the Act on the police. In the Defender's opinion, the challenged provisions of the said Ordinance have been issued although the regulator transgressed the statutory authorisation. The case is pending before the Constitutional Tribunal.

*c) Discrimination on grounds of sex during recruitment to the State Fire Service*

The Defender received a complaint from a candidate for an officer of the State Fire Service about discrimination on grounds of sex during the recruitment to service in poviát headquarters of the Service. The Defender petitioned the Commander-in-Chief of the State Fire Service for examining the issue. The Defender emphasised that the recruitment announcement was worded in a way that gives rise to discrimination on grounds of sex, because it was addressed only to men. It is contrary to the principle of equality and infringes the provisions of the Act on the implementation of some regulations of the European Union regarding equal treatment.<sup>65</sup> The copies of the announcement on the recruitment for service in other poviát headquarters, sent by the complainant, proved there are no uniform rules or criteria of recruitment to preparatory service at the State Fire Service. What is more, the Act on the State Fire Service<sup>66</sup> does not provide for any rules based on which such recruitment is organised. The absence of such regulations in contrary to the constitutional principle that Polish citizens enjoying public rights have the right to access public service on unified terms. The Commander-in-Chief of the State Fire Service shared the Defender's opinion and appointed a team whose task is to work out guidelines for the recruitment to the State Fire Service. The Defender also requested the Minister of the Interior<sup>67</sup> to take legislative actions aimed at resolving the problem so that the rules of access to public service at the State Fire Service were the same for all citizens.

In response, the Minister of the Interior stated<sup>68</sup> that having analysed the problem, he requested the Commander-in-Chief of State Fire Service to prepare relevant draft amend-

<sup>63</sup> Act of 6 April 1990 (Dz. U. of 2011, No 287, item 1687, as amended).

<sup>64</sup> Act of 26 June 1974 (Dz. U. of 1998, No 21, item 94, as amended).

<sup>65</sup> Act of 3 December 2010 (Dz. U. of 2010, No 254, item 1700).

<sup>66</sup> Act of 24 August 1991 (Dz. U. of 2009, No 12, item 68, as amended).

<sup>67</sup> RPO-707570-III/12 of 26 October 2012.

<sup>68</sup> Letter of 4 February 2013.



ments to the Act and submit them to the Ministry together with a regulatory impact assessment.

The Defender will monitor the issue to see whether the planned amendments will be introduced.

d) *The need to adopt a comprehensive legal act on transgender persons*

In response to the Defender's earlier petition on the need for a comprehensive legal act on transgender persons and the intervention of the legislator on the procedure for a legal sex change, the Minister of Justice shared the opinion of the need to adopt such a legal act. At the same time, the Minister was sceptical about the idea to amend the Act on the civil status register,<sup>69</sup> because, in his opinion, such a change would be purely procedural. The Defender did not agree with the above position. Change in the procedure from litigious to non-litigious process would bring about a number of benefits for all those who wish to have their sex change legally recognized. Proposed amendment would enable the courts to rectify birth certificates instead of conducting a process of establishing one's gender and then deciding on the protection of personal interest as a result of a civil action pursuant to Article 189 of the Code of Civil Procedure as it is the case at present.<sup>70</sup> In addition, in the current state of affairs, parents of a transgender person are the defendants, and must participate in the proceedings. Under the non-litigious procedure, parents would have an opportunity to opt out from the proceedings, thus not becoming its participants. Complaints filed to the Defender, mainly relating to the procedure, suggest that such a change would solve a lot of problems that are still painful in family relationships in such cases. The Defender once again requested the Minister of Justice<sup>71</sup> to provide information on the progress of work on the regulation governing the legal situation of transgender persons and, in particular, whether he has established an inter-ministerial team that would deal with the subject.

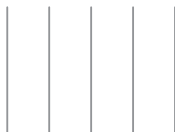
The Minister of Justice stated<sup>72</sup> that a Deputies' draft Act on gender recognition was submitted to the Sejm. The draft Act provides for, *inter alia*, resigning from litigious proceedings in cases relating to gender change (called *cases relating to gender recognition*) and introducing non-litigious proceedings. The draft Act is pending an opinion of the Legislative Committee. Due to the fact that the Deputies' draft Act on gender recognition includes, among others, a proposal for a new regulation on the procedure of a legal change of gender, which is in line with the position of the Defender and the Minister of Justice, it does not seem reasonable to undertake a separate legislative action regulating the said issues. The Ministry of Justice expressed his readiness for cooperation during the Sejm's work on the Deputies' draft Act. However, the establishment of an inter-ministerial team to develop a draft comprehensive regulation concerning gender change would, in the assessment of the Minister of Justice, be premature in relation to the submission of the Deputies' draft Act. The results of discussions

<sup>69</sup> Act of 29 September 1986 (Dz. U. of 2011, No 212, item 1264).

<sup>70</sup> Act of 17 November 1964 (Dz. U. of 1964, No 43, item 296, as amended).

<sup>71</sup> RPO-660929-I/11 of 21 March 2012.

<sup>72</sup> Letter of 15 October 2012.





on the Deputies' draft in the Parliament will certainly have a significant impact on the assessment of the need, scope and procedures of any further actions aimed at developing such a comprehensive regulation.

The Defender expects that the Act regulating the said problem area will be adopted during the present term of the parliament.

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

### a) *Classes in ethics*

The European Court of Human Rights passed a judgment in the case *Grzelak v. Poland*.<sup>73</sup> The case concerned the execution of the provisions regulating the organisation of classes in ethics at schools. The Defender inquired the Minister of National Education on the execution of the judgment. In the reply, the Minister stated that work is underway on allowing the increasing number of pupils attend classes in ethics. Yet, this does not solve the problem of executing the judgment of the European Court of Human Rights. Therefore, the Defender requested from the Minister of National Education<sup>74</sup> detailed information on the manner in which the guidelines provided in the verdict would be implemented. She also asked for information on what legislative, organisational and technical actions have been taken to ensure the application of the Convention standards in Poland, as well as for information on the status of work on the Ordinance on the introduction of online ethics classes and on planned legal solutions in this area.

The Minister replied<sup>75</sup> that the European Court of Human Rights held that the regulations on the organisation of classes in religion and ethics in schools do not violate the Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>76</sup> The Convention is breached by inappropriate application of the provisions by educational establishments. Due to the reason of violations indicated by the Court, the Ministry of National Education started informational activities in order to disseminate the judgment among school authorities (e.g. by publishing it on the website of the Ministry) and sent a letter to school superintendents and, via them, to school principals, to remind them of the regulations on the principles of organising classes in religion and ethics in schools and placing marks from these classes on school certificates. The Ministry of National Education, with the participation of school superintendents, will monitor the organisation of classes in ethics, analyse the need for further action, and provide assistance in case of difficulties faced by pupils interested in attending classes in ethics. On the basis of conclusions drawn from monitoring, an in-depth analysis of the needs will be carried out on which further steps will be built.

<sup>73</sup> Judgment of 15 June 2010, complaint No 7710/02.

<sup>74</sup> RPO-601727-I/08 of 11 May 2012.

<sup>75</sup> Letter of 22 June 2012.

<sup>76</sup> Convention of 4 November 1950 (Dz. U. of 1993, No 61, item 284, as amended).



On the initiative of the Defender, the Department of Proceedings before International Human Rights Protection Bodies of the Ministry of Foreign Affairs organised a meeting with representatives of the Ministry of National Education to take further actions to implement the system aspects of the ECHR judgment in the said case.

b) *Solicitors' training entrance exams for members of Seventh-day Adventist Church*

The Human Rights Defender received more complaints from members of the Seventh-day Adventist Church about the dates of entry examinations for legal trainings, which currently are organised solely on Saturdays, which makes it impossible for persons for whom Saturday is a very important holiday to take such examinations. The Constitution ensures citizens the freedom of conscience and belief whereas the Act on the relationship between the State and the Seventh-day Adventist Church in the Republic of Poland<sup>77</sup> stipulates that the Church's holiday is Saturday and that its followers have the right to be excused from work and education on that day, i.e. from sunset on Friday to sunset on Saturday. In addition, at the request of the employee filed at the beginning of or during employment, but not later than seven days before the date of dismissal, the employer must determine his/her individual work schedule. The provision applies to pupils and students accordingly. In light of the case law of the European Court of Justice (case *Vivien Prais v Council of the European Communities*<sup>78</sup>), it can be stated that the legal training examinations should be considered as circumstances that are associated with both education and work, i.e. circumstances that meet the statutory requirements. It seems possible to organise the examinations on other days in selected cities for the persons who are unable to take the exams on a Saturday for religious reasons. Therefore, the Defender requested the Minister of Justice<sup>79</sup> to consider her suggestions and let her know on his position.

The Minister pointed out<sup>80</sup> that the existing acts governing the regime of public trust legal professions, such as the Act on the bar,<sup>81</sup> the Act on legal advisors,<sup>82</sup> the Act on notaries<sup>83</sup> and the Act on court enforcement officers and enforcement<sup>84</sup> determine the organisation and conduct of legal training examinations in a comprehensive manner. The acts stipulate that examinations for all legal trainings are held once a year at the date defined by the Minister of Justice. The current regulations do not provide for a possibility to change a date that has already been set. The only exception from the rule is a situation where the need to set a different date for the exam arises from *force majeure* or an impediment to holding the exam at the same date for all the candidates. The postulated change in the date of examination in the course of preparations seemed impossible, and

<sup>77</sup> Act of 30 June 1995 (Dz. U. of 1995, No 97, item 481, as amended).

<sup>78</sup> Judgment of 27 October 1976, case 130-75.

<sup>79</sup> RPO-649337-I/10 of 18 May 2012.

<sup>80</sup> Letter of 11 June 2012.

<sup>81</sup> Act of 26 May 1982 (Dz. U. of 2009, No 146, item 1188, as amended).

<sup>82</sup> Act of 6 July 1982 (Dz. U. of 2010, No 10, item 65, as amended).

<sup>83</sup> Act of 14 February 1991 (Dz. U. of 2008, No 189, item 1158, as amended).

<sup>84</sup> Act of 29 August 1997 (Dz. U. of 2011, No 231, item 1376, as amended).



could breach the principle of citizens' confidence in public authority. The proposal to organise an additional exam only in certain voivodeships seems contrary to the principles of social justice and equality before the law.

Unfortunately, the Minister of Justice did not see the need to change the law, contrary to the Minister of Health who introduced such changes for doctors' exams.

Therefore, the Defender will consider taking further steps in this area.

## 6. Other motions of the Defender in the area of preventing discrimination

### a) *Human rights and the case law of international tribunals in the framework of trainings for judges and prosecutors*

The complaints addressed to the Defender show that the knowledge of human and civil rights protection principles as well as of the case law of the European Court of Human Rights and of the European Court of Justice of the EU in relation to the protection of fundamental rights is insufficient among Polish judiciary and society. It is estimated that 95% of all rulings of the Strasbourg Court in cases filed by Polish citizens concern the judiciary. Therefore, it seems reasonable to take a wider account of human rights and the case law of the European Court of Human Rights and the European Court of Justice in the initial training of the future judges and prosecutors. Trainings devoted to specific matters in the area should be organised on an ongoing basis. The purpose of such trainings should be primarily to limit the number of decisions and rulings of national bodies that are held in breach of the Convention. The provisions of the Act on the implementation of some regulations of the European Union regarding equal treatment<sup>85</sup> have been in force since 1 January 2011. In 2011, regional and district courts received a total of only 30 cases for damages under this Act, which means that the level of information on remedies available to citizens in relation to the principle of equal treatment is relatively low. The Defender requested the Minister of Justice<sup>86</sup> to extend the scope of trainings offered by the National School of Judiciary and Public Prosecution to include detailed issues of the protection of rights of man and citizen and respect for the principle of equal treatment, with particular emphasis on the case law of the European Court of Human Rights and the European Court of Justice.

The Minister stated<sup>87</sup> that pursuant to the Act on the National School of Judiciary and Public Prosecution,<sup>88</sup> it organises initial and continuous trainings of personnel of the judiciary and prosecution. The curriculum for the general training includes classes devoted to discussing the case law of the European Court of Human Rights and the European Court of Justice. General training graduates are equipped to work as assistants of judges and prosecutors. The limited 12 month duration of the general training implemented within 11 thematic

<sup>85</sup> Act of 3 December 2010 (Dz. U. of 2010, No 254, item 1700).

<sup>86</sup> RPO-693226-I/12 of 29 March 2012.

<sup>87</sup> Letter of 26 April 2012.

<sup>88</sup> Act of 23 January 2009 (Dz. U. of 2012, item 1230, as amended).



meetings does not allow for a more comprehensive familiarisation of the trainees with the problems of the human rights protection and fundamental freedoms system. Some general training graduates continue education when they attend trainings for judges and prosecutors. The judges' training covers classes in different thematic blocks during 26 meetings. The agenda of each meeting includes a discussion of case law in the form of case studies using specific judgments of the European Court of Human Rights and the European Court of Justice. The curriculum of the prosecutors' training is similar. As suggested by the Defender, the National School of Judiciary and Public Prosecution organizes trainings in the area of the system for the protection of human rights and fundamental freedoms in the framework of lifelong learning for members of the judiciary, particularly judges and prosecutors. In 2012, several editions of trainings in human rights will be held for judges adjudicating civil, commercial, family and guardianship cases, labour law and social security cases, as well as for judges specialized in criminal law, prosecutors and assistant prosecutors.

The Defender is monitoring the matter.

*b) Execution of the Act of 3 December 2010 on the implementation of some regulations of the European Union regarding equal treatment*

The Defender receives numerous comments signalling the deficiencies of the Act on the implementation of some regulations of the European Union regarding equal treatment.<sup>89</sup> The Act grants legal protection only in enumerated areas. It also introduces various levels of protection for victims of discrimination. Persons with disabilities, LGBT persons and persons complaining about discrimination on grounds of religion, denomination, belief or age are not protected against discrimination in areas such as education, access to goods and services or social security. The Act does not protect persons subject to discrimination on grounds of sex in the area of health care and education. It would be advisable to cover more areas with protection against discrimination. NGOs have emphasised the divergent definitions of discrimination provided in the Act. Due to the small number of cases brought to court under the Act, it can be concluded that it contributes to ensuring effective legal protection of victims of discrimination to a very small extent. The ratification of the Protocol No 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>90</sup> which has not been signed by Poland yet, would significantly contribute to efficient implementation of the EU legislation against discrimination. The Defender requested the Government Plenipotentiary for Equal Treatment<sup>91</sup> for her position on the issue and for considering a petition to competent authorities for amending the Act. She also asked for information on the actions taken with a view to ratifying Protocol No 12.

In her reply,<sup>92</sup> the Government Plenipotentiary for Equal Treatment shared the Defender's view that the Act on the implementation of some regulations of the European Union

<sup>89</sup> Act of 3 December 2010 (Dz. U. of 2010, No 254, item 1700).

<sup>90</sup> Convention of 4 November 1950 (Dz. U. of 1993, No 61, item 284, as amended).

<sup>91</sup> RPO-687085-I/12 of 28 May 2012.

<sup>92</sup> Letter of 12 September 2012.



regarding equal treatment has introduced different levels of protection for victims of discrimination, as it contains an exhaustive list of characteristics and circumstances on ground of which unequal treatment is prohibited. The Plenipotentiary received the Prime Minister's consent for amending the Act. Work on the draft amendment is expected to be completed in the first quarter of 2013. The main purpose of the changes is to create an open list of anti-discrimination prerequisites and to introduce solutions covering all social groups with the same level of protection in case of discrimination.

It would also be desirable to include an explicit provision allowing compensation claims for non-pecuniary loss resulting from discrimination. A change in regulations on the application of the statute of limitations to compensation claims should also be taken into account. In the opinion of the Plenipotentiary, accession to Protocol No 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms should be fully supported. The Protocol introduces a general ban on discrimination. It is nonetheless necessary to analyse respective solutions adopted by the national law in force before ratifying the Treaty. For this reason, it is necessary to consult competent ministries to work out a position on the issue. To that end, the Plenipotentiary addressed the Ministry of Foreign Affairs which is the leading ministry in this regard.

The Defender expects proposals for amending the act.

### c) *Education on human rights*

The Recommendation of the Committee of Ministers to Member States on the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education<sup>93</sup> encourages Member States to include education on human rights and the democratic state in the curricula of all types of schools at every education stage. The Defender has received complaints on both the stereotypical and even humiliating image of women e.g. in commercials, as well as on the image of men as perpetrators of crimes in a number of social campaigns, and in the context of names of professions and specialisms. Analyses of the textbook content show that stereotypes on the roles of both sexes and the duties of men and women are repeated at every stage of education. Textbooks lack proposals for classes that would touch upon issues such as the mechanisms and consequences of discrimination or definitions related to preventing discrimination in a detailed way. There is no information on violence motivated by prejudice, violence towards women, hate speech and hate crime, and offences on grounds of prejudice. Young people are not educated on how to respond to violence (including violence motivated by prejudice) or discrimination. The presence of anti-discrimination education at school depends solely on the goodwill and awareness of school authorities, in-service teacher training centres and personal willingness to develop on the part of teachers. Key importance should be attached to relevant training of the staff on preventing discrimination. The Defender inquired the Minister of National Education<sup>94</sup>

<sup>93</sup> Recommendation of 11 May 2010, CM/Rec (2010)7.

<sup>94</sup> RPO-690507-I/11 of 3 July 2012.





on the actions that have been taken by the Ministry in order to implement the Charter's recommendations.

In reply, the Minister pointed out<sup>95</sup> that the core curriculum of general education takes into account human rights, democracy and the rule of law at all stages of education, to the extent corresponding to the age, needs and cognitive capacity of students.

The core curriculum of basic civics is intended to prepare students to find and use information on the way in which the law regulates the life of citizens. Students are expected to learn how to use the procedures and possibilities offered to citizens by public life institutions efficiently. In the part entitled "Recommended conditions and execution," the core curriculum requires that classes in civics are to focus on developing students' involvement in civic activities, social sensitivity, responsibility, ties with the local, national, European and global community, tolerance and the ability to counteract discrimination.

The Ministry of National Education is taking actions to raise the awareness of textbook experts to ensure that, when expressing opinions on textbooks, they pay particular attention to the need to analyse their content in terms of equal treatment and preventing discrimination on grounds of sex, race, ethnic origin, nationality, religion or denomination, political views, age, sexual orientation, marital and family status. The Ministry is aware of the need to improve the content of textbooks in terms of equal treatment. It is necessary to carry out further trainings for experts issuing opinions on textbooks in terms of their content, didactic value and language devoted to equal treatment, counteracting stereotypes and preventing discrimination. Analysis will also concern possible changes to regulations in terms of approving textbooks for use. The Defender will monitor the results of the actions taken by the Ministry of National Education.

#### *d) Access to kindergartens*

The Defender receives complaints from parents about the enrolment of children in public kindergartens and the extent of personal data by gminas during such enrolment. In the Defender's opinion, these issues have not been regulated correctly. Pursuant to Article 22(1) (1) of the Act on the education system,<sup>96</sup> an Ordinance of the Minister of National Education and Sport was supposed to define the procedure and conditions of enrolling children in public kindergartens. The Ordinance<sup>97</sup> issued on the basis of the authorisation includes a provision that determines the order of enrolling children in kindergartens and groups. The Act on the education system does not provide for an authorisation to differentiate the status of children enrolled in public kindergartens and their families.

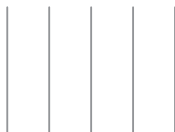
Pursuant to Article 70(4) of the Constitution, the state shall ensure universal and equal access to education for citizens. Restrictions on exercising the constitutional rights and freedoms can be introduced only by way of an act, if it is necessary in a democratic state under the rule of law to ensure exercising other constitutionally protected values.

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<sup>95</sup> Letter of 26 July 2012.

<sup>96</sup> Act of 7 September 1991 (Dz. U. of 2004, No 256, item 2572, as amended).

<sup>97</sup> Ordinance of 20 February 2004 (Dz. U. of 2004, No 26, item 232, as amended).





In the Defender's opinion, a wrongly structured statutory authorisation resulted in a situation where the rules of enrolling children in kindergartens and public schools were defined by sub-statutory acts (the Ordinance and the statutes of specific kindergartens and schools).

In practice, the problem most frequently concerned children in kindergarten age. Due to a shortage of places in kindergartens, the criteria provided for in the Ordinance and statutes of kindergartens resulted in actual unavailability of pre-school education to some children. Thus, the differentiation of the legal situation of citizens took place on the basis of sub-statutory legal acts, which constituted a breach of the constitutionally guaranteed equality in access to education.

The choice of possible solutions on establishing both the enrolment criteria and procedure is made by the body authorised to issue a relevant ordinance. The minister competent for education and upbringing independently determines the level of detail of the rules provided for in the ordinance. The minister may decide to grant almost unlimited freedom in establishing the enrolment terms and procedure to specific schools or regulate the issue in a comprehensive way in the implementing act. The minister decides on the differences in the process of enrolment at individual types of schools. The need for the differences results from objective circumstances, yet they have not been taken into account by the act. It is the ordinance that regulates all the enrolment criteria, including the priority in enrolment for certain groups. However due to the absence of relevant guidelines in the act, this matter was arbitrarily set out in the ordinance. Thus, the ordinance is not an implementing regulation substantively and functionally linked to the Act, but an independent legal act that regulates the entire area of enrolment to kindergartens and schools, and transition from one type of school to another.

The absence of relevant guidelines at the level of an act also results in doubts as to the possibility to obtain and process personal data of parents and children covered by the enrolment process, and as to instances of establishing enrolment criteria that breach the constitutional guarantee of equality before the law. The absence of such regulation also prevents full and effective control of the legality of the process of enrolment at kindergartens and schools as there are no provisions that model the controls.

The Defender appealed to the Constitutional Tribunal<sup>98</sup> to find Article 22(1)(1) of the Act on the education system incompatible with Article 92(1) of the Polish Constitution.

The Constitutional Tribunal<sup>99</sup> granted the Defender's application and ruled that the challenged provision of the Act on the education system is incompatible with the Constitution. In the light of the judgment, it is necessary to start work on amendments to the Act on the education system.

<sup>98</sup> RPO-654450-I/II of 14 September 2012.

<sup>99</sup> Judgment of 8 January 2013, file No K 38/12.



## B. Adapting detention facilities visited by the National Preventive Mechanism to the needs of the disabled

In Poland, the tasks of the National Preventive Mechanism (hereinafter “NPM”) are performed by the Defender whose representatives carry out preventive visits to detention facilities to protect inmates from torture and other cruel, inhuman or degrading treatment or punishment.

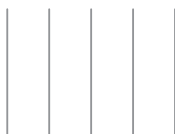
In 2012, in the framework of the visits also the situation of the disabled and senior inmates in places of detention was examined.

### 1. Data from visits carried out in Q1 of 2012

Following the control of the 10<sup>th</sup> Pre-Trial Detention Centre in Kielce, NPM representatives pointed out that it is necessary to adapt its infrastructure so that a disabled person in a wheelchair, staying in a cell adapted for his/her needs, was able to move freely also when outside a cell without the help of others. The NPM also ordered to adapt more cells in the residential ward to the needs of the disabled in wheelchairs and to adapt the centre’s infrastructure to such needs.

A visit to the Sobering Station in Toruń revealed that none of its rooms was adapted to the needs of the disabled. Visits to the following centres had similar results: Youth Upbringing Centre (MOW) No 2 in Warsaw, Youth Sociotherapy Centre (MOS) “Exodus” in Białystok, Youth Sociotherapy Centre (MOS) No 3 in Łódź, Juvenile Detention Centre and Juvenile Shelter in Konstancin-Jezierna and in rooms for the detained or people brought to sober up at the City Police Headquarters in Toruń. In the light of the above, the NPM recommended to adapt the rooms to the needs of persons with disabilities.

In reply to the recommendations, Deputy Director of the Education Department of the Warsaw Municipal Office stated that actions are underway to obtain funds for the liquidation of the architectural barriers in educational establishments (MOWs and MOSs). The Director of the Education Department of the Łódź Municipal Office declared that renovations are not carried out due to the possible relocation of individual educational establishments, including the visited MOS. The Director of the Juvenile Detention Centre and Juvenile Shelter in Konstancin-Jezierna said that plans for the future take into account the need for the modernisation of its buildings and adapting them to the needs of the disabled, but it depends on obtaining the necessary funds. Similarly, the Director of the Juvenile Shelter in Chojnice stated adapting it to the needs of the disabled depends on obtaining the necessary funds.





## 2. Data from visits carried out in Q2 of 2012

The inmates of Prison No 2 in Łódź with reduced mobility (physically disabled) and thus require and use the help of their fellow prisoners stated during the conversations with NPM representatives that they did not go for walks not to burden their 'helpers' too much. In view of the signals received and the possibility of serving a sentence of imprisonment in the therapeutic system by persons with disabilities, the NPM recommended the adaptation of one of the cells in the therapeutic division to the needs of persons with disabilities (especially for a disabled in a wheelchair). Similarly, in the case of the Warszawa-Białołęka Prison, the NPM recommended to adapt one of the cells to the needs of the disabled. In response to the recommendations, the Director of Prison No 2 in Łódź stated that renovation works started in two cells in the hospital building to adapt them to the needs of the disabled. The Regional Director of the Prison Service in Gdańsk declared funds were provided for the adaptation of one of the residential cells to the needs of people with disabilities in Sztum Prison. The Director of Warszawa-Białołęka Prison told the NPM that adapting one of the cells to the needs of the disabled depends on obtaining the necessary funds.

A visit to the Sobering Station in Opole revealed that none of its rooms was adapted to the needs of the disabled. In the light of the above, the NPM recommended to adapt the rooms to the needs of persons with disabilities. The visitors to the Sobering Station in Suwałki pointed out that the nurse call system is not adapted to the needs of the disabled – the buttons are mounted too high. The NPM recommended adapting the nurse call system to the needs of the disabled. As to other issues, the Station was well-adapted to the needs of persons with physical disabilities. In reply, the Director of the Sobering Station in Suwałki declared that a wheelchair was acquired, employees were obliged to use it for the transport of people with reduced mobility and that the nurse call system was adapted to the needs of the disabled.

After visits to the following: Sobering Stations in Katowice and Toruń, Regional Court Psychiatric Centre in Gostynin, Voivodeship Psychiatric Hospital in Warta and Youth Upbringing Centre in Brzeg Dolny, it was concluded that they are well-adapted to the needs of persons with disabilities.

In addition, the following visited institutions were adapted to the needs of the disabled: Welfare Centre No 1 in Grudziądz, Welfare Centres in Łódź, Mogilno, Ruda Śląska and facilities for detainees in the Powiat Police Headquarters in Końskie.

The MOS in Dobrodzień is not adapted to the needs of the disabled in any way. Therefore, the NPM recommended adapting it to the needs of people with reduced mobility. In reply, it was stated that if a person with a physical disability is referred there, care will be taken to immediately adapt the MOS to the needs of such a person.



### 3. Data from visits carried out in Q3 of 2012

The visited Prisons in Płock and Rawicz failed to create proper conditions for inmates with a physical disability. Therefore, the NPM recommended creating proper living conditions for inmates with a physical disability and individual care for organising their stay in a way that allows limiting inconveniences that are not directly related to serving the sentence or pre-trial detention. In reply, the Director of Prison in Rawicz stated that the recommended investments depend on obtaining additional funds.

In the Prison in Chełm, one cell is intended for the disabled. The conveniences were introduced after consultations with an inmate in a wheelchair. Consultations with an inmate with reduced mobility is good practice, but in the opinion of the NPM the conveniences should correspond to universal technical and construction requirements so that they match the needs of other inmates with disabilities. Bearing this in mind, the NPM recommended creating proper living conditions for inmates with physical disabilities.

As a result of the visit, the NPM found that the Sobering Station in Białystok was largely adapted to the needs of persons with physical disabilities. Also the visited Welfare Centre in Psary turned out to be well-adjusted to the needs of the disabled.

As a result of the visit to the Youth Upbringing Centre in Cerekwica, the NPM discovered that it was not adapted to the needs of the disabled. Its Director declared that the Centre's regulations prevent it from taking in girls with organic and intellectual dysfunctions. Yet, analysis of documentation did not confirm what the Director said. Therefore, the NPM asked the Director to explain this issue.

Visits to rooms for the detained or brought for sobering up (PDR) of Poznań Stare Miasto revealed that the Station is not adapted to the needs of the disabled. The Warszawa VI PDR has one cell adapted to the needs of the disabled.

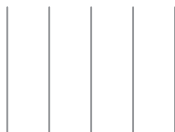
### 4. Data from visits carried out in Q4 of 2012

The only cell of the Prison in Rzeszów adapted to the needs of the disabled is located in ward 9 intended for prisoners who constitute a serious threat to the society or to the prison's security. Therefore, the NPM recommended adapting one of the cells in another residential ward to the needs of the disabled.

All rooms of the Sobering Stations in Chorzów can be accessed by people in a wheelchair. Yet, it is almost impossible for them to access toilets. The NPM recommended adapting the Station to the needs of persons with disabilities and people with reduced mobility.

The Youth Upbringing Centre in Podborsk was not adapted to the needs of the disabled. In the light of the above, the NPM recommended to adapt the Centre's infrastructure to the needs of persons with disabilities. In reply, the Centre's Director stated that he had already suggested a solution to the problem to the Białogard Starost.

The visited Welfare Centres in Koronowo and Pleszew were fully adapted to the needs of the physically disabled.





During the visit to the Psychiatric Hospital in Suchowola, the NPM's attention was drawn to the absence of an elevator, which means that the hospital is not adapted to the needs of the disabled. The NPM recommended to take immediate actions aimed at adapting the building to the needs of people in a wheelchair.

During the visits, the NPM discovered that the PDRs in Biskupiec, Brzozów and Rzeszów are not adapted to the needs of persons with disabilities. As a person with a physical disability may be detained in a PDR, the NPM recommended to adapt the toilets and at least one room to the needs of persons with reduced mobility who require special conveniences.

In reply, the Deputy Municipal Commander-in-Chief of the Police in Rzeszów stated that he has already requested the Head of the Investment and Renovation Department of the Voivodeship Police Headquarters in Rzeszów to implement the recommendation.

## C. Defender's studies and reports on equal treatment

In 2012, the Defender published two thematic reports from the series *The Principle of Equal Treatment – Law and Practice: Guarantees of Exercising of Voting Right for the Elderly and Persons with Disabilities. Analysis and Recommendations* and *Equal Opportunities in Access to Education for Persons with Disabilities. Analysis and Recommendations*.

Also, the Defender's publications on equal treatment include three monographs written by the expert committees to the Defender. All these publications are available at the Defender's website.

In the framework of performing the tasks related to exercising the function of the independent equality body, in 2012 the Defender also commissioned several social studies on the following topics:

- a) *Perception of elderly persons by young people, perception of young people by elderly persons*. The study carried out in cooperation with the Association of Creative Initiatives "ę" provided recommendations on preventing the negative stereotypes related to age, and thus on preventing discrimination on grounds of age.
- b) *Violence against elderly women and women with disabilities*. The study focused on the knowledge of the law by members of interdisciplinary teams, and the specific nature of preventing violence in a situations of cross-discrimination: on grounds of sex, age and disability.
- c) *Elderly people in the financial services market*. The study consists of two components: the qualitative component that refers to the perception of advertising of financial services and the manipulation techniques it employs by the elderly, and the quantitative component – investigation into the quality of financial services for the elderly at banking establishments using the mystery shopper method.
- d) *Doctors in the process of specialisation and non-heterosexual patients*. The study was intended to initially examine equal treatment of non-heterosexual patients in medical treatment. The topic will be examined further in 2013.



The results of the studies will be published as part of the thematic reports on preventing discrimination scheduled for 2013.

## 1. Guarantees of Exercising of Voting Right for the Elderly and Persons with Disabilities. Analysis and Recommendations

The Defender, having referred to the provisions of the Constitution has repeatedly indicated the need for ensuring adequate voting facilities for the elderly and for persons with disabilities. In order to summarise the actions and achievements in this area so far, the Defender developed a report entitled *Guarantees of Exercising of Voting Right for the Elderly and Persons with Disabilities. Analysis and Recommendations* on the basis of analyses of national and international law, and recommendations of international organisations, controls of polling stations and available results of social studies.

The report presents the general situation of seniors and the disabled. In this context, reference was made to changes in the electoral law in Poland, analysing them in terms of the availability of mechanisms that take into account the conditions of the social groups and their needs related to the electoral process.

The report describes the adaptation of election procedures as well as polling stations, and other organisational and technical issues relevant to voting. One of the most important aspects of the preparations for elections is the way of informing the public about current regulations and procedures relating to forms of voting such as proxy voting, voting by mail, and or voting with Braille overlay.

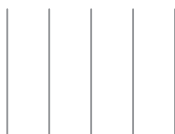
In addition to the recommendations of the Defender and the National Electoral Commission, the report shows good practices not covered by the regulations that are applied by local governments and may constitute a significant facilitation for the elderly and the disabled.

## 2. Equal opportunities in access to education for persons with disabilities

Universal and equal access to education is one of the rights guaranteed by the Polish Constitution. In addition, the Convention on the Rights of Persons with Disabilities<sup>100</sup> requires States-Parties to guarantee to persons with disabilities access to general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. Therefore, the Defender has drafted a report on the implementation of the obligations. The first part presents the detailed recommendations on specific actions that must be taken to ensure equal access to education at its every stage to persons with disabilities. It discusses issues related to inclusive education, differentiating it from special and integrated education. It also analyses the system of financing education of students with disabilities, pointing to the need for changing the

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<sup>100</sup> Convention of 13 December 2006 (Dz. U. of 2012, item 1169).





financing model towards “money follows a student,” and tackles issues related to the education of persons with specific disabilities: deaf and hearing-impaired, and with an intellectual disability. Additionally, evaluations concerned the actions aimed at ensuring adequate textbooks for students with disabilities, as well as the system for supporting parents, students and teachers.

## D. Activity of the Expert Committees, cooperation of the Human Rights Defender with NGOs and other social activity in the area of equal treatment

In 2011, the Defender appointed three Expert Committees: on Elderly People, on People with Disabilities and on Migrants. These are advisory bodies composed of persons with authority in various areas of social life, having academic or practical experience, usually resulting from their activity in NGOs. The tasks of the Expert Committees include substantive support for actions taken by organisational units of the Office of the Defender, *inter alia* by identifying priority directions of activities and the delivery of opinions on current public debates. The Committees monitor the protection of freedoms and rights of man and citizen in the process of the application of the law, as well as monitor equal treatment and the ban on discrimination on grounds of age, disability, gender, nationality, ethnicity and religion. The experts prepare proposals for legislative improvements, comments and recommendations on the binding or planned amendments to legal acts, proposals of systemic changes and key points for the Defender’s speeches. Representatives of state administration offices are invited to the meeting of the Expert Committees to exchange information and views on the issues raised by particular Committees. Activity of the Committees is of a voluntary nature (experts are not financially rewarded for their participation in the meetings); their work has been carried out in 2012 and will continue in 2013.

### 1. Expert Committee on Migrants

During the meetings of the Expert Committee on Migrants, discussions concerned the issues related to the new Act on foreigners, the course of abolition proceedings towards foreigners, durability of the effects of the abolition and the situation of foreigners staying in guarded centres.

Members of the Committee have developed thematic reports and expert opinions, which include *How to Permanently Use the Abolition?*, *Detention of Children of Foreigners – Law and Practice*, *Activities of Civil Society Organizations to Reduce the Detention of Minors in Poland*.

A monograph entitled *Observance of the Rights of Foreigners in Poland* was published. It raised issues such as the rights of foreigners applying for international protection in Poland,





the pros and cons of the abolition introduced in 2012, amnesty, detention of minors, access to employment and labour rights violations, as well as other more general situations faced by third country nationals in Poland. The publication also contains recommendations on, *inter alia*, changes in the detention of foreigners, the institutionalisation of legal aid for foreigners, an analysis of the effectiveness of the Act on repatriation, changes in granting Polish citizenship to the children from mixed marriages who were born in Poland.

## 2. Expert Committee on People with Disabilities

The topics of the Committee's meetings were: the case law on disability, vocational rehabilitation of the disabled, ratification of the Convention on the Rights of Persons with Disabilities,<sup>101</sup> the image of persons with disabilities in the media, the task of the Defender as the independent monitoring body for the implementation of the Convention on the Rights of Persons with Disabilities, including the civil society in the process of monitoring the Convention, the problem of disabled person's assistants and equal access to education for people with disabilities.

A report drafted by members of the Expert Committee on Persons with Disabilities and invited external experts, entitled *Equal Opportunities in Access to Education for Persons with Disabilities*, was published. The report contains 15 recommendations that concern, *inter alia*, the implementation and monitoring of the implementation of the UN Convention on the Rights of Persons with Disabilities, the promotion of the inclusive system of education for persons with disabilities, its funding, support for teachers, the availability of communications and information systems. The Committee started cooperation with the Ministry of National Education to further study the possibility of implementing the recommendations contained in the report.

Committee members also drafted a publication entitled *Major Challenges Following the Ratification of the UN Convention on the Rights of Persons with Disabilities by Poland*. It concerns the protection of the rights of persons with limited physical, intellectual or sensory ability. It describes international standards of legal protection and preventing discrimination on grounds of disability.

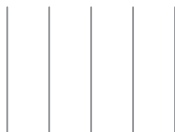
The authors focused on issues related to the system of deciding on disability, the legal situation of persons declared legally incapacitated, universal design, access of persons with disabilities to education and digital exclusion of persons with disabilities.

The Expert Committee is also drafting a study entitled *The Polish Road after the Convention*, which describes the actions required to be taken by public authorities in connection with the ratification of the UN Convention on the Rights of Persons with Disabilities.

Members of the Expert Committee on People with Disabilities participate in the process of devising the rules, methods and tools for the system of monitoring the Convention on the Rights of Persons with Disabilities by the Defender. As a result of work, initial opinions

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<sup>101</sup> Convention of 13 December 2006 (Dz. U. of 2012, item 1169).





were drafted in the optimum design of the monitoring system, its functions, method of implementation and the role of social organisations. An analysis related to public statistics was also prepared.

### 3. Expert Committee on Elderly People

Committee sessions were devoted to health care for the elderly, preventing the exclusion of seniors on the financial services market and state policy towards the ageing population.

As a result of the Committee's work, a monograph was published entitled *Strategies in the Ageing Society. Theses and Recommendations*. It constitutes a collection of articles that present the key principles and objectives of the social policy for the elderly. The articles cover the five fundamental principles: independence, participation, care, self-fulfilment and dignity defined in international documents. The study emphasises the need for changes and adjustments in various areas of social life and the need to take into account demographic changes and the specifics of ageing as a phase of life in all public policies.

The recommendations included in the monograph may be helpful for the public administration at the central, regional and local level. They were presented during the conference attended by representatives of ministries, local governments and NGOs. The event involved 10,000 Internet users.

The Committee's work resulted in publishing three guides for older people: *Human Rights* on health care and welfare; *Financial Services* on a number of issues related to the exclusion of older people from the banking services market, with a particular focus on access to credits, loans and bank accounts; and *Work* dedicated to starting work in various forms by the elderly and information on what to look out for when concluding and terminating employment contracts.

### 4. Social measures in the area of equal treatment and cooperation with NGOs

Joining in the celebration of the European Year for Active Ageing and Solidarity between Generations 2012, the Defender launched a broader project on intergenerational dialogue as one of the important instruments of social inclusion of seniors. Under the project, pilot workshops were organised with the participation of coaches from the "Trop" group, thanks to which two conferences with workshops were organised. In Warsaw, the conference was organised in cooperation with the University of Social Sciences and Humanities, while the second one in Chorzów was one of the events on the agenda of the *Citizen Senior* Congress. During the two meetings the results of social studies conducted by the Office of the Defender entitled *Seniors in the eyes of young people, young people in the eyes of seniors* were presented. They were prepared in cooperation with the Association of Creative Initiatives "ę". The purpose of the study was to identify the impact of mutual perceptions of people belonging to



different generations on the development of their mutual relations. The study also identified some possible middle ground between the young and the old. The effects of the project will be presented in the form of a separate publication.

Representatives of non-governmental organisations were also involved in other research and publishing activity of the Office of the Defender. The cooperation usually involved the persons being members of the Expert Committees to the Defender. Other experts whose contribution was significant came from the following institutions:

- the Institute of Public Affairs (contribution to the report *Guarantees of Exercising of Voting Right for the Elderly and Persons with Disabilities*),
- the Polish Society of Gerontology (contribution to preparing social studies on financial exclusion of the elderly),
- the Blue Line Foundation (contribution to preparing social studies on violence against elderly women and women with disabilities),
- the Campaign Against Homophobia, Field of Dialogue Foundation and Campaign Love Does Not Exclude (contribution to preparing social studies concerning equal treatment of non-heterosexuals in contacts with doctors of selected specialties).

In addition, non-governmental organisations whose statutory objectives include countering hatred on grounds of race, religion, ethnic origin and sexual orientation participated in the preparation of the handbook for police officers entitled *Anti-Discrimination Activities in Police Units*. At present, the materials are being edited.

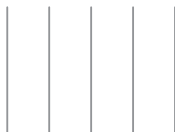
The Defender continued friendly cooperation with universities by appointing the Defender's Ambassadors from among students of selected universities. These are students outstanding in terms of social involvement, acting for the dissemination of information about the competence of the Defender and human rights in their universities. The Defender's Ambassadors were trained in monitoring of the implementation and observance of the Convention on the Rights of Persons with Disabilities.

Training was also held on the functioning of the disabled for journalists who covered the 2012 UEFA Euro. The workshops were held with the participation of experts from the Foundation Institute for Regional Development and the Polish Association for the Intellectually Disabled.

## E. International activity of the Human Rights Defender in the area of equal treatment

As an independent equality body, the Defender continued the cooperation with other equality bodies operating in Member States of the European Union, which started in 2011.

Cooperation with the European Network of Equality Bodies (EQUINET) is also very fruitful. The Defender became an EQUINET member in 2011. Representatives of the Defender took part in a seminar organised by EQUINET concerning the judgments of the





European Court of Justice in the area of the implementation of the principle of equal treatment, trainings on alternative methods of dispute resolution and the phenomenon of under-reporting, and participated in two EQUINET working groups involved in the analysis of the EU anti-discrimination legislation (Working Group on Equality Law in Practice) and effective communication of the national activities of bodies for the promotion of equal treatment (Working Group on Communication Strategies and Practices). The work of the WG on Communication Strategies and Practices will result in *inter alia*, a publication on the phenomenon of under-reporting, that is to be issued in the first quarter of 2013.

In this regard, it was also important that the Defender started cooperation under the project “Combating discrimination on grounds of sexual orientation and gender identity,” established at the initiative of the Council of Europe, in relation to the Recommendation of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity.<sup>102</sup>

In addition, representatives of the Defender took part in a series of international meetings and conferences devoted to the implementation of the principle of equal treatment and preventing discrimination, including in the meeting of the Fundamental Rights Agency of the European Union and national human rights protection institutions, seminars organised by the Academy of European Law on the European Union’s anti-discrimination law and the Convention on the Rights of Persons with Disabilities, seminar of the European Commission against Racism and Intolerance of the Council of Europe (ECRI), the conference on the cooperation of the EU Fundamental Rights Agency with Equinet and the National Equality Authorities, the “Equality Summit” conference, the conference organised by the Council of Europe in collaboration with the European Economic Area and Norway Grants (agreement between Iceland, Liechtenstein and Norway aimed at reducing the disparities between European countries and strengthening of bilateral relations with 15 countries of Central and South America) on possible ways of combating hate speech (“Tackling hate speech: Living together online”) and the seminar on anti-discrimination law organised by the European Commission (“Equality Law for Everyone: Challenges Ahead”).

<sup>102</sup> Recommendation of 31 March 2010, CM/Rec(2010)5.



## II. Activity of other public bodies in the area of equal treatment

### A. Selected judgments 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 judgments 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 judgments of European courts influence the level of protection of the rights of an individual also in Poland.

#### 1. Selected judgments of national courts

##### a) *Denying entry into a restaurants to people of Roma ethnic origin*

Judgment of the Appellate Court in Poznań of 29 February 2012 (file No I ACa 1162/11).

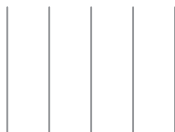
1. *Denying the wronged party entry to a restaurant because of his Roma ethnic origin is a violation of his personal interest, i.e. the right to personal dignity.*

2. *From the point of view of the protection of justified interests of the client (consumer) of a restaurant, the legal relations between the owner and the people providing customer services and security guards may not be significant as their behaviour is associated with the operation for a specific restaurant. The restaurant owner, therefore, is always responsible for damages to the customers from these persons, including non-pecuniary damages, pursuant to Article 430 of the Civil Code.<sup>103</sup>*

In the court's opinion, introducing the ban on entry to the restaurant for potential customers because of their ethnicity and its enforcement constituted unlawful infringement of personal rights of these people, regardless of what motivated such practices. There is no doubt that denying the claimant entry to a restaurant because of his Roma ethnic origin constituted a violation of his personal interest, i.e. the right to personal dignity.

The court emphasised that unalienable human dignity covers, *inter alia*, the right to high self esteem due to one's national or ethnic origin. Any discriminatory actions on those grounds are considered a violation of personal interest thus understood.

<sup>103</sup> Act of 23 April 1964 (Dz. U. of 1964, No 16, item 93, as amended).





b) *Graphic symbols of political parties*

Decision of the Appellate Court in Warsaw of 3 December 2012 (file No I ACa 1410/12).

1. *Article 11(2) of the Act on political parties<sup>104</sup> allows entering only one symbol.*

2. *Due to the required synthetic nature of the message, a graphic symbol should characterise a given party best.*

The court dismissed the application from a political party “National Rebirth of Poland” to enter additional graphic symbols into the register of political parties: “Cross and Sword,” “Crowned eagle with fasces and a battleaxe,” “No way for gay,” “Celtic cross.”

The Appellate Court sustained the decision of the Regional Court according to which Article 11(2) of the Act on political parties allows entering only one symbol. Therefore, the Court did not examine whether registering the above symbols would be lawful.

In the justification, the Court referred to the decision of the Constitutional Tribunal of 6 April 2011<sup>105</sup> in which the Tribunal emphasised that due to the required synthetic nature of the message, a graphic symbol should characterise a given party best.

c) *Allowance added to the family benefit*

Judgment of the Constitutional Tribunal of 20 December 2012 (file No K 28/11).

*Increasing the allowance added to the family benefit for the parent of a disabled child does not breach the constitutional principle of equality or other provisions of the Constitution that are the model for control.*

The Constitutional Tribunal examined the Defender’s application on the allowance added to the family benefit for the single parent of a child.

The Constitutional Tribunal evaluated the rules of determining the amounts of benefits provided for in the regulations that result from the challenged articles, namely Article 11a(3) and (4) of the Act of 28 November 2003 on family benefits.<sup>106</sup> The provisions limit the amount of an allowance added to a family benefit for being a single parent to PLN 340 for all children and the amount by which the allowance is increased for being a single parent to PLN 160 for all disabled children. The Tribunal ruled that the manner of calculating the allowance added to the family benefit for being a single parent and increasing the allowance in the case of being a single parent of a disabled child does not breach the constitutional principle of equality or other provisions of the Constitution that constitute the control model.

In the Tribunal’s opinion, it should be taken into account that the system of benefits related to the family benefit and additional amounts thereto should be evaluated with account taken of all the relevant provisions.

It is admissible to assume that the amount of the addition to the allowance for being a single parent of disabled children is not entirely dependent on the number of disabled children in a single-parent family with two or more children. As pointed out by the Tribunal, apart from the allowance added to the family benefit for being a single parent, the regula-

<sup>104</sup> Act of 27 June 1997 (Dz. U. of 2011, No 155, item 924).

<sup>105</sup> File No Pp 1/10.

<sup>106</sup> Act of 28 November 2003 (Dz. U. of 2006, No 139, item 992, as amended).



tor also introduced another allowance for education and rehabilitation of a disabled child, whose purpose is to support families with disabled children, and other forms of support for families with disabled children provided for in the Act on family benefits and other acts.

d) *Dignity*

Judgment of the Regional Court in Warsaw of 6 March 2012 (file No C 815/10) – invalid judgment

*When claiming a relevant amount as a compensation for the aggrieved party, the basic criterion of evaluation by a court should be the extent of negative effects on the aggrieved party's psyche, as the purpose of granting pecuniary protection is to redress and alleviate the moral harm.*

In the opinion of the Court, it is beyond doubt that the refusal to admit the claimant to a toilet and instructing him to use a toilet in some restaurant nearby, in a derisive way, by the defendant's employee was in itself a breach of the claimant's dignity, and in addition it was one of the important reasons for the claimant being unable to fulfil his physiological need. There is also an adequate causality between the quoted behaviour of the defendant's employee and the fact that there was no toilet for customers in the premises, and the effect – it was humiliating for the claimant to go home in dirty clothes with an unpleasant smell.

The Court also concluded that the defendant surely knew that the claimant was a senior and therefore the letter from the defendant informing about the location of a public toilet was undoubtedly and explicitly intended to deride the claimant.

e) *Advertisements*

Judgment of the Regional Court in Warsaw of 10 May 2012 (file No C 1101/11)

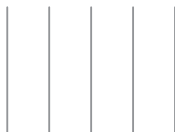
*When evaluating whether honour was violated, one should take into account not only the feelings of the person claiming legal protection, but also the objective reaction of the public. The evaluation should not be limited to an analysis of a phrase without a context, but it should be interpreted against the background of the entire utterance. Finally, the meaning of an utterance may not be determined by its literal form.*

The case concerned advertising an Internet provider by presenting a woman lying on her stomach, in one ad without her face shown, with a slogan “from September it is free,” and in another ad with her face shown, with a laptop and with a slogan “free Internet access for our subscribers,” which corresponded to the first ad linguistically and logically.

The carriers using which the ad was disseminated were large format meshes, ads on buses and on the Warsaw underground.

In the claimant's opinion, the advertisement violated her personal interests as the defendant's intention was to influence the target audience in a way that the ad resembled a promise of a sexual service.

The opinion was not shared by the Regional Court in Warsaw, which concluded that the claim may not be related to the personal interest of the claimant in any responsible way. In the first ad, the promise is formulated by an unspecified entity or entities. Moreover, if the





target audience would relate the message to any person, first of all they would relate it to the person shown in the ad, not the claimant who is not depicted in the ads. Therefore, if anyone would have the right to be harmed by the content of the ad, or its ambiguity challenged by the claimant, it should be the person depicted in the ad. The Court also stated that surely the person in the ad consented to pose for the picture used in the ad and received a relevant remuneration.

f) *Entering into a tenancy relationship in lieu of a deceased partner*

Resolution of the Supreme Court of 28 November 2012 (file No III CZP 62/12)

*A person cohabitating with the tenant in reality – within the meaning of Article 691(1) of the Civil Code<sup>107</sup> – is a person having an emotional, physical and economic relationship with the tenant, also a person of the same sex.*

The challenged provision stipulates that “In the case of death of the tenant of residential premises, the following shall enter into the tenancy relationship: a spouse not being a co-tenant of the premises, children of the tenant and his/her spouse, other persons towards whom the tenant had the obligation to pay alimony, and a person cohabitating with the tenant in reality.”

The Supreme Court pointed out that the regulator omitted the term “as husband or wife” which, in the previous versions of the provision, characterised the cohabitation with the tenant. This stands for expanding the scope of the term “cohabitation.”

Analysing the term, the Supreme Court pointed out that it stands for a special emotional, physical and economic bond. At the same time, the absence of the restriction “as husband and wife” indicates that Article 691 of the Civil Code applies not only to heterosexual relationships where the couple is not married, but also to homosexual relationships where the bonds between the partners are the same as in the case of cohabitation. In the Court’s opinion, there are no sociological or psychological arguments in favour of differentiating the results of cohabitation of heterosexuals and homosexuals. The bonds in such relationships are the same.

The Court also emphasised the obligation of equal treatment, and the related prohibition of any discrimination, also on grounds of sex or sexual orientation.

g) *Exemptions from the tax on inheritances and donations*

Judgment of the Supreme Administrative Court of 20 march 2012 (file No II FSK 1704/10)

*The regulator granted the right to relief only to spouses, i.e. a man and a woman in a relationship defined in Article 18 of the Constitution and the Family and Guardianship Code.<sup>108</sup> There are no grounds to derive the right to a relief by persons in a civil partnership by analogy, as the rule is that such reliefs must be interpreted precisely.*

<sup>107</sup> Act of 23 April 1964 (Dz. U. of 1964, No 16, item 93, as amended).

<sup>108</sup> Act of 25 February 1964 (Dz. U. No 2012, item 788).





The Supreme Administrative Court ruled that it cannot share a view that the structure of the tax relief that covers exemption from tax on inheritances and donations acquired by accepting an inheritance or a donation by a spouse, ascendants, descendants, stepchildren, siblings, stepfather and stepmother assumes that the privilege extends to people having emotional ties, and the criterion of blood ties is not decisive. This tax group includes people included in the donor's family within the meaning of the Constitution. Thus, emotional ties are not the criterion which decides on covering by a tax exemption as in themselves, they have no significance to being eligible to the tax relief.

*h) Discrimination in employment*

Judgment of the Regional Court in Gorzów Wielkopolski of 27 November 2012 (file No VI Pa 56/12)

*1. The addressee of claims related to discrimination is always the employer, even if it is another employee who commits the prohibited acts. ... The employer is responsible for such acts if, knowing about them, he/she fails to prevent them.*

*2. The following are of significance to determining the amount of damages: the type of personal interest infringed upon, the extent of discrimination, the employer's attitude to discrimination, the severity of the damages aimed at eliminating such behaviour in the future by the employer, and proportionality of the damages to the financial standing of the employer and living conditions.*

An employee of one of retail chains repeatedly heard derogatory comments on his sexual orientation from his direct superior. Such behaviour frequently took place in the presence of his co-workers and store customers. The claimant's employment contract was terminated due to his alleged conflict with co-workers.

The Regional Court ruled that the employer was guilty of discrimination by verbally humiliating the claimant in public, which humiliated the claimant in the presence of strangers.

According to the Labour Code,<sup>109</sup> the employer must respect the dignity and other personal interests of employees. The Court decided that as the employer allowed behaviour bearing the features of discrimination, he breached the Labour Law and thus must remedy the damage caused by such behaviour. The compensation covers the harm to the employee's property and non-property interests.

*i) The notion of mobbing*

Judgment of the District Court in Toruń of 28 June 2012 (file No IV P 1101/11)

*In order to classify an action or behaviour as mobbing, it must have the following features:*

- a) concern an employee or be targeted on him/her,*
- b) consist in persistent and long-term bullying or intimidating an employee,*
- c) result in the employee's low esteem of his/her professional capacity,*
- d) result in or be intended to humiliate or ridicule an employee, isolating him/her or eliminating from a team of co-workers.*

<sup>109</sup> Act of 26 June 1974 (Dz. U. of 1998, No 21, item 94, as amended).



In the context of the statutory definition of mobbing, it is emphasised that in order to consider behaviour as mobbing, it is required to conclude that an employee was subject to influence which, according to an objective measure, can be considered to have brought about one of the effects defined in Article 94<sup>3</sup>(2) of the Labour Code.<sup>110</sup>

The definition of mobbing requires proving not only that certain acts have been unlawful, but also that they had a specific purpose (humiliation, ridiculing, isolating an employee). The premises must occur jointly, and absence of any of them makes it impossible to rule that mobbing has indeed taken place. The burden of proving mobbing rests on the employee. The regulator did not intend to ascribe the legal consequences provided for in Article 94<sup>3</sup>(2) of the Labour Code to any negative behaviour of the employer, even very grave and unpleasant, not only to behaviour that causes actual damages to the employee. Any action that has no such effect cannot be classified as mobbing, even if it consists in an obvious breach of good manners, the employee's personal interests and even (in extreme situations) fulfils the definition of a punishable act. An employee harmed in this way has remedies available, but other than those applicable to mobbing.

j) *Sickness insurance*

Judgment of the Constitutional Tribunal of 24 May 2012 (file No P 12/10)

*As a result of the discretionary nature of insurance for pursuing economic activity, the calculation basis for the benefit is only a fraction of the monthly calculation basis of contributions.*

Article 48(2) and Article 52 of the Act of 25 June 1999 *on social insurance cash benefits in the event of sickness or maternity*<sup>111</sup> are incompatible with the principle of equality before the law and the principle of social justice to the extent in which they do not provide for the application of Article 37(1) of the Act when determining the calculation basis of sickness and maternity benefits payable to the insured who is voluntarily subject to sickness insurance in respect of non-agricultural economic activity, whose incapacity to work arose before the elapse of a full calendar month of sickness insurance in that respect, in a situation where it was preceded by sickness insurance on other grounds.

The Tribunal emphasised that if the claimant was an employee and became incapable of working before the elapse of a full calendar month of sickness insurance, he would receive a sickness benefit calculated on his remuneration for the entire month. Meanwhile, due to the discretionary nature of insurance for pursuing economic activity, the Social Security Board applied the challenged provisions in a way that it assumed only a fraction of the monthly contribution calculation basis as the calculation basis for the benefit.

<sup>110</sup> Act of 26 June 1974 (Dz. U. of 1998, No 21, item 94, as amended).

<sup>111</sup> Act of 25 June 1999 (Dz. U. of 2010, No 77, item 512, as amended).



k) *Discrimination of part-time employees*

Judgment of the Supreme Court of 2 October 2012 (file No II PK 82/12)

*Among the prohibited criteria, Article 18<sup>3a</sup>(1) of the Labour Code<sup>112</sup> lists also employment for a specified or unspecified period of time as well as full-time or part-time, whereas Paragraph 2 of the said Article prohibits discrimination in any way, and every differentiation between employees on grounds of any criteria can be considered discriminatory if the employer fails to prove he was driven by objective reasons.*

An employee was employed at  $\frac{3}{4}$  of an FTE, and therefore his hourly rate was lower than the hourly rate of employees employed on a full time basis. The Supreme Court decided that such a differentiation in remunerations constituted a discrimination of employees working part-time. The Supreme Court emphasised that explicit interpretation of Article 18<sup>3a</sup> led to a conclusion that the prohibition of discrimination in any way provided for in Paragraph 2 of the said Article stands for a ban on any behaviour that are considered symptoms of discrimination on the grounds listed in Paragraph 1 thereof. The latter provision specifies two groups of prohibited criteria. It orders equal treatment of employees, firstly, regardless of their qualities or personal characteristics, examples of which are given (“in particular”), and secondly (“also”) regardless of employment for a specific or unspecified period of time or full-time or part-time. Separating these two groups of criteria of discrimination by the phrase “also regardless of” allows assuming that the exemplary enumeration of the grounds of discrimination (“in particular”) refers only to the first group of criteria. The examples of criteria suggest that, undoubtedly, it concerns qualities and personal characteristics of a person that are not related to work, and which are of such a great social significance that the regulator considered them the prohibited criteria of differentiation in the area of employment.

## 2. Selected judgments of international courts

a) *Recruitment procedure.*

Judgment by the European Court of Justice of 19 April 2012, in Case C-415/10.

*Defendant's refusal to grant any access to information may be one of the factors to take into account in the context of establishing facts from which it may be presumed that there has been direct or indirect discrimination.*

Article 8 (1) of the Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin<sup>113</sup>, Article 10 (1) of the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation<sup>114</sup> and Article 19(1) of the Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the

<sup>112</sup> Act of 26 June 1974 (Dz. U. of 1998, No 21, item 94, as amended).

<sup>113</sup> Directive of 29 June 2000 (OJ EU L 180 19.07.2000 items 0022 – 0026).

<sup>114</sup> Directive of 27 November 2000 (OJ EU L 303 2.12.2000 items 0016 – 0022).



implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation<sup>115</sup> must be interpreted in such a way that they do not establish the right of an employee, who claims plausibly that he/she meets the requirements listed in a job advertisement and whose application was rejected to have access to information indicating whether the employer engaged another applicant at the end of the recruitment process.

However, one cannot rule out that the defendant's refusal to grant access to information is one of the elements that must be taken into account in the context of establishing facts from which it may be presumed that there has been direct or indirect discrimination. It is for the national court to verify, whether that is the case in the circumstances of the case before it.

*b) Interpretation of the general non-discrimination principle on grounds of age in employment and occupation*

Judgment by the Court of Justice of the European Union of 5 July 2012, in Case C-141/11 *The second subparagraph of Article 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation*<sup>116</sup> must be interpreted as not precluding a national measure, such as that at issue in the main proceedings, which allows an employer to terminate an employee's employment contract on the sole ground that the employee has reached the age of 67 and which does not take account of the level of the retirement pension which the person concerned will receive, as that measure is objectively and reasonably justified by a legitimate aim relating to employment policy and labour-market policy and constitutes an appropriate and necessary means by which to achieve that aim.

The case considered by the European Court of Justice concerned national regulations and collective agreements granting an employee the unconditional right to work until the age of 67 and providing for the automatic and not requiring any notice termination of the employment relationship at the end of the month in which the employee reaches the age of 67, without taking into account the level of the retirement pension, which will be actually paid to this employee.

The Court ruled that the automatic termination of the employment contracts of employees who meet the conditions as regards age and contributions paid for the exercise of their pension rights has, for a long time, been a feature of employment law in many Member States and is widely used in employment relationships. This mechanism is based on the balance between political, economic, social, demographic or budgetary considerations and depends on the choice to prolong employees' working lives or, conversely, to provide for their early retirement. In addition, in accordance with the case-law, promoting employment undoubtedly constitutes a legitimate aim of the social and employment policy, pursued by

<sup>115</sup> Directive of 5 July 2006 (OJ EU L 204 26.7.2006 items 23 – 36).

<sup>116</sup> Directive of 27 November 2000 (OJ EU L 303 2.12.2000 items 0016 – 0022).



the Member States, in particular when it comes to facilitating young people's access to performing a specific job.

c) *Discrimination on grounds of nationality in the area of making use of reduced fares*

Judgment by the Court of Justice of the European Union of 4 October 2012, in Case C-75/11

*The status of citizen of the Union is destined to be the fundamental status of nationals of the Member States, enabling those among such nationals who find themselves in the same situation to receive, as regards the material scope of the FEU Treaty<sup>117</sup>, the same treatment in law irrespective of their nationality, subject to such exceptions as are provided for in that regard.*

By reserving, as a general rule, the possibility of making use of reduced fares only for students whose parents receive Austrian family allowances, the Republic of Austria violated its obligations pursuant to Article 18 of the Treaty on the Functioning of the European Union in conjunction with Articles 20 and 21 of the Treaty on the Functioning of the European Union and Article 24 of the Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States<sup>118</sup>.

Every citizen of the Union may invoke the prohibition of discrimination on grounds of nationality resulting from Article 18 of the Treaty on the Functioning of the European Union in all situations covered by the scope of the application of EU law *ratione materiae*, which include exercising freedom of movement and residence within the territory of the Member States granted by Article 21 of the Treaty on the Functioning of the European Union.

In addition, from the same case-law it results that this prohibition also includes situations regarding the conditions of access to vocational training, whereby both college and university education means vocational training.

d) *Parental leaves*

Judgment by the European Court of Human Rights of 22 March 2012, application No 30078/06 (case of *Konstantin Markin v. Russia*) and of 2 October 2012, application No 33411/05 (case of *Hulea v. Romania*)

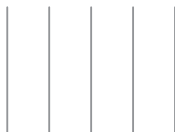
*Provisions which automatically rule out a possibility of taking parental leave by a man constitute discrimination on grounds of sex.*

Both cases concerned the refusal to grant parental leave to the applicants, which constituted different treatment when compared to women in military service. The Court decided that the scope of the application of the Convention is also applicable in the army. Since the applicants could have been easily replaced by a woman, there was no justification to deny their right to use parental leave.

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<sup>117</sup> Treaty of 25 March 1957 (Dz.U.[Journal of Laws] of 2004, No 90, item 864/2).

<sup>118</sup> Directive of 29 April 2004 (OJ EU L 158/77 30.4.2004).





The Court considered the reference to positive discrimination as groundless. Different treatment of professional soldiers: men and women when it comes to the right to parental leave, was not aimed at improving the unfavourable situation of women in the society or at reducing the “actual inequalities” between men and women. The Court stated that such different treatment had led to the strengthening of gender stereotypes and had been negative both for women’s careers and for men’s family lives. Also, the difference in treatment may not be justified by traditions prevailing in a particular country.

e) *Incapacitation*

Judgment by the European Court of Human Rights of 16 October 2012, application No 45026/07 (case of *K. v. Poland*)

*The compulsory stay at a social care centre constitutes confinement within the meaning of Article 5(1) of the Convention*<sup>119</sup>.

When analysing the applicant’s situation, the Court at first stated that his compulsory stay at a social care centre constituted a deprivation of liberty within the meaning of Article 5(1) of the Convention. Namely, two conditions – objective and subjective – allowing to make such conclusions were fulfilled. Firstly, the social care centre managers exercised total and effective control over the treatment, care, place of residence and movement of the applicant as well as they controlled the part of his disability pension left at his disposal. Secondly, despite the fact that the applicant was incapacitated, he was able to express an opinion regarding his situation and never gave his consent for being placed at the social care centre. The liability of the state is not precluded by the fact that the applicant’s guardian applied for placing the applicant at the centre, if the social care centre itself was a state-owned institution.

The Court critically referred to the fact that the opinion on the applicant’s mental health had been drawn up for the purposes of the incapacitation proceedings, rather than for determining whether his state of health required him being placed at the social care centre. In addition, the applicant was not under psychiatric supervision and his health was not subject to periodical control.

In that case, the Court also found a violation of Article 5(4) of the Convention due to the absence of the court’s involvement, at any stage, in the issue of placing the applicant at the social care centre. In such case, Polish law did not provide for automatic judicial review of the legality of placing and keeping a person in that kind of institution. In addition, there was no opportunity to initiate any control procedure by the person concerned being completely incapacitated. Thus, the applicant was deprived of a possibility of lodging an independent legal remedy of judicial nature, for the purpose of calling his compulsory isolation into question.

f) *Access of women to prenatal tests*

Judgment by the European Court of Human Rights of 26 May 2011, application No 27617/04 (case of *R.R. v. Poland*)

<sup>119</sup> Convention of 4 November 1950 (Dz.U. of 1993, No. 61, item 284, as amended).



*No access to prenatal tests and thus preventing a pregnant woman from obtaining information about the foetus' condition is inhuman and degrading treatment, equal to torture.*

The Court ruled that preventing a pregnant woman from obtaining information about the foetus' condition was inhumane and degrading treatment equal to torture. In addition, the Court stated that denying the applicant's right to prenatal tests was a violation of every human's right to respect private and family life.

*g) Custody of an illegitimate child by the father*

Judgment by the European Court of Human Rights of 3 February 2011, application No 35637/03. (case of *Sporer v. Austria*)

*The absence of a possibility of providing judicial review regarding the decision on custody of an illegitimate child constitutes an action discriminating the father of this child.*

In the Court's opinion, the authorities did not provide sufficient reasons to justify the fact that the situation of a person who acted as a father throughout the life of the son did not deserve the same level of judicial review as in case of other fathers, who had their parental rights from the beginning and then got divorced or their separation with the mother of the child was decreed.

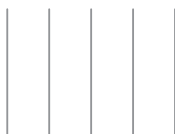
Therefore, the Court stated that the inability to ensure judicial review regarding the decision on custody of the child, constitutes a discriminatory action against the father of the child.

## **B. Selected controls, investigations and other actions taken by the public authorities in the area of equal treatment**

### **1. Government Plenipotentiary for Equal Treatment<sup>120</sup>**

Within the framework of the project implemented by the Government Plenipotentiary for Equal Treatment, the Warsaw School of Economics, from 16 October 2011 to 29 February 2012 carried out, in selected government administration institutions, a study using the Gender Index extended by the elements of the Diversity Index. The purpose of the study was to gather information on the compliance of the pursued policy with the principle of equal treatment and anti-discrimination on grounds of sex, race, ethnic origin, nationality, religion, belief, political opinions, age, disability, sexual orientation, marital and family status. The study covered all ministries and the Chancellery of the Prime Minister.

<sup>120</sup> <http://www.rownetraktowanie.gov.pl>.





In October 2012, training courses were conducted with an objective to raise the competence of the public administration personnel in the field of the policy of equal treatment and anti-discrimination. Training courses covered in total 460 officials of both genders from 87 institutions (all ministries, Chancellery of the Prime Minister, voivodship offices and selected public institutions).

In 2012, the project “Media of equal opportunities” was also implemented. The general objective of the project was to introduce the equality perspective into the language of social debate through educational and promotional activities addressed to persons and communities responsible and having impact on its shape. As part of the project implementation, training courses and conferences were conducted.

On 11 December 2012, the Government Plenipotentiary for Equal Treatment reapplied to the Ministry of Interior for amending *the Ordinance of the Minister of Interior and Administration of 26 October 1998 on detailed rules of drawing up vital records, method of keeping birth, marriage and death registers, their control, storage and protection as well as models of vital records, their copies, certificates and protocols*.

The Government Plenipotentiary for Equal Treatment also applied to the Minister of National Education for taking actions aimed at preventing and combating mobbing and violence at educational establishments towards LGBT persons.

## 2. Ministry of Interior<sup>121</sup>

Within the structure of the Ministry of Interior, the Team for the Protection of Human Rights has been created. The Team collects the information about the cases of racism and xenophobia on the basis of reports from non-governmental organisations, including organisations of national and ethnic minorities and individual entities, as well as the information revealed in press articles. The collected information is analysed on a regular basis and used, *inter alia*, in drawing up reports on the implementation by Poland of its international commitments and in planning further activities and training courses with regard to the fight against hate crime. The Team coordinates educational activities aimed at ensuring the effective fight against hate crime (*The programme of the fight against hate crime for the officers of law enforcement bodies*).

By the end of 2012, about 58,000 police officers were trained under the programme. Due to its role as the coordinator, the Ministry intensively monitors the way training courses are carried out, by way of visits, analysis of evaluation surveys completed by training participants and by obtaining the information on carrying out training courses from individual police units. In addition, the Team acts as the National Contact Point for hate crimes at the Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe (ODIHR OSCE). In connection with that, the Team annually coordinates the preparation and provision of the Polish contribution to the ODIHR OSCE's report on hate crimes in the OSCE region.

<sup>121</sup> Letter of 12 February 2013, ref.: DKSİW-ZPC-0790-2/13.





### 3. National Police Headquarters<sup>122</sup>

In 2012, the multicultural education issues were included in the educational activities aimed at maintaining safety in the school environment and broadening by the issues of bias crimes (Brochure for teachers – Procedures of cooperation between the police and educational establishments). The above material contains tips for the management staff on the issues of preventing juvenile demoralisation and crime, including the information on legal education.

Training courses on cultural differences were organised for preventive policemen. As part of training, the lecturers from the Polish Migration Forum dealt with the thematic block on intercultural communication.

On the International Day for Tolerance a conference was held, addressed to persons who at their work meet persons exposed to discrimination. The second edition of the “School of Tolerance” project started in September 2012.

Upon request of the Plenipotentiary of the Voivodeship Police Headquarters in Wrocław for Human Rights’ Protection, in all municipal and poviat police headquarters of the police garrison in Lower Silesia, for the purpose of disseminating knowledge in the field of bias and hate crimes, the police units’ employees were made familiar with the provisions and interpretation of Articles 13, 32, 35 of the Constitution of the Republic of Poland and the provisions of Articles 118, 118a, 119, 126a, 256, 257, 194, 195 and 196 of the Penal Code<sup>123</sup>.

At the Office of the Human Rights Defender, expert meetings between the Defender, the Plenipotentiary of the Police Commander-in-Chief for Human Rights’ Protection and non-governmental organisations were held with respect to publishing a guidebook for police officers: “Anti-discrimination activities in police units.”

### 4. Chief Labour Inspectorate<sup>124</sup>

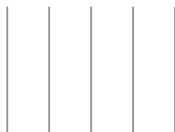
In 2012, routine inspections on the “observance by employment agencies of the provisions of the Act on Promotion of Employment and Labor Market” were executed. During inspections, the observance by an employment agency of the principle of non-discrimination with respect to persons, for whom the agency is looking for employment was assessed. 146 inspections were executed, during which the violation of the provisions of the Act by 14 employment agencies was revealed and consisted in posting job announcements for persons of a certain gender or of a certain age. In addition, 9 agencies did not observe the prohibition of discrimination on grounds of sex, and 7 – on grounds of age. In connection with that, 6 applications for punishment were referred to courts and in 3 cases educational measures were applied as a consequence of committing an offence.

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<sup>122</sup> Letter of 24 October 2012, ref.: Gpc-952/12.

<sup>123</sup> Act of 6 June 1997 (Dz.U. [Journal of Laws] No 88, item 553, as amended).

<sup>124</sup> Letter of 17 September 2012, ref.: GNP-306-079-13-4/12.





As part of inspections regarding the legality of employment, other gainful employment and work by foreigners, the inspectors examined the observance of the principle of equal treatment of foreigners with regard to working conditions. In the period from January to June, that issue was examined during 429 inspections and they covered 1,9 thousand foreigners. In 8 controlled operators, there were violations consisting in the application of less favourable contracts, determining lower rates of remuneration for the same work and unfavourable work organisation systems.

In 2012, the National Labour Inspectorate implemented the project entitled “Migrants’ rights in practice” scheduled for the period from October 2011 to June 2014. The objective of the project is to strengthen the integration process of newly-arrived foreigners, *inter alia*, by counteracting signs of discrimination and exploitation of migrants in the labour market. The project also provides for carrying out a series of workshops addressed to labour inspectors and substantive employees of the National Labour Inspectorate, *inter alia*, with regard to non-discrimination of migrants in the labour market.

In connection with the implementation of the information campaign “Know your rights at work” in mid-2012, the district inspectorates started popularising the provisions on equal treatment of men and women in employment.

## 5. Office of Electronic Communications<sup>125</sup>

Within the framework of market monitoring works with regard to providing services being a part of the universal service, including facilities for persons with disabilities, carried out by the President of the Office of Electronic Communications last March, *Telekomunikacja Polska S.A.* was requested for the information showing the level of providing facilities to persons with disabilities, despite the absence of an obligation to provide such services after 8 May 2011. From the feedback it results that *Telekomunikacja Polska S.A.* still provides all facilities referred to in the Ordinance.

The President of the Office of Electronic Communications applied to three economic chambers for submitting the information on providing, by operators other than *Telekomunikacja Polska S.A.*, facilities for persons with disabilities and on requirements for special facilities reported by those persons. Operators implement various projects aimed at introducing facilities for subscribers with special needs by facilitating access to selected points of customer service for persons with motor disabilities. Also, instructions on how to serve elderly and disabled persons and pregnant women are deployed. However, few alternative operators apply any facilities for this group of people.

<sup>125</sup> Letter of 28 September 2012, ref.: BDG-WOK-0746-1/12(6).



## 6. Central Statistical Office<sup>126</sup>

In 2012, a report on the *Social Cohesion Survey* containing, *inter alia*, information on social exclusion in Poland, was published.

Also, a publication with the data covering the 4<sup>th</sup> quarter of 2011, obtained as a result of the study *Economic activity of the population*, was issued. The publication contains descriptive statistics for data on the size and structure of professionally active persons in conjunction with features such as gender, age, level of education, field of education, disability, occupation.

In the second quarter of 2012, the results of the study *Persons with disabilities in the labour market* were published.

The Central Statistical Office also carried out a study on participation of persons with disabilities in sport and recreation.

In 2012, the results of studies such as: “National and ethnic associations” and „People above 50 years of age in the labour market.” were published.

## 7. Polish Financial Supervision Authority Office<sup>127</sup>

As a result of having received signals from customers of financial services providers, attention was paid to the relatively low level of knowledge on financial products (especially among elderly people). The Polish Financial Supervision Authority Office declared a possibility of participating in projects initiated and implemented by the Defender.

Also, a series of brochures „Guide for customers of financial services” was prepared as part of the Office’s publishing activity. Brochures were disseminated among municipal and poviát consumer ombudsmen and used in their contacts with customers.

## 8. Office of the Defender for Patient’s Rights<sup>128</sup>

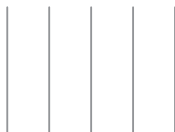
The Defender for Patient’s Rights sent a request to the President of the National Health Fund on the refusal to provide health services to persons up to 18 years and women during pregnancy, childbirth and postpartum period, who are nationals of the Republic of Poland and have the place of residence therein, but for various reasons are unable to obtain the status of the insured.

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<sup>126</sup> Letter of 17 February 2012, ref.: BS-07-0652-1/2012.

<sup>127</sup> <http://www.knf.gov.pl>

<sup>128</sup> Letter of 15 February 2012, ref.: RzPP-ZZP-0722-2-4/MO/11.





## 9. The General Prosecution<sup>129</sup>

In the monthly issued by the General Prosecution Office, Prosecution and Law, a study concerning hate crimes was published containing a description of national and international regulations, the extent of the phenomenon in Poland and methodical guidelines for prosecutors conducting or supervising preparatory proceedings in cases concerning hate crimes.

The study covered 45 cases related to the phenomenon of racism on the Internet and completed with refusal to initiate a proceeding, decision on discontinuation of a preparatory proceeding, on suspension of a proceeding and on filing an indictment. The study was completed in May 2012 and a summary report was sent to all Appellate Prosecution Offices in the country in order to have them acquainted with its content and to use comments in ongoing cases.

## 10. Ministry of Justice<sup>130</sup>

In 2012, the Ministry of Justice took actions to change the way and methodology of obtaining and collecting statistical data on hate crimes. For this purpose, they expanded the statistical records of criminal cases brought by public prosecution, concerning a valid decision and providing individual statistical data on perpetrators of those acts and of persons injured as a result of their commission, as well as of reasons for committing that category of crimes.

Judges and prosecutors participated in training conducted by the National School of Judiciary and Public Prosecution on the fight against the phenomenon of discrimination on grounds of race, ethnic origin, religion, sexual orientation or gender identity. Discrimination *sensu largo* is also the subject of training for trainees.

## C. Information and statistical data regarding the issues of equal treatment for 2012

In 2012, district and regional courts considered 229 actions brought by women for compensation due to the violation of the principle of equal treatment in employment of men and women pursuant to Article 18(3)(d) of the Labour Code<sup>131</sup>, of which 35 were accepted in whole or in part, and 58 were dismissed. On the other hand, among actions brought by men, 299 were considered, of which 57 were accepted in whole or in part and 43 were dismissed.

<sup>129</sup> Letter of 10 August 2012, ref.: PG II P 404/8/12.

<sup>130</sup> Letter of 13 August 2012, ref.: DWMPC-III-072-2/12.

<sup>131</sup> Act of 26 June 1974 (Dz.U. of 1998, No 21, item 94, as amended).



In cases for compensation in connection with sexual harassment, as one of the forms of discrimination at work (Article 18(3)(a) § 6 of the Labour Code in conjunction with Article 18(3)(d) of the Labour Code), 10 actions brought by women were considered, of which 2 were accepted in whole or in part and 4 have been dismissed. In cases where actions had been brought by men, 4 cases were considered, of which 1 was accepted in whole or in part, and 3 were dismissed.

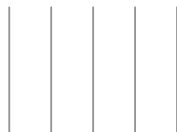
In cases for compensation and redress in connection with mobbing, (Article 94(3) § 3-4 of the Labour Code), 186 cases, where actions had been brought by women, were considered, of which 13 actions were accepted in whole or in part and 66 were dismissed. On the other hand, among actions brought by men, 138 cases were considered, of which 10 were accepted in whole or in part and 41 were dismissed.

In cases concerning employment discrimination (Article 11(3) of the Labour Code), 93 cases were considered (without distinction on grounds of sex), of which 4 were accepted in whole or in part and 20 were dismissed.

In addition, in connection with entering into force of the Act of 3 December 2010 *on the implementation of some regulations of European Union regarding equal treatment*<sup>132</sup>, the Minister of Justice declared broadening the catalogue of collected statistical data by the records of civil cases for damages for the violation of the right to equal treatment, cases initiated due to the violation of the principle of equal treatment and criminal cases in which the courts demonstrated that penal acts had been committed for reasons violating the principle of equal treatment on grounds of sex, race, ethnic origin, nationality, religion, beliefs, disability, age or sexual orientation. To date, the Defender has not received any of the above statistical data.

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<sup>132</sup> Act of 3 December 2010 (Dz.U. No 254, item 1700).





### III. Conclusions and recommendations on actions required to ensure the observance of the principle of equal treatment

The complaints and requests addressed to the Defender show that the knowledge of the principles of human and civil rights protection as well as of the case law of the European Court of Human Rights and the European Court of Justice in relation to the protection of fundamental rights is insufficient among both Polish judiciary and Polish society. It is estimated that 95% of all rulings of the Strasbourg Court in cases filed by Polish citizens concern the judiciary. Therefore, more problems related to human rights, the principle of equal treatment and the case law of international tribunals should be included, especially in the initial training of future judges and prosecutors. It would also be advisable to highlight the importance of continuous education in this regard. Trainings devoted to specific matters in this field should be organised on an ongoing basis. The report of the Polish Society of Anti-Discrimination Law entitled “Anti-discrimination law in the practice of Polish common courts”, published in 2012 under the project “Monitoring of the application of anti-discrimination law by the Polish judiciary”, shows that anti-discrimination education is virtually non-existent in the education system of the judges. Inadequate education of the judges may result in the lack of protection against unequal treatment or may even lead to discrimination. According to the authors of the report, the reasons for concern include the inability to correctly define discrimination, its determinants, areas and reasons, as well as the inappropriate conduct of proceedings, i.e. the lack of knowledge about the rule of shifting the burden of proof. Therefore, increased awareness of the judges about discrimination and legal forms of protection against discrimination should improve the efficiency of the application of anti-discrimination legislation in practice.

In addition, in connection with complaints about both the stereotypical and even disparaging image of women e.g. in advertising, and the image of men as perpetrators of crimes in various social campaigns, and in connection with the Recommendation of the Committee of Ministers to member states on the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education<sup>133</sup>, the topics related to human rights must be introduced at each stage of education.

<sup>133</sup> Recommendation of 11 May 2010, CM/Rec (2010)7.



## 1. Observance of the principle of equal treatment – comments on the Act on the implementation of some regulations of the European Union regarding equal treatment

The Defender receives numerous comments signalling the deficiencies of the Act of 3 December 2010 on the implementation of some regulations of the European Union regarding equal treatment. The Act grants legal protection only in enumerated areas. It also introduces various levels of protection for victims of discrimination. Persons with disabilities, LGBT persons and persons complaining about discrimination on grounds of religion, denomination, beliefs or age are not protected against discrimination in such areas as education, access to goods and services or social security. The Act does not protect persons subject to discrimination on grounds of sex in the area of health care and education. The Defender is of the opinion that it would be advisable to cover more areas with protection against discrimination. Furthermore, Article 13(1) of the Act, which stipulates that everyone with respect to whom the equal treatment principle was breached has the right to compensation, should be amended, since its current wording makes it impossible to claim redress in certain cases of discrimination resulting in non-pecuniary harm. The provisions concerning the limitation periods for submitting damages claims need to be amended, so as to fall under the general rules on statutory limitation periods.

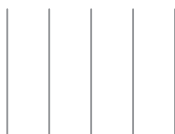
The ratification of the Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>134</sup>, which has not been signed yet by Poland, would significantly contribute to efficient implementation of the EU anti-discrimination legislation. The Protocols introduces a general ban on discrimination.

## 2. Preventing discrimination on grounds of race, nationality or ethnic origin

In order to prevent discrimination on grounds of race, nationality or ethnic origin, the state authorities must pursue a social policy which ensures safety and peaceful co-existence of all inhabitants of the country, regardless of their nationality or ethnic origin.

Increasing multiculturalism and persistent stereotypes about various groups of the population pose a number of challenges for both the authorities and the entire Polish society. Recent times have seen an increased activity of neo-Nazi organisations and more hate speech online. The Defender acts on the issue, she i.a. filed a successful appeal against the decision of the Regional Court in Warsaw concerning registration of new graphic symbols of the National Rebirth of Poland (Polish: *Narodowe Odrodzenie Polski*) and monitors pending explanatory proceedings in cases involving racism. An important factor preventing hate speech online is the appropriate approach of law enforcement agencies – the Internet cannot be a tool to promote hate speech and potential perpetrators should bear responsibility stipulated in penal law for their statements.

<sup>134</sup> Convention of 4 November 1950 (Dz. U. of 1993, No 61, item 284, as amended).





It should be emphasized that one of the main tasks of public authorities is to protect and observe human rights, which involves protection against violence, including violence motivated by xenophobia and other forms of intolerance.

It is necessary to raise awareness of the public about the relevant legal regulations in place. Therefore, the Defender recommends taking educational measures to popularise knowledge about crimes based on discrimination.

The Defender considers it necessary to continue the training of officers of state services, particularly the Police, in prevention and identification of racist or xenophobic incidents, and in treatment of foreigners. During such trainings, the officers of state services should learn about cultural differences characteristic for various ethnic groups and come into direct contact with people of different ethnic or national background.

The training programme for judges and prosecutors on passing verdicts in criminal cases relating to discrimination should be compiled so as to highlight the specific nature of such cases. The trainings should point to appropriate application of penal law in such cases to achieve the optimal rehabilitation effect for the convicted persons. Judges should also be sensitized to the fact that hate crimes are not crimes of minor social danger and the suspension of penalties should more often involve an obligation for the convicted persons to participate in corrective and educational activities. The judges should also be persuaded that in numerous cases it would be advisable to more often adjudge the deprivation of liberty coupled with an obligation of social work (e.g. the perpetrator of the devastation of the Jewish cemetery should carry out maintenance work in similar places of remembrance – rehabilitation measures).

In the opinion of the Defender, it is essential to develop a system for exchanging information about racist incidents (by means of i.a. organisation of conferences, trainings, seminars) between non-governmental organisations and state institutions dealing with discrimination.

### 3. Preventing discrimination on grounds of disability

The Republic of Poland ratified the Convention on the Rights of Persons with Disabilities<sup>135</sup> on 6 September 2012. The Convention is guided by a new philosophy of disability perception. It shifts its focus from care to activities aimed at ensuring that the persons with disabilities can live independently and make their own free choices to the fullest extent possible. According to the Defender, this should result in a comprehensive analysis of the Polish legislation on persons with disabilities and amendment of the law in line with the requirements of the Convention. The summary of the measures taken so far to protect persons with disabilities and new directions of changes in the most important areas of social, cultural and public life are presented in the Defender's monograph entitled *Major challenges after the ratification of the UN Convention on the Rights of Persons with Disabilities. Analysis and recommendations*.

<sup>135</sup> Convention of 13 December 2006 (Dz.U. of 2012 item 1169).





One of the major tasks relating to the ratification of the Convention on the Rights of Persons with Disabilities is the implementation of Article 33 of the Convention which concerns national implementation and monitoring of the Convention.

Pursuant to the Article, the states parties must establish or designate a focal point and a coordination mechanism within government and allocate appropriate funds for monitoring the progress in implementation and execution of the Convention, including for involving the civil society in the monitoring process.

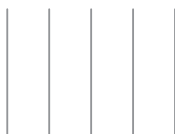
The recommendations on access to education for pupils and students with disabilities are presented in the Defender's report *Equal Opportunities in Access to Education for Persons with Disabilities*. The major recommendations focus on promoting the inclusive education system so that the largest possible number of disabled pupils and students is educated in general schools, with the only criterion for referring a pupil or a student to a special or integrated school being his/her individual needs and the decision made by the parents who obtained reliable information about the conditions of learning in various types of schools. The precondition for implementing the inclusive education model is the change in the model of financing the education of disabled pupils/students in a way ensuring that the funds allocated for their education in the state budget were actually transferred to the school or institution where a given disabled child is learning. Other necessary measures include standardization of the system determining the disability of pupils/students and increasing the flexibility of the support system, ensuring architectural availability of schools and educational institutions' buildings, availability of communication and information systems and unrestricted access to textbooks and learning aids in the formats adjusted to individual needs of pupils/students (textbooks for the blind and visually impaired, for mute and deaf children).

The solutions ensuring access to the built environment for persons with disabilities should be introduced, with the best one being the implementation of the universal design principle. Therefore, the definition of universal design, as well as the related guidelines and standards, must be introduced into the Polish legislation. The Defender also recommends including the subjects presenting the principles of universal design into the curricula of the faculties related to design of the built environment.

Further functioning of the institution of incapacitation should be reconsidered, as it is incompliant with the Convention on the Rights of Persons with Disabilities which promotes the system based on supported decision-making instead of substitute decision-making. Incapacitation does not provide support in the exercise of legal capacity, but leads to the deprivation or limitation of this capacity, ignores the will and preferences of the incapacitated persons in matters of the greatest importance for that person. The current legal form of incapacitation leads to legal and social exclusion of incapacitated persons. Incapacitation should therefore be replaced with various forms of support, in line with the model of supported decision-making. The planned amendments should in particular take into account the judgments of the European Court of Human Rights, e.g. the case (*Kędzior v. Poland*)<sup>136</sup>

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<sup>136</sup> Judgment of 16 October 2012, application No 45026/07.





*in which the Court ruled that placing a partially incapacitated person in a social care home by his guardian, without the court ruling on whether the person is able to decide about his place of residence is a violation of the European Convention on Human Rights; or the case (Kiss v. Hungary)<sup>137</sup> where the European Court of Human Rights challenged the exclusion of disabled persons from the exercise of voting rights without analysing their competence to take part in the election.*

The Defender recommends also introducing other solutions to ensure that disabled and elderly persons are able to exercise their voting rights. The election law should therefore remove all obstacles that disabled persons may encounter, in order to ensure their efficient inclusion in the public life. All polling stations should be adjusted to meet the needs of voters with disabilities. They should also offer the possibility to use the Braille voting templates. Later on, voting machines for disabled voters and electronic voting should be introduced.

The insufficient involvement of persons with disabilities in the activities of the state is the case of concern, as it is in breach of standards required by the Convention on the Rights of Persons with Disabilities and the Madrid Declaration. The authorities making decisions concerning issues relating to persons with disabilities, including the authorities responsible for the development and implementation of legislation and policies to implement the Convention, should include an appropriate number of persons with disabilities.

The presentation of persons with disabilities in the media must also change. The majority of the Polish media, including the state television, present the issues relating to disability in a way that consolidates the image of persons with disabilities as recipients of charity in the Polish society. The media should not be guided by misconceived “attractiveness”, but create a modern approach to the subject presented in the Convention on the Rights of Persons with Disabilities.

#### 4. Preventing discrimination on grounds of age

In the current social and demographic situation in Poland, the most important aspect in the area of protecting the rights of seniors is to devise a comprehensive government policy adjusted to the needs of the ageing society. The Minister of Labour and Social Policy announced that such a document would be developed at the government level by September 2013. Therefore, the Defender upholds her recommendations in this regard made in the previous years and formulates additional guidelines.

The first step to develop a state policy for the ageing society should be the reliable implementation of the Madrid International Plan of Action on Ageing (MIPAA). To this end, the following actions are necessary:

- systemic public consultation in the process of drafting the strategic document, determination of priorities and schedule of their implementation;

<sup>137</sup> Judgment of 20 May 2010, complaint No 38832/06.



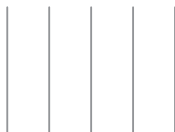
- identification of the areas of impact and determination of their interrelations in order to ensure cohesion and interdisciplinary nature of the measures taken;
- highlighting the values constituting the basis for the measures, including solidarity between generations, in the drafted document; including the multigenerational aspect in the strategic objectives and enhancing the dialogue between generations;
- including the perspective of the ageing society in all state policy documents at both central and local level;
- development of the indicators allowing to assess and evaluate the measures taken in relation to implementation of individual objectives;
- taking into account the diversity of the elderly population at the stage of programming (urban areas – rural areas, women – men, age diversity, etc.);
- considering the inclusion of serious system changes to integrate the activities of the health care sector and social services among the priorities of the document;
- system strengthening of access to geriatric services.

Specific recommendations for various areas, including health care, economy, housing, infrastructure, social participation, participation in culture and recreation, image of seniors and other, were presented in the publication entitled *Strategies of actions in the ageing society. Theses and recommendations*, available at the website of the Defender.

## 5. Preventing discrimination on grounds of gender

2012 was particularly significant in terms of prevention of violence against women as Poland signed the Council of Europe Convention on preventing and combating violence against women and domestic violence. The Convention was adopted and opened for signature on 11 May 2011 in Istanbul. It has been signed by 26 countries and ratified by 1, i.e. Turkey. The Convention will enter into force when it is ratified, adopted or approved by 10 signatories, 8 of which must be member states of the Council of Europe. It is the first such legal act in Europe which comprehensively regulates the issue of violence against women. The Convention originated based on an observation that violence is related to gender. Women are most often the victims of violence. 45% of women in the EU declare that they at least once had fallen victim to violence due to their gender, while 40-45% of women were victims of sexual harassment at work. It is estimated that 7 women die in Europe everyday as a result of gender-based violence.

The Convention contains a section of civil and penal law and covers all types of violence that may affect women, but also the elderly, children or disabled persons who are victims of domestic violence. The purpose of the Convention is to prevent and combat violence against women and domestic violence, eliminate all forms of discrimination against women and promote substantive equality between women and men, including by empowering women, design comprehensive strategies for the protection of and assistance to all victims of violence against women and domestic violence, protect the victims of violence and to efficiently prosecute and penalize the perpetrators of violence.





The Defender will monitor the process of ratification of the Convention and the adjustment of the Polish law to its standards.

Another important problem is the lack of gender equality in appointing persons to senior positions at enterprises. The obligation of public authorities to take measures to ensure gender equality and counteract discrimination on grounds of sex results from both the Polish Constitution and Poland's membership in the European Union. Imbalances in filling senior positions in enterprises in terms of sex are currently a major challenge in all Member States of the European Union. In the Polish business, there are women who have an impact on major economic and financial decisions, yet their number is much lower than that of men. Changes aimed to ensure effective gender equality should be gradual and evolutionary, and should be introduced by promoting good practices. However, where such solutions are futile, it is also necessary to introduce legislative changes. The Defender is of the opinion that the Polish Parliament should consider introducing statutory regulations on the composition of management and supervisory boards of public companies, first of all the state-owned enterprises and municipal companies.

Despite the ongoing social transformations, women retain their special role in the society. This pertains in particular to maternity-related and educational functions performed by women in families, as well as the fact that women simultaneously perform professional activities and family duties. A disproportionately higher share of women performing family duties results in difficulties in reconciling work and family life. The Recommendation of the Council of Europe on balanced participation of women and men in political and public decision making<sup>138</sup> stipulates that the state should adopt measures to provide support in the reconciliation of family and public responsibilities. The harmonisation of family life and work is of utmost importance, as is the possibility to combine and share the responsibilities at home between women and men.

The Defender took action for coherent society and diversity management with a view to facilitate the participation of various social groups in social life, such as promoting universal design or better access to day care centres and kindergartens. The Polish government should use structural funds for those tasks in the new financial perspective of the European Union.

Individual complaints submitted to the Defender regularly point to the problem of discriminatory content in advertising. Women tend to be treated like objects in this context. This concerns instances of treating women as sexual objects and assigning them with clearly stereotypical social roles. Those negative phenomena, observed i.a. in the state television which has an obligation of civic education, should be counteracted by the National Broadcasting Council. However, the Defender is of the opinion that the Council does not use its competences in this area sufficiently. There are also advertisements in the public space and not on radio or television which fall outside the competence of

<sup>138</sup> Recommendation of 12 March 2003, CM/Rec (2003)3.



the Council. The existing civil law measures aimed at protecting personal rights and allowing to demand the cessation of activities putting these rights at risk seem to be insufficient. The Defender monitors cases initiated as a result of advertisements which may be discriminatory. The Defender, in principle, is not the competent authority in the cases concerning private entities which account for the majority of entities conducting advertising campaigns. The Constitution sets forth an intransgressible limit for the Defender which stipulates that the Defender may only intervene in the cases concerning breaches of rights and freedoms by public authorities. Therefore, there is a need to raise awareness of the society about advertising campaigns with discriminatory content.

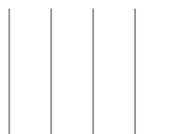
The main persistent problem in the area of counteracting discrimination on grounds of gender identity is the lack of regulations on the legal procedure for changing the gender in identity documents. The Minister of Justice agreed that there was a need to adopt a relevant legal act. At the same time, in his letter the Minister was sceptical about the idea to amend Article 31 of the Act on vital records<sup>139</sup> because such a change would be purely procedural. The Defender does not share this opinion. Change in the procedure from process to non-process would bring about a number of benefits for people who wish to change their gender in identity documents. Under such procedure, the court decides to rectify the birth certificate and not, as it is the case at present, to establish that a given person is of particular gender, and consequently decides on the protection of personal interest as a result of a civil action. In addition, in the current state of affairs, the parents of a transgender person are the defendants, and must participate in the trial. Under the non-litigious procedure, the parents would have an opportunity to opt out from the proceedings, thus not becoming its participants. Complaints filed to the Defender, mainly relating to the procedure, suggest that such a change would solve a lot of problems that are still painful in family relationships in such cases. The Defender expects that the Act regulating the said problem area will be adopted during the present term of the parliament.

## 6. Combating discrimination on the grounds of sexual orientation

In the Defender's opinion, it is necessary to continue and improve the training for officers of state services, particularly the Police officers, in identification of and responding to incidents of hate crime. The significant contribution of the guide for the Police officers entitled *Anti-discrimination Measures in Units of the Police*, prepared by the Plenipotentiary of the Police Commander-in-Chief for Human Rights' Protection, under the auspices of the Defender, must be emphasized here. The Defender holds an opinion that such a guide should be used also in the training of other services and city guard officers.

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<sup>139</sup> Act of 29 September 1986 (Dz. U. of 2011 No 212, item 1264).





Performing her statutory tasks as an independent equality body with relation to independent studies on discrimination, the Defender, following the consultation with non-governmental organisations, initiated a social survey *Doctors in the Process of Specialisation and Non-heterosexuals*. The survey focused on equal treatment of non-heterosexuals in contacts with doctors of selected specialisations and aimed at preliminary analysis of equal treatment of non-heterosexuals during medical appointments. The topic will be examined further in 2013.

The complaints filed to the Defender also raised the issue of the lack of sufficient measures protecting against discrimination on grounds of sexual orientation of persons employed based on civil law contracts. The Act on equal treatment<sup>140</sup> applies to conditions for undertaking and performing economic or professional activity, including in particular under an employment contract or work under a civil law contract. The Act prohibits unequal treatment of natural persons on grounds of i.a. their sexual orientation, in terms of conditions for undertaking and performing economic or professional activity, including in particular under an employment contract or work under a civil law contract. This means that the Act on equal treatment encompasses also the forms of employment not covered by an employment contract, but based on civil law contracts. If the equal treatment principle is breached with regard to protection of the employment relationship, the protective measures provided for in the Act on equal treatment should apply.

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

As regards preventing discrimination on grounds of religion, denomination or beliefs, the still unresolved issue is the organisation of religion and ethics lessons in general schools as well as the execution of the judgment of the European Court of Human Rights in Strasbourg in the case *Grzelak vs. Poland*<sup>141</sup>, which the Defender had already referred to in the Information on the activity in the area of equal treatment in 2011.

A significant obstacle for ensuring the rights of pupils wishing to participate in ethics classes is the minimum number of pupils required to organise the ethics lessons which is currently set at 7 persons from one form. The Defender is very critical about the fact that there is no textbook for teaching ethics. The information about possibility of holding ethics classes in each school is insufficient and there are problems with organisation of such classes after the school classes are over or in inter-class groups in other schools. The long waiting time for classes or the necessity to travel to another school may constitute a limitation on the pupils' right to participate in ethics courses or even prevent them from using this right altogether. Therefore, the Defender recommends intervention in this area.

<sup>140</sup> Act of 3 December 2010 (Dz.U. of 2010 No 254, item 1700).

<sup>141</sup> Judgment of 15 June 2010, application No 7710/02.



The Defender also acted to introduce rational adjustments in access to professions due to religion and denomination. Bearing in mind i.a. the judgments of the European Court of Justice, the Defender petitioned the Minister of Justice with a request to take into account the needs of members of the Seventh-day Adventist Church, for whom Saturday is the Church's holiday, free from study and work, while setting the dates of entry examinations for solicitors' trainings. Unfortunately, the Minister of Justice refused to introduce such amendments, as opposed to the Minister of Health who introduced such changes for doctors' exams. The arguments presented by the Minister of Justice demonstrate the lack of understanding of this basic concept of the European anti-discrimination legislation.

