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(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

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**Report on the Activity of the Human Rights Defender
(Ombudsman in Poland)
in the Area of the Equal Treatment in 2013
and the Observance of Equal Treatment Principle
in the Republic of Poland**

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REPORT
on the Activity
OF THE HUMAN
RIGHTS DEFENDER
in the Area of Equal Treatment
in 2013
and the Observance
of Equal Treatment Principle
in the Republic of Poland

This Report implements Article 212 of the Constitution of the Republic of Poland of 2 April 1997 (Dz. U. No 78, item 483, as amended), which stipulates that the Human Rights Defender shall each year present information to the Sejm and Senate about his/her activities and the observance of human and civil 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 Report implements Article 19(2) of the Act on the Human Rights Defender which imposes an obligation to make the Report public.

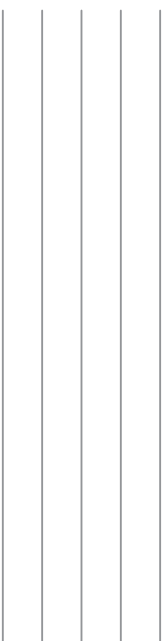


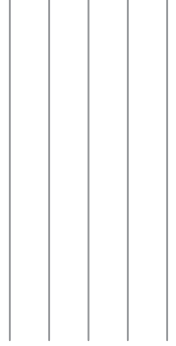


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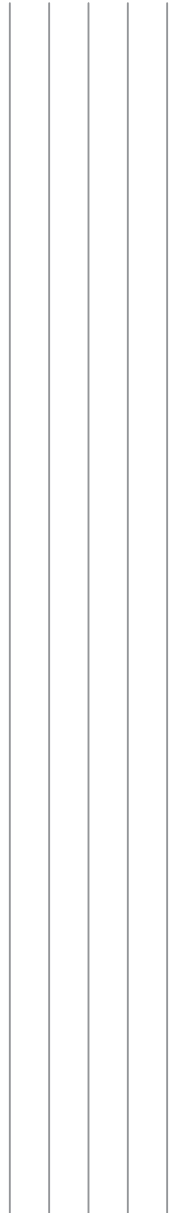
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Introduction





The Human Rights Defender performs tasks relating to the implementation of the equal treatment principle pursuant to the Act of 3 December 2010 on the implementation of some regulations of the European Union regarding equal treatment.¹ The Act implements the so-called equality directives of the European Union into the Polish legal system, including three directives imposing an obligation on Member States to designate an independent body for the promotion, analysis and support of equal treatment: 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, 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. By the legislator's decision, the Human Rights Defender has been an independent equality body since 1 January 2011.

The basic responsibilities of the Human Rights Defender include examination of the received applications, including complaints about the violation of the equal treatment principle, and taking relevant actions in accordance with the Act on the Human Rights Defender. The Human Rights 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:

- analysis, monitoring and support of equal treatment of all individuals;
- independent studies on discrimination;
- drafting and publishing independent reports and making recommendations regarding discrimination-related issues;
- performing additional information-related obligations which consist in providing annual information to the Sejm and the Senate about 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.

Since Poland ratified the Convention on the Rights of Persons with Disabilities², the Defender was also designated as the independent body that supports, protects and monitors the Convention's implementation. It should be noted that the new competences of the Defender in this area have not been reflected in the amendment of the Act on the Human Rights Defender and the Defender performs these tasks solely on the basis of an arrangement with the Ministry of Labour and Social Policy.

In her work, the Defender is assisted by the Office of the Human Rights Defender. The applications relating to the observance of the equal treatment principle are examined by the competent departments. The organisational structure of the Office

¹ Act of 3 December 2010 (Dz. U. No 254, item 1700).

² Convention of 13 December 2006 (Dz. U. of 2012, item 1169).



includes also the Antidiscrimination Law Division within the Department of Constitutional and International Law, which is responsible for examination of applications and for performing additional tasks of the Defender regarding the implementation of the equal treatment principle and the ban on discrimination. Furthermore, a special Task Force has been established as part of the functions of an independent body for monitoring of implementation of the Convention on the Rights of Persons with Disabilities, with the aim to coordinate the actions of individual units of the Office of the Defender in this area.

There are three expert committees operating in the Office of the Defender, namely, on elderly people, on people with disabilities and on migrants. The committees' tasks include support for actions undertaken by the departments of the Office of the Defender, by means of i.a. proposing the priority areas of activity of the Defender, conducting analyses and monitoring of the observance of the principle of equal treatment on grounds of age, disability, sex, nationality, ethnic origin, region and denomination.

In the period covered by the Report, 845 complaints concerning broadly defined problems of equal treatment were submitted to the Office of the Defender. The largest group of cases concerned discrimination on grounds of disability – 305 cases (36.1%), discrimination on grounds of nationality – 81 cases (9.6%), discrimination on grounds of sexual orientation – 65 cases (7.7%) and discrimination on grounds of age – 49 cases (5.8%).

In 2013, the Defender undertook 82% of discrimination cases for further proceedings. This means that in the overwhelming majority of cases submitted to the Defender, the claim that the equal treatment principle was violated was sufficiently substantiated for the Defender to initiate explanatory proceedings. In 15.3% of the cases, the Defender informed the applicants about the measures they have the right to undertake, while in 2.7% of the cases she referred the applications to competent bodies or refrained from any action. In the period covered by the Report, the Defender directed 66 problem-related addresses on broadly defined principle of equal treatment to competent bodies.

Among all cases undertaken by the Defender, a solution favourable for the applicant was reached in only 10.2% of cases. In approximately 13% of cases, the applicants' allegations were not confirmed. The result of almost 75% of cases was negative due to the fact that the general motion of the Defender was not acknowledged. However, it should be noted that almost 1000 cases undertaken by the Defender in 2012 and completed in 2013 (which accounted for approximately two thirds of all cases completed by the Defender in 2013) related to the fact that no deaf person was appointed a member of the Polish Council of Sign Language. The actions taken by the Ministry of Labour and Social Policy in reply to the motion of the Defender only partly responded to the claims of the Defender. Therefore, the Defender considered all those cases to be completed unsuccessfully.



Nevertheless, the high percentage of unsuccessful cases raises concerns. The recommendations of the Defender related to the principle of equal treatment are not sufficiently often appreciated by public authorities and institutions which still do not attach appropriate importance to the implementation of this principle. This is a major problem in ensuring equal treatment in political, social and economic life, which will be targeted by the Defender in 2014.

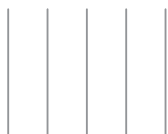
As part of the Defender's statutory obligation to carry out independent studies and issue reports and recommendations concerning discrimination, the following five reports from the *Equal Treatment Principle. Law and Practice* series were published:

1. Elderly People in the Financial Services Market. Analysis and Recommendations.
2. Counteracting Violence against Women, Including Elderly and Disabled Women. Analysis and Recommendations.
3. Intergenerational Dialogue. Between Idea and Practice. Inspirations.
4. Accessibility of Websites of Public Institutions to People with Disabilities. Analysis and Recommendations.
5. Execution of the Right of Juvenile Foreigners to Education.

The Defender also commissioned antidiscrimination studies on services provided to deaf persons by public authorities and institutions, discrimination of persons with mental disorders in the labour market and access of non-heterosexual persons to health care. The results of the studies will be published as reports in 2014.

In 2013, the Defender began work on implementing public consultation procedure with regard to the thematic areas of her antidiscrimination studies. The objective of the consultation is i.a. to obtain information about the needs of various social groups at risk of discrimination, whose problems are not reflected in the applications submitted to the Defender due to their low legal awareness, lack of trust in public authorities or other concerns of the members of those groups (underreporting). The Defender will use the outcome of the consultation to select the thematic focus of antidiscrimination studies in the second half of 2014 and in 2015.

The Defender continued international cooperation in the area of implementing the equal treatment principle, including within the structures of the European Network of Equality Bodies EQUINET and by carrying out joint projects with the Council of Europe, the European Union Agency for Fundamental Rights and the representation of the United Nations High Commissioner for Refugees (UNHCR).



**I. Activity of the Human Rights Defender
in the area of equal treatment and its results
– general motions, selected individual cases
and other actions**



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

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

(a) Hate crimes

One of the Defender's priorities is to prevent racism, xenophobia and the related intolerance. In the report entitled "Preventing violence motivated by race, ethnic origin and nationality"³ published in 2012, the Defender presented recommendations which she constantly monitors.

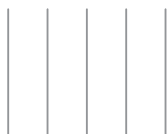
In her motion to the Minister of the Interior⁴, the Defender proposed to establish a unified database registering crimes with the use of violence, carry out studies to determine the actual scale of violence on grounds of race, continue trainings for officers of state services, in particular the Police, on responding to racist incidents and to undertake actions disseminating knowledge about hate crimes. The state authorities should ensure that all the country's inhabitants, regardless of their nationality or ethnic origin, have their human rights protected and are protected against violence. The Defender asked for information about the measures taken by the Ministry to combat crimes motivated by racism, xenophobia and intolerance.

The Minister of the Interior⁵ informed that his Ministry actively prevented hate crimes. The Human Rights Protection Team operates within the Department of Control, Complaints and Petitions of the Ministry. The Team monitors the cases concerning hate crimes, coordinates educational activities within the Police to ensure effective combating of hate crimes, cooperates with national and international institutions and organisations for human rights protection and combating and preventing hate crimes, takes actions aimed at ensuring appropriate protection of human rights during the performance of tasks by the units reporting to or supervised by the Minister of the Interior. The Human Rights Protection Team also began work aimed at extending analytical work within the framework of monitoring of hate crimes and misconduct of the Police officers. Furthermore, the Ministry currently works on amending the

³ *Preventing violence motivated by race, ethnic origin and nationality. Analysis and recommendations, Equal Treatment Principle. Law and Practice, No 2, Human Rights Defender Bulletin 2012, No 4.*

⁴ RPO-707583-I/12 of 14 February 2013.

⁵ Letter of 14 March 2013.





model of submitting complaints and non-complaint information by the Police and the Border Guard to the Human Rights Defender as the Independent Authority for Police and Border Guard Misconduct Investigation.

The Defender also asked the Minister of Administration and Digitisation⁶ to present the actions planned for 2013 and aimed at curbing racial discrimination, intolerance and xenophobia. In reply, the Minister informed⁷ that the regulations on equal treatment were implemented under the “Programme for the Roma Community in Poland”. One of the areas covered by the Programme includes security and prevention of crimes committed on ethnic grounds. The Programme provides funding i.a. for educational activities, addressed in particular to children and youth, aimed at changing the negative stereotype of the Roma community. In reply, the Defender was also informed that on 13 February 2013 the Prime Minister had signed the Order No 6 on the Council for Counteracting Racial Discrimination, Xenophobia and Related Intolerance, headed by the minister competent for informatisation or a secretary or undersecretary of state appointed by the minister.⁸

The Defender monitors penal proceedings in hate crimes on an ongoing basis. Analysis of preparatory proceedings files in cases concerning brutal xenophobic acts, anti-Semitism and racism (e.g. setting fire to the doors to foreigners’ flats, assaults on xenophobic and racist grounds) shows that in some instances the prohibited act was qualified incorrectly (i.e. failure to conduct proceedings in relation to Article 256 or 257 of the Penal Code) and decisions to discontinue proceedings may have been due to incomplete hearing of evidence. In the Defender’s opinion, it is necessary to introduce further corrections to the manner in which proceedings in discrimination crime cases are conducted. The issue will be monitored by the Defender.

(b) Preventing anti-Semitism

On 5 December 2013, a public debate entitled “Anti-Semitism. Diagnosis of the phenomenon in Poland as compared to the situation in the European Union” was held at the Office of the Human Rights Defender. The purpose of the meeting was to develop proposals for legislative changes and social initiatives which could result in changing the awareness of citizens and state authorities about anti-Semitism and hate crimes. The discussion touched upon the issue of monitoring the groups which most often exhibit discriminatory attitudes towards other social groups. The verdicts in hate crimes often depend on the social position of the accused. Other issues discussed included anti-Semitic posts on websites and failure on the part of law enforcement authorities to take action in such cases. The low detectability of hate crimes was emphasized. The representative of the Prosecutor General informed about the activities

⁶ RPO-666658-I/11 of 3 January 2013.

⁷ Letter of 13 March 2013.

⁸ In 2013, the representatives of the Office of the Human Rights Defender participated in six meetings of the Council at the Minister of Administration and Digitisation as observers.



aimed at establishing a special group of prosecutors specialising in proceedings regarding hate crimes. The Defender was critical of the hitherto efforts of the General Prosecutor's Office in this regard.

(c) Protection of the rights of the Roma minority

The Defender pays particular attention to the situation of the Roma community. Some problems encountered by this community have been unresolved for years. The Roma, in particular those belonging to Bergitka Roma group, still live in extreme poverty, on the margins of society and without any real possibility to improve their living conditions. The fact has been confirmed by the visits of the employees of the Office of the Defender⁹ to the Roma settlements in Koszary near Limanowa, Maszkowice, Ochotnica Górna, Krośnica, Czarna Góra and Zadział near Szaflary. The findings of the visits are presented in a separate report.¹⁰

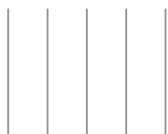
In the opinion of the Defender, the results of the visits questioned the ability of local government units to improve social and living conditions of the Roma community on their own. The possibility to use the funds from the Programme for the Roma Community by local authorities seems insufficient, since the funds are limited and it is up to local authorities to decide whether they will apply for those funds and with respect to which activities. Therefore, the Defender is of the opinion that a separate, comprehensive programme should be created independently of the Programme for the Roma Community, with its only aim being to plan and finance the improvement of the living conditions in the Roma settlements across Poland.

It remains a challenge to ensure that the Roma children have proper and non-discriminative access to education and an equal start in the education. Therefore, the calls of the Defender to ensure the access to pre-school and extramural education with an extended programme of Polish language teaching to children remain still valid. At the same time, all attempts to place Roma children in special schools only because of their problems with adaptation or insufficient knowledge of Polish should be thwarted, as should the plans to create forms or departments only for the Roma at schools.

The fact that the problem of the Roma-only forms in schools remains valid is demonstrated i.a. by the case of the Primary School No 19 in Poznań investigated by the Defender. The Defender received information that the school planned to establish a form only for the Roma children who, due to their age or insufficient command of Polish, found it difficult to function in general forms. Such a form was to function only in the 2013/2014 school year. In her letter to educational authorities, the Defender stated that a separate form for the Roma children was a highly inappropriate solution. She reminded that it is the duty of public authorities to ensure adequate and equal access

⁹ The visits took place between 21 and 23 October 2013.

¹⁰ RPO-749844-V/13 of 1 October 2013.





to education, while forms for the Roma only would surely enhance marginalisation of these students. In reply to the Defender, the creation of such a form was presented as a temporary solution aimed at including the Roma pupils in the general education system. However, such an approach seems unacceptable. Negative experience related to the Roma forms, which existed still in 2011, shows that the creation of such forms may stigmatise the Roma children and put them at risk of discrimination.¹¹

Negative stereotypes about the Roma minority, which persist in the society, are demonstrated by the acts of vandalism or even active aggression against the Roma community. Such incidents are of particular concern for the Defender. In line with the already established practice, immediately after receiving a report about such incidents, the Defender requests the local authorities and the competent commander of the Police for information about the impact of the incident on public security and order and, in particular, its impact on the situation of the local Roma community. The Defender undertook such actions *inter alia* with regard to the brutal assault on a Roma family living in one of the Łódź districts, which occurred in October 2013. The assault was carried out by around a dozen men armed in baseball bats and torches, which may indicate that the action was planned and prepared in advance and that the perpetrators operated in an organised group. The Defender carried out a similar intervention in the case of a campaign of the Internet users against the Roma community from Andrychów. The campaign focused on the profile created at one of the social networking websites. The profile included posts calling for removal of the Roma families from the centre of Andrychów and for acts of aggression against the Roma.¹²

Among all actions of the Defender for the protection of the rights of the Roma community, the case concerning the planned relocation of the Romanian Roma people from two camps in Wrocław was unprecedented. Both camps are located on public grounds belonging to the Wrocław gmina and their residents have no legal title to this property. In this case, apart from their dire social and living conditions, another aspect is at stake, i.e. the right of stay of those persons, as foreigners, on the territory of Poland.

The Defender undertook intensive actions in this regard and petitioned the city authorities on two occasions.¹³ At the initiative of the Defender, the employees of her Office visited the camps and met with the representatives of the local government to discuss the situation of the Romanian Roma community. The participants of the meeting agreed that due to the complexity of the problem, the activities would be continued in expert teams. The coordination and compliance control was carried out at the Office of the Defender. The Defender continues to monitor the case.

¹¹ RPO-749519-V/13 of 25 September 2013.

¹² RPO-750554-V/13 of 9 October 2013 and RPO-747933-V/13 of 3 September 2013.

¹³ RPO-729020-V/13 of 8 April and 15 May 2013.



(d) Criticism of the sale of items associated with the Third Reich at online auctions

The Defender took part in the proceedings before the Court of Appeal in Warsaw on infringement of personal interests of a commercial entity.¹⁴ The case concerned the modification of the legally protected graphic sign of an Internet portal involved in sale by changing two letters from its name into sig runes (the sign of the Nazi German National Youth).

The modified sign was used in organising a protest campaign in the streets of Warsaw to draw attention to the sale of items referring to the Third Reich at online auctions of the plaintiff. The online auction portal filed a suit for violation of personal rights against the organisers of the campaign. The Court of first instance ruled that the actions of the defendants were not directed against a general problem consisting in online trading in fascist symbolism items, but directly against the plaintiff.

In the procedural writ¹⁵, the Defender questioned the grounds justifying the Court's categorical statement on the primacy of the protection of personal interests of the commercial entity over the criticism motivated by the protection of public interests. In the opinion of the Defender, the Court of first instance failed to sufficiently thoroughly investigate the circumstances pointing to the possible existence of a public interest which the defenders tried to protect and which consisted in the need to eliminate the trade in items with fascist symbolism. Therefore, it should have been examined whether the defendants violated the personal interests or whether their actions were controversial but within the limits of the freedom of expression protected by law. The Defender also stated that the protection of personal interests of legal persons differed considerably from the protection of personal rights of natural persons. The scope of protection enjoyed by commercial entities is narrower, in particular large, well-known companies are inevitably exposed to criticism and the limits of acceptable criticism are broader with regard to such entities. In the said case, the Court of first instance did not take into account the difference in protection of personal rights sought by a natural person and by a legal person.

The Court of Appeal in Warsaw agreed with the Defender and dismissed the action, stating that artistic criticism of the activity of the portal is not unlawful and should be subject to constitutional protection.¹⁶

(e) Destruction of bilingual Polish-Lithuanian place identification signs

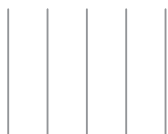
The Defender intervened in the case concerning the destruction of bilingual Polish-Lithuanian place identification signs in the Puńsk gmina.¹⁷ The Defender considers such acts of vandalism to be of utmost concern, since they are acts against the freedom

¹⁴ File No I ACa 841/13.

¹⁵ RPO-727839-I/13 of 5 May 2013.

¹⁶ Verdict of 9 January 2014.

¹⁷ In Trakiszki, Sejwy, Wojtukiemie and Puńsk.





to maintain and use own language guaranteed to the minorities by the Constitution. Therefore, the Defender asked the voivode of the Puńsk gmina and the competent poviats commander of the Police for information about the actions taken in this regard. The Defender also wanted to know whether the acts of vandalism had affected the public order and security in the Puńsk gmina, in particular taking into account the situation of the Lithuanian minority living in the gmina. In reply, the voivode ensured that the signs would be cleared and placed on their previous posts. The poviats commander of the Police presented the information about the intervention and prevention activities undertaken in relation to this case. The issue is monitored by the Defender.

(f) TV programmes for the Kashubian community

The Defender received a complaint concerning the programmes broadcast by the state television channels which do not include a programme in Kashubian and for Kashubian-speaking community. The Defender asked the Chairman of the National Broadcasting Council to provide relevant explanations. She asked for information how the lack of the programme for the only (according to the Act on national and ethnic minorities and regional language¹⁸) community using a regional language affects the performance of the state television's tasks resulting from its mission and related to the obligation to take into account the needs of national and ethnic minorities, including the needs of the said community, in its programme offer. In reply, the Chairman of the Council declared that all programmes addressed to the Kashubian community would be subject to the review. The Defender awaits information about the results of the review.¹⁹

(g) Education of juvenile foreigners

The execution of the right to education by juveniles staying in the centres for foreigners applying for a refugee status and in guarded centres for foreigners was discussed in the Defender's report from the *Equal Treatment Principle. Law and Practice* series.²⁰

The report includes findings from visits of the employees of the Office of the Defender, the purpose of which was to verify whether the constitutional right to education was properly and effectively guaranteed to foreigners staying in Poland. The report contains information about the legal regulations in place and findings, as well as conclusions and recommendations of the Defender.

All visited centres for foreigners applying for a refugee status implemented the obligation stemming from Article 71(1)(1)(f) of the Act on granting protection to foreigners in the territory of the Republic of Poland²¹ and provided the juveniles with the

¹⁸ Act of 6 January 2005 (Dz. U. of 2005 No 17, item 141, as amended).

¹⁹ V.816.1.2014.MS (previously RPO-596533-V/08).

²⁰ *Execution of the Right of Juvenile Foreigners to Education*, Equal Treatment Principle. Law and Practice, No 12.

²¹ Act of 13 June 2003 (Dz. U. of 2006 No 234, item 1695, as amended).



possibility to participate in Polish language classes. The main recommendations of the Defender included enrolment of children subject to schooling obligation to schools immediately after their admission to the centre, introduction of uniform rules for assessing the fulfilment of the curriculum by foreign pupils/students into the internal regulations of schools, increasing the number of Polish language classes for foreigners and introducing Polish language courses also in pre-schools, as well as employing cultural assistants in all schools attended by foreigners.

As regards guarded centres for foreigners, the Defender reiterates that the right of foreigners to education cannot be exercised during detention. It is an additional argument in favour of introducing a statutory ban on placing juveniles and their guardians in guarded centres, which has been raised by the Defender on multiple occasions. The absolute minimum in terms of exercising the right to education, which should be ensured by the Border Guard in cooperation with education authorities already at this stage, is to provide juveniles with the possibility to attend classes taught by qualified teachers on the basis of existing curricula.

2. Preventing discrimination on grounds of age

(a) Policy for seniors

Since 2010, the policy for seniors has been one of the priorities of the Defender. Continuing the projects conducted in 2012, which was celebrated as the European Year for Active Ageing and Solidarity between Generations, the Defender undertook numerous activities to highlight the need to pursue policies taking into account the needs and rights of seniors by central administration and local governments.

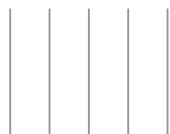
The Defender, in cooperation with the Committee on Elderly Persons, took part in a series of regional conferences²² presenting the monograph entitled “Strategies of actions in ageing society”²³ in order to disseminate its proposals and obtain information about the local activities in this area.

The Defender also monitored the work on those issues at the central level. In her petition to the Minister of Labour and Social Policy²⁴, the Defender called for including the perspective of the ageing society in all documents implementing the state policy tasks at the central government level, as well as the regional and local level. The priorities of the document and thus the activities of the state should take into account systemic changes, including in particular those referring to geriatric care, by integrating the actions of health care and social welfare. In reply, the Minister of Labour and

²² The conferences were held in Warsaw, Stargard Szczeciński, Katowice, Augustów, Kraków and Jelenia Góra.

²³ *Strategies of actions in ageing society. Theses and recommendations*, Equality Treatment Principle. Law and Practice, No 5. Human Rights Defender Bulletin 2012, No 9.

²⁴ RPO-673128-I/11 of 3 January 2013.





Social Policy²⁵ informed that as part of the celebrations of the European Year for Active Ageing and Solidarity between Generations 2012, the Council of Ministers adopted the *Government Programme for Senior Citizens' Social Activity 2012-2013* (ASOS Programme)²⁶, laying foundations for building the policy for seniors in Poland. The Minister declared that the Council for Policy for Seniors would be established, with its members representing the ministries, central government administration and other state authorities, as well as local government units, third sector organisations and scientific community. The representatives of the Defender participated in the meetings of the Council for Policy for Seniors as observers.

The work of the Council resulted in the “Draft assumptions for long-term policy for seniors for 2014-2020” adopted by the Council of Ministers on 24 December 2013. The Defender will monitor the achievement of objectives set out in individual areas laid down in the assumptions.²⁷

(b) Preventing negative stereotypes concerning elderly persons by actions for intergenerational dialogue

In order to prevent discrimination motivated by negative stereotypes related to persons from various generations, the Defender published the report entitled “Intergenerational Dialogue. Between Idea and Practice”²⁸, summing up the experience from the project implemented in 2012. The project included sociological research on “Seniors in the eyes of young people, young people in the eyes of seniors”, as well as two meetings consisting of a conference and workshops, organised in cooperation with the Expert Committee on Elderly Persons. The material presented in the report combines theory and practice. The authors point to the need to develop the platforms for meetings of seniors and young people in the public space, which is of particular importance in view of weakening of intergenerational family ties due to geographical distance between the family members. To this end, animators of intergenerational meetings, employed by local governments or non-governmental organisations, are needed. The method proposed by the authors of the report is the workshop technique, providing for learning by listening and getting to know each other. It also enables direct conversations of persons belonging to different generations which are one of the most efficient ways to overcome negative stereotypes.

The Defender also pointed to the importance of language in preserving negative stereotypes related to old age. The Office of the Defender organised a debate on the

²⁵ Letter of 15 January 2013.

²⁶ Resolution No 137 of 24 August 2012.

²⁷ The document defines the following areas of action: health and independence, professional activity of persons aged 50+, educational, social and cultural activity of elderly persons, silver economy and relations between generations.

²⁸ *Intergenerational dialogue. Between Idea and Practice*, Equal Treatment Principle. Law and Practice, No 10. Human Rights Defender Bulletin 2013, No 8.



way of speaking about old age. The main finding of the discussion is the fact that discrimination occurs in everyday language and in negative meanings attributed to individual words referring to old age and seniors, which may lay foundations for subsequent exclusion of elderly persons from access to various goods and services.

(c) Elderly people in the financial services market

Access to goods and services is one of the areas examined by the Defender in terms of possible discrimination. Based on complaints and media reports, the Defender decided to analyse the situation of elderly persons in the financial services market.

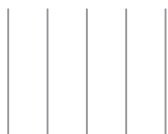
The report entitled “Elderly persons in the financial services market”²⁹, published in 2013, presents the conclusions from the activities of the Defender in this area. Sociological research, using the mystery customer method, in selected financial institutions was commissioned to evaluate the quality of services provided to elderly persons, as well as the qualitative research on perception of advertisements of financial services in terms of possible manipulation. The research findings reveal that although the banks notice the group of customers above 50 years of age, they do not take into account different needs of persons belonging to individual age groups 65+ and 80+. If an elderly person is refused a loan, he or she may feel mistreated, if the reason for the decision on refusal was his or her age and not creditworthiness. Therefore, addressing the report to the institutions related to the financial services market, i.e. the Polish Financial Supervision Authority and the Polish Bank Association, the Defender pointed to the need to improve specific banking practices. It is therefore of utmost importance that the banks provide competent and comprehensive information about the offered products, their legal aspects, as well as the risk and benefits related to specific agreements, as well as the extensive justification of refusals.

One example of indirect discrimination is the use of small print in bank documents, which is difficult to read for elderly persons and persons with visual impairment. Furthermore, the lack of access to toilets is another significant practical inconvenience for the elderly. It should be noted that the issue had been the subject of the court proceedings³⁰ joined by the Defender who filed a cassation appeal.³¹ The Defender awaits the ruling of the Supreme Court which may have a significant impact on the practice followed by banks and other institutions providing services in this regard.

²⁹ *Elderly people in the financial services market*, Equal Treatment Principle. Law and Practice, No 8. Human Rights Defender Bulletin 2013, No 4.

³⁰ In the case concerning an elderly customer of the bank, who was refused access to the toilet by a bank employee, the Regional Court granted the motion of the claimant (verdict of 6 March 2012, file No C815/10). The bank filed an appeal against the verdict of the Regional Court in the part imposing an obligation to provide access to the toilet to its customers at the bank establishment. The Court of Appeal in Warsaw (verdict of 23 January 2013, file No VI Ca 961/12) changed the verdict of the Regional Court by dismissing the claim in the part covered by the bank's appeal, which meant that the claim to impose an obligation on the bank to provide access to the toilet to its customers was not granted.

³¹ RPO-667268- I/12 of 29 August 2013.





The Defender also acted on the issues related to compulsory insurance associated with selected financial services, which may contain limits related to age. There is a widespread belief in the area of insurance services that the limits due to the customer's age are justified by high insurance risk.

In her petition to the President of the Polish Bank Association on inappropriate practices followed by banks, the Defender presented the problems reported in the complaints of the banks' customers, i.e. inadequate diligence and reliability in providing services to customers, in particular with regard to investment insurance products, the lack of a standardised procedure to be followed in the case of death of a customer and the sale of debts by banks to debt collection agencies. Numerous complaints include requests for help in obtaining more favourable terms of debt repayment, since the applicants' efforts aimed at changing the repayment terms prove futile. Another problem is the banks' privilege of enforcement. Upon request of the enforcement body, the banks have an obligation to seize the funds on the bank account. The initiation of debt enforcement proceedings, often concerning low amounts of debt, results in blocking all bank accounts of the debtor. The complaints also reveal that each bank follows a different complaint procedure which is insufficiently clear to the customers. A tighter lending policy with regard to consumer loans resulted in numerous customers using the services of private lending companies. Those companies are not supervised by the Polish Bank Association which may, nevertheless, contribute to creating appropriate supervision framework and ensure adequate protection of non-professional participants of the financial market. The Defender asked for information about the actions which would be taken to eliminate the reported problems.

The Banking Ethics Commission at the Polish Bank Association³² notified the acceptance of the Defender's reports about bank practices towards customers – elderly persons and declared that they would be taken into account in its further actions. The Defender will monitor the implementation of the recommendation.

(d) Reversed mortgage

The problem of so-called reverse mortgage, covered by the draft act prepared by the Ministry of Economy, remains unsolved. The Defender continued to exchange letters with the Minister of Economy³³ on the matter, pointing to absence of regulations in this area due to which the only model available in the market at present is the sale model which envisages transfer of ownership of real property in exchange for a life annuity paid in instalments. The model does not secure full rights and needs of seniors. The credit model, currently unavailable in the Polish market, offers greater possibilities, since real property ownership remains with the borrower and it offers the heirs the option to purchase the property. In reply, the Minister of Economy³⁴

³² RPO-657480-V/10 of 11 September 2013.

³³ RPO-717429-V of 28 January 2013 and of 22 May 2013.

³⁴ Letter of 20 September 2013.



informed the Defender that draft assumptions for the draft Act on reverse mortgage, providing for a credit model, had been approved by the Committee of the Council of Ministers and awaited the examination by the Council of Ministers. The Defender will monitor the legislative process concerning this issue.

(e) Violence against elderly women and women with disabilities

The Defender published a report on anti-discriminatory studies concerning the prevention of violence against women, including elderly women and women with disabilities. The report is presented in the part entitled “Preventing discrimination on grounds of sex”.

(f) Long-term care – health care standards in welfare care homes

The Expert Committee on Elderly Persons prepared a questionnaire to analyse the standards of functioning of welfare care homes where significant irregularities in health care for elderly persons are reported. The irregularities may also be due to the regulations in place. The Order of the President of the National Health Fund on determining the conditions of concluding and executing agreements on care benefits and carer’s allowances for long-term care³⁵ does not provide formal grounds for employing doctors at welfare care homes and for employing nurses. Nurses are sometimes employed as carers or contrary to the regulations in place, due to the need for such care among the persons staying in welfare care homes. There is a possibility to establish Non-Public Health Care Centres which may employ doctors and nurses providing services to the residents of welfare care homes and for persons living in their private homes. However, this solution does not fulfil all needs. The lack of a regulation on health care for residents of welfare care homes in the Act on social welfare³⁶ results in the elimination of health care structures from the network of welfare care homes. The legal situation limits the possibility to guarantee appropriate health care standards required by patients with unstable conditions or suffering from multiple health problems.

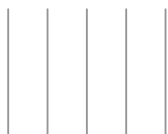
Using the detailed questionnaire (prepared by experts) to evaluate the living conditions in welfare care homes, including medical and care services, the Defender will carry out controls, acting as the National Preventive Mechanism.

The control of centres which provide long-term care services was also raised by the Defender in her letter to the Minister of Labour and Social Policy on establishments which did not receive a voivode’s consent to pursue such activity.³⁷ The lack of entry to the relevant registers hampers the access to such centres and prevent the control of their care standards. The Defender asked for the Minister’s opinion on this issue and for information about the potential amendment to the Act on social welfare.

³⁵ Order of the President of the National Health Fund No 83/2011/DSOZ of 16 November 2011.

³⁶ Act of 12 March 2004 (Dz. U. of 2004 No 64, item 593).

³⁷ RPO-728554-III/13 of 14 October 2013.





In reply³⁸, the Minister of Labour and Social Policy agreed with the Defender that the failure to apply the binding regulations on establishments providing round-the-clock care for disabled persons, the elderly or chronically ill persons was a problem, but ensured that such establishments were subject to control by voivodes and the relevant services. The Defender will continue to analyse the problem. In 2014, the Expert Committees at the Office of the Defender will focus on deinstitutionalisation of long-term care and improvement of its quality.

(g) Health care services for seniors

The Defender continued to act to improve the quality of health care for seniors. In her letter to the Minister of Health³⁹, she emphasised the system's inefficiency in this regard and its unpreparedness for sudden demographic changes and for a situation where ageing citizens are at risk of losing their autonomy and dignity without real access to adequate health care and support. The Defender requested the Minister for information on planned actions and initiatives, including legislative initiatives, of the Ministry of Health in this regard and on implementation dates.

In reply⁴⁰, the Minister of Health informed that financing of geriatric care services had increased over the last years and, consequently, their accessibility had also improved. Expenditure on care benefits and carer's allowances for care in stationary facilities (nursing homes) and at home has also been increasing systematically. The Ministry of Health also tries to stimulate the increase in the number of specialists in i.a. geriatrics, by means of increasing the number of entities authorised to provide specialist training and the number of places for trainee specialists that they offer. Specialisation in geriatrics has been deemed the priority field of medicine, which should contribute to increasing the interest of doctors in specialist training in this area. The Defender will continue to monitor the progress of work on ensuring access to health care services for elderly persons.

(h) Definition of a "young researcher"

In her petition to the Minister of Science and Higher Education, the Defender pointed to the problem with the definition of a "young researcher"⁴¹, included in the Act on the principles of financing science.⁴² According to the provisions in place, young researchers are persons under 35 years of age who are engaged in scientific activity. The current regulation may be discriminatory. The classification into the group of young researchers often determined the possibility to conduct research and the progress of research. At present, the decision to start Ph.D. studies is often made later

³⁸ Letter of 19 November 2013.

³⁹ RPO-690730-11/V of 12 April 2013.

⁴⁰ Letter of 17 May 2013.

⁴¹ RPO-718235-1/12 of 27 August 2013.

⁴² Act of 30 April 2010 (Dz. U. of 2010 No 96, item 615, as amended).



than directly after graduating from master's degree studies. The current definition of a "young researcher" can be unfair for women who for the time of pregnancy and care after their child must suspend their scientific activity and for parents who decide to go on maternity or paternity leaves and child care leave. The Defender asked the Minister to consider actions aimed at amending Article 2(19) of the Act on the principles of financing science to replace the criterion of age with the duration of scientific activity, for example a specific number of years elapsed from the date of obtaining the Ph.D. degree.

The Minister informed⁴³ that she had proposed the amendment to the definition of a young researcher, consisting in replacing the age of the researcher with the period elapsed from the date of obtaining the Ph.D. degree – 5 years, excluding maternity leaves and child care leaves granted pursuant to the rules laid down in the Labour Code. However, the proposed amendment met with very mixed reactions of social partners. Furthermore, the Minister added that the amendment would result in liquidation of several instruments of support for young researchers, i.a. scholarships and ministerial programmes, and therefore, the work on the final text of the amendment would be continued. The Defender did not agree with the Minister with regard to obstacles to amendment of the definition of a young researcher and will continue to monitor the process of legislative changes in the Act on the principles of financing science.

(i) Age limits for football referees

The Defender received complaints on age limits for football referees. Therefore, the Defender send letter raising this issue to the competent units within the individual Football Associations. In her letter to the Pomorski Football Association⁴⁴, the Defender asked for explanations regarding the resolution of the Association Board which introduced the upper and the lower age limit for referees in each game class. In reply⁴⁵, the President of the Association stated that the limits are justified historically and their aim is to ensure opportunities for development of young referees who can be promoted to higher level leagues. He added that the limits were in place also at the national and international level.

In her letter to the Mazowiecki Football Association⁴⁶, the Defender asked for explanations about the age limit of 65 years for referees-observers in the leagues run by this Association. In reply⁴⁷, the President of the Mazowiecki Football Association stated that the provision stemmed from the regulations of the Polish Football Association and the international federations.

The Defender will continue explanatory proceedings regarding this issue.

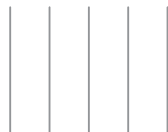
⁴³ Letter of 29 October 2013.

⁴⁴ RPO-747685-I/13 of 12 September 2013.

⁴⁵ Letter of 17 December 2013.

⁴⁶ RPO-748009-I/13 of 21 November 2013.

⁴⁷ Letter of 5 December 2013.





3. Preventing discrimination on grounds of sex

(a) Image of women in advertising

The complaints filed to the Defender still frequently concern the problem of discriminatory content in advertising. Women tend to be treated like objects in this context which without any doubt contributes to their discrimination in the labour market and in public life. The Defender is aware of the problem of negative stereotypes about the sexes presented by the media and the representatives of the advertising sector and undertakes numerous actions against discrimination on grounds of sex in advertising campaigns.

In her petition to the Office of Competition and Consumer Protection, the Defender asked⁴⁸ for an opinion on whether, pursuant to Article 16(1) of the Act on combating unfair competition⁴⁹, such advertising campaigns did not breach good practices and thus human dignity, and therefore were acts of unfair competition. In reply⁵⁰, the Office of Competition and Consumer Protection declared that in this case the infringement of the collective interest of consumers must be connected with the infringement of its economic aspects. The breach of the ban on advertising violating human dignity may infringe the public interest, but is not tantamount to infringement of the collective interest of consumers. The Defender plans to file another petition concerning this case to the Office of Competition and Consumer Protection.

In 2013, the Advertising Council decided to amend its regulations, which currently allow it to examine the complaints concerning also the entities registered abroad. The lack of such provision did not allow for intervention e.g. with regard to large-scale outdoor advertising of some websites containing pornographic content, which were also the subject of complaints filed to the Defender.⁵¹

(b) Ensuring balanced participation of women and men in management boards of state-owned companies

Imbalances in filling senior positions in enterprises in terms of sex are currently a major challenge in all Member States of the European Union. The number of women which influence the most important economic and financial decisions in the Polish business is much lower than that of men. Only six in each 100 of Polish companies' CEOs are women. According to the analyses of the Polish Confederation Lewiatan, only women account for only 6.8% of CEOs of 400 large Polish 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 Con-

⁴⁸ RPO-716405- I/12 of 14 January 2013.

⁴⁹ Act of 16 April 1993 (Dz. U. of 2003 No 153, item 1503, as amended).

⁵⁰ Letter of 24 January 2013.

⁵¹ RPO-730362-I/13 concerning the advertising campaign of the showup.tv website.



stitution and Poland's membership in the European Union. Changes aimed to ensure actual gender equality should be introduced gradually by promoting good practices. Where such solutions do not bring the expected results, legal instruments must be used. The Defender is of the opinion that statutory regulations should be introduced on the composition of management and supervisory boards of public companies. First of all, such solutions should be introduced in companies with the participation of the State Treasury and in municipal companies.

The Defender continued to act on the case and asked⁵² the Minister of Treasury to provide information about the actions taken in this regard. The Minister informed⁵³ that he had approved the document entitled "Good practices in ensuring balanced participation of women and men in the governing bodies of companies with participation of the State Treasury", recommending its use in recruitment of members to the governing bodies of the companies with participation of the State Treasury. The application of the principle of balanced participation of women and men to recruitment of the members of governing bodies of enterprises should result in increasing the average share of underrepresented sex to 30% of all members of supervisory boards selected and appointed by the Minister of Treasury. In public and key companies, the figure should be accomplished by 2015. In addition, the Minister of Treasury issued the Order No 6 of 7 March 2013, pursuant to which the document "Principles of ownership supervision over companies with participation of the State Treasury" was supplemented with a provision stipulating that the recruitment of appropriately qualified members of supervisory board should take into account balanced participation of women and men in order to ensure appropriate functioning of ownership supervision.

The Defender asked⁵⁴ for information about the implementation of the said Order of the Minister of Treasury, emphasizing that the implementation of good practices in this area in the entities supervised by the Minister of Treasury will promote wider application of similar solutions in other economic operators, such as municipal companies or listed companies with private capital. The case will be monitored in 2014.

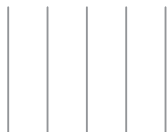
(c) Preventing violence against women, including elderly and disabled women

Violence against women breaches the right to life and health, to respect for private and family life, and breaches the ban on inhumane and degrading treatment. It is a form of discrimination on grounds of sex, motivated by the perpetrators' conviction about the second-rate role of women. Due to the occurrence of multiple discrimination, i.e. unequal treatment on grounds of more than one personal characteristic,

⁵² RPO-712795-I/12 of 23 October 2012 and of 21 March 2013.

⁵³ Letter of 8 April 2013.

⁵⁴ Letter of 30 December 2013.





elderly women and women with disabilities are at a particular risk of falling victim to violence.

Therefore, the Defender commissioned the analysis of this problem. Its results were presented in the report entitled “Counteracting violence against women, including elderly women and women with disabilities”.⁵⁵ The report built on the results of qualitative and quantitative research analysing various aspects of violence against women, including elderly women and women with disabilities, and the studies commissioned by the Defender as the equality body. The studies commissioned by the Defender focused on family violence, in particular against women with disabilities and elderly (i.e. aged over 65) women and the knowledge of interdisciplinary teams’ members with respect to legal solutions concerning assistance for victims of violence. The analysed group consisted of representatives of five statutorily designated services constituting an interdisciplinary team. They consist of organisational units of welfare services, representatives of gmina committees for solving of alcohol-related problems, the Police, education services and health care services.

The studies and other available sources of information about the scale of violence against women in Poland show that violence against elderly and disabled women is largely ignored, difficult to identify and analysed only in a very narrow area. The publication and the results of the control by the Supreme Audit Office on the efficiency of performance of the public administration’s tasks resulting from the Act on counteracting family violence⁵⁶ presented in the Defender’s petition⁵⁷ to the Minister of Labour and Social Policy illustrate the inadequate knowledge of the employees of services involved in preventing and combating violence against women. Furthermore, although elderly women and women with disabilities are a group at particular risk of violence, in particular domestic violence, have a difficult access or no access at all to both legal and psychological assistance. There is still no coherent state policy for prevention and combating of violence on grounds of sex, taking into account the aspect of age and disability.

Referring to the finding from the report by the Supreme Audit Office⁵⁸, the Minister stated that the introduction of changes was a complex and long-lasting process. She noted that it was too early to assess the system, since the relevant legal changes became effective relatively recently and the control of the Supreme Audit Office covered only 37 units, i.e. a slight percentage of all institutions acting pursuant to new regulations. She also informed about the work on drawing up another National Programme on Preventing Domestic Violence 2014-2020, the main objective of which is to increase the efficiency of preventing family violence and reduce the scale of this problem in Poland.

⁵⁵ *Counteracting Violence against Women, Including Elderly and Disabled Women*, Equality Treatment Principle. Law and Practice, No 9. Human Rights Defender Bulletin 2013, No 7.

⁵⁶ Act of 29 July 2005 (Dz. U. of 2005 No 180, item 1493, as amended).

⁵⁷ RPO-747923-III/13 of 23 September 2013.

⁵⁸ Letter of 4 October 2013.



The Defender is preparing another petition to the Minister of Labour and Social Policy on this issue and will monitor the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence and the adjustment of the Polish law to its standards.

(d) Implementation of the procedure for objection to medical certificates in the context of execution of judgments in the case of *Tysic v. Poland* and *R.R. v. Poland*

The Defender carried out a control of the files of the acts of objection against physicians' opinions or certificates lodged to the Medical Committee for the Commissioner for Patients' Rights in relation to the explanatory proceedings regarding the execution of the judgment of the European Court of Human Rights in the case of *Tysic v. Poland*⁵⁹ and in the case of *R.R. v. Poland*⁶⁰.

The analysis yielded a conclusion that the objection procedure was ineffective and its introduction solely delivered on the formal requirements of the European Court of Human Rights towards Poland. In the opinion of the Defender, the implementation of those formal requirements cannot be considered satisfactory. Taking into account the recommendations of the European Court of Human Rights, as well as the need to ensure effective protection against the standards established by the European Convention on Human Rights, the Defender is of the opinion that the Act on patients' rights and the Commissioner for Patients' Rights⁶¹ must be amended. The Defender asked the Minister of Health and the Commissioner for Patients' Rights⁶² to analyse the report and present their opinion on recommendation to amend the Act.

Referring to the recommendations of the Defender, the Commissioner for Patients' Rights replied⁶³ that the proposal to enable objection to oral opinion or decision cannot be granted. The proposal to reduce the time for examination of an objection to a medical opinion or certificate is included in the assumptions for a draft Act amending the Act on patients' rights and the Commissioner for Patients' Rights⁶⁴, submitted by the Ministry of Health for inter-ministerial consultation. The draft assumptions also provide for simplification of the objection procedure by abandoning the requirement to identify the regulation stipulating the patient's rights or obligations.

The Minister of Health informed⁶⁵ about the draft assumptions for the draft Act amending the Act on patients' rights and the Commissioner for Patients' Rights and certain other acts, which currently undergoes inter-ministerial consultation and pub-

⁵⁹ Judgment of 20 March 2007, application No 5410/03.

⁶⁰ Judgment of 26 May 2011, application No 27617/04.

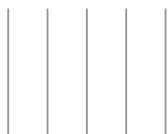
⁶¹ Act of 6 November 2008 (Dz. U. of 2012, item 159, as amended).

⁶² RPO-578571-I/08 of 16 October 2013.

⁶³ Letter of 15 November 2013.

⁶⁴ Act of 6 November 2008 (Dz. U. of 2012, item 159, as amended).

⁶⁵ Letter of 15 November 2013.





lic consultation. The assumptions do not provide for the possibility to lodge objection in any form, in particular by phone. The possibility to lodge objection to oral medical opinion or certificate also raises serious doubts. Additional proposed changes may be taken into account at subsequent stages of the legislative procedure.

In the opinion of the Defender, the judgments in the case of *Tysic v. Poland* and *R.R. v. Poland* cannot be considered executed. The Defender expects amendment to the Act on patients' rights and the Commissioner for Patients' Rights, taking into account the recommendations included in the analysis which will facilitate the actual execution of the patients' right to file objection.

(e) Anti-mobbing procedures at the Police

Taking into account the explanatory proceedings conducted by the Defender in the case concerning the officers of one of the Voivodeship Headquarters of the Police, the Defender filed⁶⁶ a petition to the Minister of the Interior arguing that the labour regulations concerning the Police officers did not include anti-mobbing procedures which would enable i.a. lodging a complaint to an independent body that could investigate the matter. In reply, the Minister of the Interior informed⁶⁷ that work would start at the Ministry to analyse the possibility to introduce solutions on mobbing in the labour regulations of the Police. The Defender will monitor the implementation of anti-mobbing procedures in the services reporting to the Minister of the Interior.

(f) Determination of marital status rights and discrimination of fathers with regard to the custody of children

The Defender receives complaints from fathers of minor children concerning the determination of marital status rights, most often in cases concerning the determination of the child's parentage, denial of paternity or ineffectiveness of acknowledgment of paternity (annulment of the acknowledgement of paternity). The fathers lodging complaints to the Defender are most often deprived of the possibility to pursue their rights in court due to the expiry of the deadline for filing an action or have never had such a right due to subjective exemption. This concerns in particular biological fathers who cannot pursue their legal paternity when another man has already acknowledged the child to be his own.

Pursuant to Article 86 of the Family and Guardianship Code, actions to establish or deny paternity and to establish the ineffectiveness of acknowledgement of paternity may be filed also by a prosecutor, if so required by the best interest of the child or the protection of the public interest. The prosecutors often refuse to take up the case due to the lack of irrefutable evidence for biological paternity of the applicant in the form of genetic tests. The regulations in force still limit the access of citizens to this means of evidence. Numerous

⁶⁶ RPO-735572-III/13 of 5 August 2013.

⁶⁷ Letter of 23 September 2013.



interventions of the Defender over the course of many years⁶⁸ have proven ineffective. The common practice supporting the execution of the rights of individual must be developed and implementing in cases concerning marital status rights. The Defender asked⁶⁹ the Prosecutor General for information whether the public prosecutors' offices follow an established procedure for handling the actions for establishment or denial of paternity or for establishment of the ineffectiveness of acknowledgement of paternity, as well as for provision of statistics on cases conducted by prosecutors based on Article 86 of the Family and Guardianship Code. The Defender has not received complete data in this regard so far.

(g) Provisions of the company social benefits fund which discriminate the fathers

Based on a press report, the Defender initiated explanatory proceedings concerning the provisions of the company social benefits fund in place at one of the universities which were discriminatory for fathers. An employee was denied the funds for day care centre or kindergarten, since such co-financing was intended only for women and single fathers employed at the university. The Defender sent⁷⁰ a letter to the State Labour Inspection, requesting investigation on the compliance of the university regulations with the provisions of the Act on company social benefits fund.⁷¹ In reply⁷², the Defender was informed that, due to irregularities found, an order was issued to remove the provisions incompliant with the Act on company social benefits fund and the provision potentially discriminatory on grounds of sex from the regulations on the company social benefits funds and to grant benefits depending solely on the living, family and material situation of the person entitled to benefits. Therefore, the Defender considered the case to be completed successfully.

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

(a) Hate crimes

The Defender receives complaints about acts of violence motivated by hatred towards non-heterosexual and transgender persons, including the assault and battery of a social activist and employee of the Wrocław Contemporary Museum due to his homosexual orientation⁷³, disturbing the festival of LGBT films at "Kosmos" Film Art Centre

⁶⁸ RPO-383896-IV/01 of 25 July 2001, of 3 March 2004, of 13 September 2007 and of 23 October 2009.

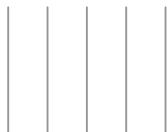
⁶⁹ RPO-715092-IV/12 of 21 October 2013.

⁷⁰ RPO-740267-III/13 of 12 August 2013.

⁷¹ Act of 4 March 1994 (Dz. U. of 2012 No 592, as amended).

⁷² Letter of 17 October 2013.

⁷³ RPO-740802-II/13 of 11 July 2013.





in Katowice⁷⁴, disturbing of the meeting of the “Tęczówka” Association at “Archibar” by the fans of the GKS Katowice football club and the members of the National Radical Camp (ONR)⁷⁵, insulting of the members of the Campaign Against Homophobia (KPH) at the Internet forum⁷⁶, disturbing a public assembly “Coming Out Day 2013. Become a hero”⁷⁷. In such cases, the Defender asked the competent commanders of the Police for information about the actions taken, which she often praised.

However, complaints about disrespectful treatment of non-heterosexuals and transgender persons by Police officers are particularly disturbing. The Defender initiated proceedings concerning the detention of a man – a transgender person by the Police officers due to riding on a tram without a ticket and suspected use of someone else’s documents or personal data of another person. The man was subjected to a thorough strip search and humiliating treatment due to his gender identity. The Police officers called the randomly selected number from his phone and insulted him, deriding him and requesting him to undress. In the opinion of the Defender, the allegation of such a gross violation of fundamental rights and freedom of a detained persons required an immediate initiation of a detailed, thorough and efficient proceedings to investigate the circumstances of the case and to identify the responsible Police officers.⁷⁸ In reply to the petition of the Defender, the Małopolskie Voivodeship Commander of the Police stated⁷⁹ that the allegation of degrading and humiliating treatment of the detainee was not confirmed by the unanimous statements of the Police officers. However, the workplace discipline was breached, since the Police officers failed to draw up the protocol on detention. The Defender will continue the proceedings regarding this case, since she considers the presented explanations unsatisfactory.

(b) Graphic sign infringing the dignity of homosexual persons

The Defender conducted explanatory proceedings concerning the presence of graphic signs insulting specific groups of persons, in particular the “no way for gay” sign, in the public space. The Defender, upon her own initiative, intervened in the case of placing this sign in one of the Warsaw clubs. In the opinion of the Defender, this could meet the criteria of a prohibited act laid down in Article 141 of the Code of Petty Offences.⁸⁰ The opinion that the “no way for gay” sign is an obscene drawing referred to in Article 141 of the Code of Petty Offences was expressed i.a. by the Regional Prosecutor in Warsaw in an appeal concerning the registration of the sign as the symbol of the political party National Radical Camp (ONR), which is pend-

⁷⁴ RPO-732482-XVIII/13 of 24 April 2013.

⁷⁵ RPO-732483-XVIII/13 of 24 April 2013.

⁷⁶ RPO-733878-II/13 of 10 May 2013.

⁷⁷ RPO-751179-XVIII/13 of 18 October 2013.

⁷⁸ RPO-753120-I/13 of 12 November 2013.

⁷⁹ Letter of 18 December 2013.

⁸⁰ RPO-752585-I/13 of 7 November 2013.



ing before the Regional Court in Warsaw.⁸¹ In reply to the petition of the Defender⁸², the Warsaw Commander of the Police informed that he had initiated investigation to determine whether there were grounds for a motion for punishing the perpetrator of the offence. The Defender continues to monitor the activities of law enforcement authorities regarding this case.

(c) Gender recognition

On 1 August 2011, the Defender addressed the Minister of Justice in the case concerning the procedure for legal gender recognition.⁸³ The Minister agreed with the Defender⁸⁴ that a legal act should be drawn up and adopted to comprehensively regulate the situation of transgender persons. He also declared that an inter-ministerial team would be established to develop the appropriate legal solutions. However, the Minister rejected the solution proposed by the Defender and consisting in changing the procedure from litigious to non-litigious in case of inability to swiftly adopt a comprehensive act regulating the entire issue. The Minister added⁸⁵ that the Deputies' draft Act on gender recognition had been submitted to the Sejm of the Republic of Poland in May 2012. The draft Act provides for, *inter alia*, resigning from litigious proceedings and introducing non-litigious proceedings in cases relating to gender recognition. Therefore, the Ministry of Justice informed that it was not reasonable to undertake a separate legislative action. However, according to the information obtained by the Defender, an inter-ministerial team to develop a draft Act on gender recognition was established in mid-2012. The Defender asked for information on whether the legislative work on the issue had started at the Ministry of Justice.⁸⁶

In reply, the Minister of Justice informed⁸⁷ that preliminary draft assumptions for the draft Act amending the Act – Code of Civil Procedure, the Act – Family and Guardianship Code, the Act on physician and dentist profession and some other acts had been prepared. The draft assumptions provide for two separate proceedings, the first one concerning the issue of the medical certificate attesting the existence of permanent gender identity different than the legal gender and the judicial proceedings concerning the motion for legal gender change.

In order to ensure the best possible solutions in terms of human rights in the pending legislative work, the Defender, in cooperation with the “Transfuzja” Foundation and the Council of Europe, organised a conference entitled “European standards and good practices in gender recognition”. The issue of gender recognition was discussed by persons involved in work on changing the current legal situation, i.e. representa-

⁸¹ Letter of 28 November 2011, file No VII Ns Rej Ew Pzm 11/12.

⁸² Letter of 16 December 2013.

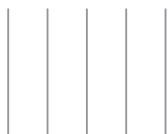
⁸³ RPO-660929-I/11 of 1 August 2011.

⁸⁴ Letter of 22 September 2011.

⁸⁵ Letter of 15 October 2012.

⁸⁶ RPO-660929-I/11 of 17 April 2013.

⁸⁷ Letter of 21 May 2013.





tives of organisations specialising in protection of transgender persons' rights, academics and a representative of the Ministry of Justice. The meeting provided an opportunity to confront the existing and planned solutions with the recommendations of the Defender and international organisations.⁸⁸ There are two models of regulating the legal gender recognition which are based on different assumptions. The first one is a medical model and the other the human rights model. The first one is based on the assumption that transgenderism is a disorder which must be treated and focused on pathologisation and medicalisation of the phenomenon. The second model takes into account the needs of transgender persons, respecting their identify and dignity, and aims at refraining from medicalisation and simplifying the procedure for legal gender recognition. The Defender expects that during the legislative work the Ministry of Justice will take into account the needs of transgender persons, closer to the human rights model.

(d) Discrimination on grounds of sexual orientation in employment

The Defender investigated the case of a person employed based on a civil law contract who was allegedly dismissed due to sexual orientation. Article 8(1)(2) of the Act of 3 December 2010 on the implementation of some regulations of European Union regarding equal treatment⁸⁹ 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 employment under a civil law contract.

In the opinion of the Defender presented in the petition to the Chief Labour Inspector⁹⁰, the provisions of the Act on equal treatment prohibiting discrimination in employment based on civil law contracts belong to the tasks of the National Labour Inspectorate. The Chief Labour Inspector agreed⁹¹ with the Defender, but emphasized that the National Labour Inspectorate controls the compliance with the labour law and the provisions of the Act on equal treatment do not belong to the labour law. In the case of persons employed on the basis of a civil law contract, the Inspectorate may only examine occupational health and safety and legality of employment. Therefore, the Defender asked⁹² the Chairman of the Social Policy and Family Committee of the Polish Sejm to examine the grounds for amending the Act on National Labour Inspectorate⁹³ in order to include the right to control the compliance with the pro-

⁸⁸ See in particular Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe of 31 March 2010 to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, CM/Rec (2010)5.

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

⁹⁰ RPO-704986-I/12 of 3 January 2013.

⁹¹ Letter of 12 February 2013.

⁹² RPO-704986-I/12 of 13 June 2013.

⁹³ Act of 13 April 2007 (Dz. U. of 2012, item 404, as amended).



visions of the Act on equal treatment, which prohibit unequal treatment of natural persons employed based on a civil law contract, in the legal grounds authorising the National Labour Inspectorate to carry out inspection activities. The Chairman of the Social Policy and Family Committee informed⁹⁴ that the problem would be subject to further analyses and consultation in the Committee. The Defender will monitor the work on this case.

(e) Discrimination on grounds of sexual orientation in health care

The conclusion stemming from the meetings of the Defender with the representatives of the Ministry of Health, the Office of the Commissioner for Patients' Rights and non-governmental organisations is that the problems encountered by persons at particular risk of discrimination in health care on grounds of their sexual orientation stem mainly to insufficient knowledge (often based on stereotypes and prejudice) of doctors about the needs of non-heterosexual persons. The Defender commissioned an anti-discriminatory study entitled "Equal treatment as perceived by non-heterosexuals in health care". The purpose of the study was to obtain more information about discrimination of non-heterosexual persons in health care, the impact of such discrimination on disease prevention and the limited contacts with health care services, as well as the knowledge of doctors about the contact with, diagnosis and treatment of non-heterosexual persons. The study covered doctors and patients-non-heterosexual persons. The report on the study, along with recommendations of the Defender, will be presented in 2014.

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

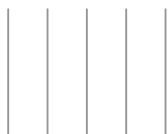
(a) Religion and ethics lessons at schools

The Defender continues to monitor the execution of the judgment of the European Court of Human Rights in the case of *Grzelak v. Poland*⁹⁵ concerning the implementation of Polish regulations on the organisation of classes in religion and ethics in schools. In her petition to the Prime Minister⁹⁶, the Defender stated that, despite the three years that had elapsed from the announcement of the judgment, the systemic problems concerning the ethics classes in Polish schools had not been resolved. The lack of any visible progress results in the Council of Europe standards in this area not being complied with in Poland. The problems related to organisation of ethics classes in public schools still remain. Ethics classes for pupils who do not participate

⁹⁴ Letter of 16 December 2013.

⁹⁵ Judgment of 15 June 2010, application No 7710/02.

⁹⁶ RPO-601727-1/08 of 3 July 2013.





in religious instruction, in particular when the mark for religion/ethics is taken into account in calculating the average annual mark on a school report, are an important supplement to educational offer. The Defender filed numerous petitions to the Minister of National Education on teaching ethics in schools. The reports submitted to the Defender and the data presented by the Ministry of National Education show that the actual availability of ethics courses in Polish schools is insufficient. The Defender asked for information about the reasons for failure to take specific action to execute the recommendations of the European Court of Human Rights, for presentation of the opinion on the amendment to the Ordinance of the Minister of National Education of 14 April 1992 on conditions and method of organising religious instruction in public kindergartens and schools⁹⁷, as well as for the plan of actions aimed at executing the said judgment along with their schedule.

In reply, the Minister of National Education informed⁹⁸ that the adopted government action plan to execute the judgment of the European Court of Human Rights in the case of *Grzelak v. Poland* provided for preventive information activities, in particular the translation and dissemination of the judgment and the provision of information about the rules governing the organisation of ethics courses to the education officers and headmasters of schools. Due to suggestions of the Department for the Execution of Judgments of the ECHR, the Ministry of National Education adopted a schedule of actions concerning the introduction e-learning ethics courses in public schools, if ethics classes cannot be organised pursuant to the existing regulations due to the insufficient number of pupils wishing to participate in such classes. The case is monitored by the Defender.

The Defender also receives complaints about the cases where kindergartens or schools require written statements from parents on resignation from religious instruction of their children. Such requirement is incompliant with the existing regulations which provide for declaration on wish to participate in such classes and may be considered to be a form of discrimination on grounds of religious beliefs or irreligion. The Defender asked the Minister of National Education⁹⁹ to remind the education officers, and through them also the headmasters of educational establishments, about the need to apply the binding legal regulations and to inform the Defender about the actions taken.

In reply¹⁰⁰, the Minister agreed with the Defender on the practice of requiring written statements from parent on non-participation in religious instruction and stated that such practice was incompliant with the existing regulations. The Ministry is to discuss the said problem in the planned information for education officers and headmasters of schools to be provided before the beginning of the next school year.

⁹⁷ Ordinance of 14 April 1992 (Dz. U. No 36, item 155, as amended).

⁹⁸ Letter of 12 August 2013.

⁹⁹ RPO-601727-1/08 of 15 November 2013.

¹⁰⁰ Letter of 4 December 2013.



(b) Ritual slaughter

The Defender received complaints from the Muslim Religious Union in Poland and from the European Jewish Association to analyse the compliance of the current regulations on religious slaughter with the Polish Constitution. On 1 January 2013, the Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing entered into force. From that date, the ritual slaughter has been regulated not only by the national law but also by the EU law. Pursuant to the Regulation, in the case of animals subject to particular methods of slaughter prescribed by religious rites, the requirements concerning the stunning of animals before their killing do not apply provided that the slaughter takes place in a slaughterhouse. The Minister of Agriculture is responsible for legislative initiative in this regard. The Defender asked the Minister of Agriculture and Rural Development to present his position on the issue and to provide information on whether legislative work on ritual slaughter was planned.

In reply, the Minister of Agriculture and Rural Development¹⁰¹ explained that as a result of the judgment of the Constitutional Tribunal¹⁰² the provision of the Ordinance of the Minister of Agriculture and Rural Development, providing for the resignation from stunning of animals slaughtered in line with religious rites of registered religions unions, was no longer effective in the Polish legal system. The Minister of Agriculture informed the Directorate-General for Health and Consumers about the ban on slaughter of animals in a slaughterhouse without stunning which has been in effect in Poland from 1 January 2013. Pursuant to Article 34(1) of the Act on the protection of animals¹⁰³, vertebrate animals may only be killed in a slaughterhouse after being rendered unconscious by persons with the relevant qualifications. One of the courts addressed a legal question to the Constitutional Tribunal about the compliance of the provision with the Constitution.¹⁰⁴ The ruling of the Tribunal will be decisive for the application of regulation on ritual slaughter. Furthermore, the work is ongoing on the draft Act amending the Act on the protection of animals, implementing the Council Regulation (EC) No 1099/2009, prepared by the Government Legislation Centre. The Defender will continue the proceedings regarding this case.

(c) Hate crimes

The Defender monitors penal proceedings in hate crimes on grounds of religion on an ongoing basis. Particular attention should be paid to the acts against places of worship or burial reported to the Defender, such as an attempt to set fire to a mosque¹⁰⁵

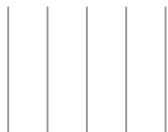
¹⁰¹ Letter of 25 November 2013.

¹⁰² Judgement of 27 November 2012, file No U 4/12.

¹⁰³ Act of 21 August 1997 (Dz. U. of 2013, item 856).

¹⁰⁴ File No P 34/13.

¹⁰⁵ RPO-751287-I/13.





or painting the word NAZI on the entrance gate to the Jewish cemetery¹⁰⁶, since they may be classified as discriminatory crimes on grounds of religion.

The Defender monitors the pending proceedings to formulate specific findings as well as general conclusions concerning the problems occurring in the course of such proceedings.¹⁰⁷ Specific actions of the Defender aimed at preventing hate crimes are discussed in the section entitled *Preventing discrimination on grounds of race, ethnic origin or nationality*.

(d) Preventing anti-Semitism

On 5 December 2013, a debate entitled “Anti-Semitism. Diagnosis of the phenomenon in Poland as compared to the situation in the European Union” was held at the Office of the Human Rights Defender. The description of the seminar is presented in the section entitled *Preventing discrimination on grounds of race, ethnic origin or nationality*.

(e) Discrimination on grounds of religion and denomination in prisons

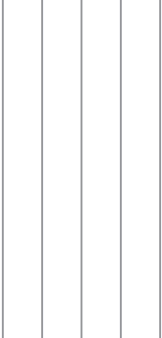
The Defender received another complaints that prisons do not respect the religion or denomination of prisoners as they fail to adapt food to religious requirements and prevent prisoners from practicing their religion. In such cases, the Defender asked the competent District Directors of the Prison Service to investigate the matter. According to the European Court of Human Rights¹⁰⁸, failure to provide food in conformity with religious beliefs of a prisoner is a breach of the Convention. The need to provide prisoners with a diet that takes into account their religion is also mentioned in the Recommendation of the Committee of Ministers to member states on the European Prison Rules.¹⁰⁹ As a result of the Defender’s intervention, the prisons, where it was found that the diet corresponding to religious requirements was refused to prisoners without sufficient grounds, provided the prisoners with the appropriate diet. However, the Office of the Human Rights Defender still receives the complaints of prisoners concerning this problem.

¹⁰⁶ RPO-716801-I/12.

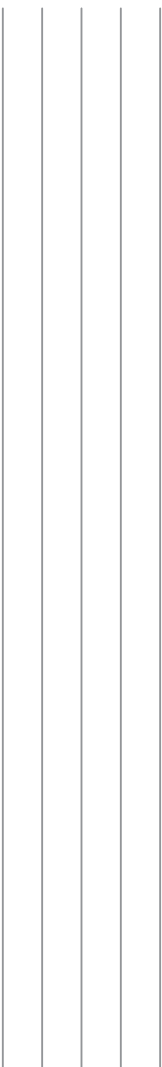
¹⁰⁷ See the comments of the Defender in the part *Preventing discrimination on grounds of race, ethnic origin or nationality*, point (a) *Hate crimes*.

¹⁰⁸ Judgement of 7 December 2007 in the case of *Jakóbski v Poland*, application No 18429/06.

¹⁰⁹ Recommendation of 11 January 2010, CM/Rec (2006)2.



**II. Activity of the Human Rights Defender
to support, protect and monitor
implementation of the Convention
on the Rights of Persons with Disabilities and
to prevent discrimination on grounds
of disability**





1. Accessibility (Article 9 of the Convention)

(a) Accessibility of buildings to persons with disabilities

The Defender received complaints from persons with disabilities about existing provisions which, in their opinion, do not prevent actual discrimination of persons with disabilities in terms of accessibility of public space, public utility buildings and residential multi-family housing. The accusations raised in citizens' complaints concern inactivity and inefficiency of architecture and construction administration bodies and building control in the area of control whether investors comply with the obligations imposed by the Act – Building Law¹¹⁰ and secondary legislation issued on its basis. Many buildings, both new and extended or refurbished, are put to use although they are not adapted to the needs of persons with disabilities in spite of the statutory obligation. Ratification of the Convention on the Rights of Persons with Disabilities by Poland necessitates a change in current practices and amendment of ineffective provisions so that the protection of the disabled by the state, guaranteed by the Convention, is effected. It seems worthwhile for the regulator to consider introducing a legal norm that would impose an obligation to take specific steps aimed at eliminating barriers in everyday life of the disabled, by a specified deadline, on owners and managers of public utility buildings and multi-family housing buildings. The Defender requested the Minister of Transport, Construction and Maritime Economy¹¹¹ for his opinion on the matter.

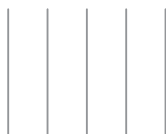
The Minister confirmed¹¹² that in the case of public utility buildings where no construction works are carried out, there is no legal basis to demand adapting them to the needs of the disabled. In the Minister's view, an alternative way to solve the problem of accessibility of public services to persons with disabilities would be, for example, to use means of electronic communication. In his reply, he also stated that the General Inspector of Building Control petitioned all voivodes to highlight the need of particular control of the conditions of accessibility of public utility buildings to the disabled assumed in building designs. He also petitioned all voivodeship inspectors of building control and obliged voivodeship and poviats level bodies to comply with the recommendations of the Supreme Audit Office (NIK) provided in the *Information on the results of control by the Supreme Audit Office – Accessibility of public utility buildings to disabled persons in Podlaskie Voivodeship*.¹¹³ Accessibility of buildings to persons with disabilities remains one of the Defender's priorities.

¹¹⁰ Act of 7 July 1994 (Dz. U. No 2013, item 1409).

¹¹¹ RPO-728520-IV/13 of 24 July 2013.

¹¹² Letter of 13 September 2013.

¹¹³ <http://www.nik.gov.pl/plik/id,4642,vp,5982.pdf>





(b) Accessibility of banking services to persons with disabilities

The Defender welcomed the activity of the Polish Bank Association (ZBP) aimed at devising recommendations for the banking sector concerning provision of services to disabled persons. In the Defender's opinion, establishing the procedures which regulate the conclusion of bank agreements with persons with a vision dysfunction should be focused on protecting these persons from abuse. Yet, such protection may not create barriers in access to banking services. In her petition to the President of the Polish Bank Association,¹¹⁴ the Defender addressed actions aimed at ensuring the disabled equal access to electronic banking, including ATMs. It is worthwhile to analyse the proposal included in draft *Recommendation on providing services to disabled persons in banks* which concerns reading out agreements to blind people by bank employees. The postulates of circles of vision-impaired people on introducing a rule on recording while reading are important. Hearing-impaired persons should be provided with assistance of a sign language interpreter. The Defender emphasised it is advisable to take actions aimed at simplifying the language of bank agreements not only for the sake of the disabled, but also other non-professional market participants, including seniors. The Defender requested information on work on the draft *Recommendation on providing services to disabled persons in banks* and on good practices worked out by banks in this area.

The President of the Polish Bank Association stated¹¹⁵ that banks which are Members of the Polish Bank Association received *Good practices in providing services persons with disabilities by banks* adopted by the Board of the Polish Bank Association. The purpose of the first edition of *Good practices* is to provide banks with guidelines that allow functional and effective use and improvement of existing mechanisms, instruments and resources in branches, taking into consideration the law in force. In relation to the above, it is planned to expand and update the *Good practices* on a regular basis so that their subsequent editions cover the needs of persons with different types of disabilities to a greater extent and in more detail.

(c) Accessibility of websites of public institutions to people with disabilities

The Defender published a report entitled *Accessibility of Websites of Public Institutions to People with Disabilities. Analysis and Recommendations*.¹¹⁶ The report is a result of a comprehensive study on accessibility of 3,000 websites of public institution bodies carried out by the Foundation Institute for Regional Development in Q4 of 2012 and in July 2013. The purpose of the publication is to verify accessibility of public websites before the deadline for their adaptation, which is the end of May 2015, and to pinpoint the

¹¹⁴ RPO-678032-V/11 of 28 May 2013.

¹¹⁵ Letter of 5 June 2013.

¹¹⁶ *Accessibility of Websites of Public Institutions to People with Disabilities. Analysis and Recommendations*, Equal Treatment Principle. Law and Practice, No 11, HRD Bulletin 2013, No 9.



most important challenges in this area. The study shows that none of the websites under analysis was 100% accessible to persons with disabilities and other people at risk of digital exclusion. It is necessary to conduct regular trainings in creating and publishing accessible public documents and electronic information and in the WCAG 2.0 standard for persons who disseminate this information in public administration bodies and who are responsible for information exchange systems and websites. It is also necessary to hold regular controls of the level of accessibility of public websites. The electronic version of the report is available at the Defender's website, in the Publications tab.

(d) Services provided to the deaf in public offices and institutions

The Act on sign language and other means of communication¹¹⁷ was adopted in 2011. The Act obliges public administration bodies to ensure solutions aimed at facilitating communication to deaf and deafblind people. The Defender received reports that not all obliged entities perform the obligations resulting from the Act correctly. For that reason, the Defender decided to verify the Act implementation status and commissioned an anti-discrimination study entitled *Knowledge of officials of the obligations resulting from the Act on sign language and other means of communication*. A report from the study will be published in 2014.

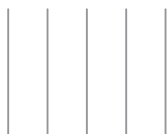
2. Freedom from torture or cruel, inhuman or degrading treatment or punishment (Article 15 of the Convention)

(a) Situation of persons with intellectual disability in prisons

In 2013, the Defender started explanatory proceedings on placing persons with intellectual disability in penitentiary units and petitioned the Prosecutor General on the matter.¹¹⁸ Information from the Director General of the Prison Service said that at that time there were over 200 persons with severe and moderate intellectual disability in prisons and pre-trial detention centres. In these persons, all processes are impaired, i.e. perception and cognitive processes (especially thinking, emotions, motivation) and performance processes. Therefore, the Prison Service provides such persons with counselling aimed at training self-care and hygiene and motoricity improvement, and ensures their safety. The Defender informed that the Director General stated that the prison system's major problem was especially the functioning of persons with intellectual disability in pre-trial detention. The Defender asked to be informed in actions taken in this area by the Prosecutor General. The Defender awaits his reply.

¹¹⁷ Act of 19 August 2011 (Dz. U. of 2011, No 209, item 1243).

¹¹⁸ RPO-720173-II/12 of 10 December 2013.





(b) Preventing placement of persons with physical disability in overcrowded cells

The Defender received complaints from persons with disabilities who are staying in penitentiary units about placing them in overcrowded cells. The regulator places particular emphasis on avoiding generalised influences on convicts. Disability is a premise for greater individualisation of serving a penalty of imprisonment. The task of public authority bodies is to create adequate conditions for the implementation of programmes to provide equal opportunities to disabled persons. This is also the task of the Prison Service. The Defender requested¹¹⁹ the Director General of the Prison Service to take appropriate action to prevent the placement of inmates with physical disabilities, who should have adequate space to move, in overcrowded cells.

The Director stated¹²⁰ that the Prison Service conducts regular activities aimed at ensuring prisoners the statutory right to 3 m² of living space. In accordance with existing regulations, all prisoners, including the disabled, are examined by a physician on admission to a pre-trial detention centre or prison, who makes recommendations on further actions, such as placement in a cell adapted for the disabled, free supply of the necessary prostheses, orthopaedic items and aids, and provides other recommendations resulting from possible restrictions faced by the disabled inmate. Despite the existing architectural barriers, there are separate cells for disabled inmates in penitentiary establishments. The Director emphasised that the case of temporary placement of a prisoner in an overcrowded cell was incidental. The case will be monitored in 2014 for the occurrence of further cases of placing persons with reduced mobility in penitentiary units in overcrowded cells.

(c) Adaptation of penitentiary units to the needs of persons with disabilities

The Defender took up the case of adaptation of Polish penitentiary units to the needs of disabled persons *ex officio*. In the current legal situation, there is no obligation for prisons and pre-trial detention centres to ensure appropriate conditions for disabled inmates, which is contrary to the Convention on the Rights of Persons with Disabilities ratified by Poland. The Act – Building Law¹²¹ does not provide a definition of a “public utility building,” which in practice makes it impossible to unambiguously specify buildings to which the obligation to adapt to the needs of disabled persons applies. The provisions of the Ordinance of the Minister of Infrastructure on technical conditions to be met by buildings and their location,¹²² issued on the basis of the Act – Building Law, introduce a definition of a public utility building and a collective

¹¹⁹ RPO-727955-II/13 of 21 October 2013.

¹²⁰ Letter of 14 November 2013.

¹²¹ Act of 7 July 1994 (Dz. U. of 2010, No 243, item 1623, as amended).

¹²² Ordinance of 12 April 2002 (Dz. U. No 75, item 690, as amended).



accommodation building. Accommodation buildings within prisons and pre-trial detention centres have been left out of the definition of a “public utility building.” The statutory authorisation only allowed determining technical conditions to be met by buildings and their location. It did not allow determining the categories of buildings to which statutory requirements on adaptation of a building to the needs of the disabled may not apply. In addition, the provisions of the Ordinance considerably limit the rights of the disabled staying in penitentiary establishments, as they introduce exclusions on the basis of which disabled persons have difficult access to utility rooms on other floors and to prison yards. These regulations violate the constitutional principle of equality before the law. The Defender requested¹²³ the Minister of Infrastructure and Development for her position on the matter and considering the possibility of undertaking a legislative initiative

In her reply, the Minister¹²⁴ declared she indeed saw the need to change the provisions and that actions will be taken to prepare an in-depth analysis of the effects of amending the Ordinance in cooperation with the Ministry of Justice. The results of the analysis will be forwarded to the Building Law Codification Committee to be included in the Urbanistic and Building Code, if possible. At the same time, she stressed that the existing exclusions of application of the provisions concerning persons with disabilities relate not only to prisons and pre-trial detention centres, but also the juvenile detention centres, juvenile shelters and buildings in workplaces which are not sheltered employment companies. Therefore, repealing the challenged provisions of the Ordinance, and thus obliging the entities managing such buildings to adapt them to the needs of the disabled, might bring about considerable expenditure on the part of public finance sector units as it may result in the need to rebuild or expand these buildings.

3. Personal mobility (Article 20 of the Convention)

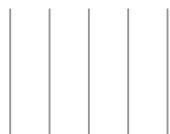
(a) Ensuring assistance of a sign language interpreter during the driver’s license examination

The Act on sign language and other means of communication¹²⁵ was supposed to be a systemic regulation to improve the conditions of communication of persons who are deaf or hearing-impaired with other people. However, in the Defender’s view, restriction of the set of entities obliged to implement the provisions of the Act to public administration bodies by the regulator resulted in the omission of other institutions that perform public tasks, but are not public administration bodies. A voivodeship traffic centre is one of such entities. The regulation contained in the Act on sign language and other means of communication releases voivodeship traffic centres from

¹²³ RPO-744194-II/IV/13 of 11 December 2013.

¹²⁴ Letter of 21 January 2014.

¹²⁵ Act of 19 August 2011 (Dz. U. of 2011, No 209, item 1243, as amended).





the obligation to provide assistance of a sign language interpreter to eligible persons. The obligation to provide assistance of a sign language interpreter when passing the state examination that checks the qualifications of applicants for a driver's license has been passed on to candidates. In addition to the costs for obtaining a driver's licence, disabled candidates must also pay additional costs of interpreter's services. The Defender requested the Government Plenipotentiary for Disabled People¹²⁶ for an opinion on the issue, and particularly to consider taking up actions aimed at amending the provisions of the Act on sign language and other means of communication.

The Minister of Labour and Social Policy explained¹²⁷ that work on the government draft assumptions for the Act on sign language, which assumed that the obliged entities will be, *inter alia*, public institutions, was abandoned due to starting work on a Deputies' draft Act on sign language and other means of communication. However, bearing in mind the good of all persons with disabilities, the Office of the Government Plenipotentiary for Disabled People petitioned the Ministry of Transport, Construction and maritime Economy on driver's license examinations.

As to adapting the driver's license examination to the needs of deaf people, the Defender also petitioned the Minister of Transport, Construction and Maritime Economy.¹²⁸ She pointed out that the current rules of driver's license examinations for the disabled are doubtful from the point of view of the constitutional principle of equality and materialisation of social justice. For this reason, she emphasised the need to consider taking actions to change the provisions of the Ordinance of the Minister of Transport, Construction and Maritime Economy on examinations of applicants for a driver's license, training, examinations and obtaining rights by examiners and template document used in those matters¹²⁹ which require the disabled to ensure the presence of a sign language interpreter during a driver's license examination.

The Minister stated¹³⁰ there were no grounds for introducing changes to relevant provisions to allow the presence of sign language interpreters during the theoretical part of the driver's license examination. The Defender disagrees with this position and will continue to act to introduce systemic changes in this respect.

(b) Provision of a vehicle adapted to a specific type of disability during the driver's license examination

The complaints submitted to the Defender highlight a problem of unequal treatment of persons with disabilities applying for category B driver's licenses. Voivodeship traffic centres that organise the practical part of the state driver's license examination have been exempted from the obligation to provide a vehicle adapted for persons with

¹²⁶ RPO-723715-V/13 of 5 April 2013.

¹²⁷ Letter of 2 July 2013.

¹²⁸ RPO-723715-V/13 of 5 April 2013.

¹²⁹ Ordinance of 13 July 2012 (Dz. U. of 2012, item 995, as amended).

¹³⁰ Letter of 15 May 2013.



disabilities for the examination. Persons with disabilities have been obliged to provide a vehicle for the state practical examination. It should be noted that a disabled person takes a driving course using a vehicle of the driver training centre, a private entity which is required to have vehicles adapted to a given type of disability if it trains people with disabilities. In the Defender's opinion, the challenged regulation violates the constitutional principle of equality and non-discrimination of the disabled, it is also contrary to the principle of social justice and the obligation to introduce provisions which ensure effective support to the disabled in various areas of social life. By imposing an obligation to provide a vehicle for an examination on persons with disabilities, the Act on vehicle drivers¹³¹ breaches the provisions of the Convention on the Rights of Persons with Disabilities, in particular the right to mobility. The rules governing examinations for drivers of disabled persons restrict the right of these people to live independently and to freedom of movement. Persons with disabilities are put in a worse position on the labour market, thus hindering the possibility of improving their living conditions of these people and their families. In the light of the above, the Defender submitted an application to the Constitutional Tribunal on the obligation on persons with disabilities to provide vehicles adapted to their disability¹³² for a driver's license examination. The case is pending before the Constitutional Tribunal.

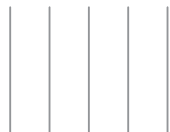
4. Education (Article 24 of the Convention)

(a) Education of the deaf

The Office of the Human Right Defender received numerous complaints about non-inclusion of actions aimed at the development and implementation of teaching of Polish as a foreign language and Polish Sign Language (PSL) to deaf students in the National Action Plan for Equal Treatment for 2013-2016. The Defender agreed with the complainants that the right of the deaf to education in PSL is not implemented in Poland. An ever-recurring postulate of these circles is to ensure bilingual education in schools for deaf students, i.e. first of all teaching of PSL and Polish as a foreign language, and subsequently teaching of all subjects in PSL. In the opinion of the Ministry of National Education, there is no need for additional government-level actions in the area of education of deaf people. From the position of the Ministry it appears that it is the decision of teachers and school principals whether there are additional classes in PSL or classes in Polish as a foreign language in a given school. Meanwhile, the PSL is the most important means of communication of the deaf, and therefore it is not sufficient to teach it in extracurricular classes or special interest classes. It seems necessary to take actions at the level of the Ministry of National Education aimed at devising and implementing a

¹³¹ Act of 5 January 2011 (Dz. U. of 2011, No 30, item 151, as amended).

¹³² RPO-658549-V/10 of 14 August 2013 (ref. K 37/13).





system of teaching Polish as a foreign language and PSL in all schools for deaf children. The Defender requested the Government Plenipotentiary for Disabled People for an explanation¹³³ if the National Action Plan for Equal Treatment for 2013-2016 would ultimately cover actions aimed at implementing bilingual instruction and thus at exercising the right of deaf students to education in sign language.

The Minister of National Education upheld her opinion that introduction of tasks aimed at development and implementation of teaching of Polish as a foreign language and Polish Sign Language to deaf students in the National Action Plan for Equal Treatment for 2013-2016 is not necessary.¹³⁴ The Defender did not agree with the Minister and will continue to act for popularisation of teaching Polish Sign Language to deaf students.

(b) Subsidies for universities for education of students with disabilities

In recent time, there has been a drastic reduction in subsidies for public universities for education and rehabilitation of students with disabilities. The State Fund for Rehabilitation of Disabled People (PFRON) completed the implementation of PITAGORAS 2007 programme to help people with hearing damage, under which funding was provided for classes in sign language on universities. Amendment of the Act – Higher Education Law,¹³⁵ which has been in force since 1 January 2012, changed the purpose of the subsidy for “tasks related to creating conditions for full participation in the education process for students and PhD students who are disabled persons” and extended the group of institutions entitled to receive it to include non-public universities. Unfortunately, the pool of funds earmarked for the subsidy has not been increased. This threatened the continuation of many currently implemented forms of support for students with disabilities by public universities. The current state of affairs may result in a reduction of the number of candidates with disabilities. The consequence of these changes may consist in a significant impediment to the implementation of the provisions of the Convention on the Rights of Persons with Disabilities in the higher education system. The Defender petitioned the Minister of Science and Higher Education¹³⁶ to address the issues.

The Minister explained¹³⁷ that in accordance with the new wording of Article 94(1) (11) of the Higher Education Law, a public university obligatorily receives a subsidy for tasks related to creating conditions for full participation in the education process for students and PhD students who are disabled persons. The amount of the subsidy received by individual public universities depends on the number of students and PhD students with disabilities in full-time and part-time studies, converted by the

¹³³ RPO-734684-I/13 of 16 June 2013.

¹³⁴ Letter of 23 July 2013.

¹³⁵ Act of 27 July 2005 (Dz. U. of 2012, item 572, as amended).

¹³⁶ RPO-717638-I/12/z of 12 February 2013.

¹³⁷ Letter of 22 March 2013.



weights for specific disability types. Funding the services of a sign language interpreter is the task of a poviát. A disabled person may submit an application for co-funding of training and retraining or the service of a sign language interpreter or an interpreter guide from the State Fund for Rehabilitation of Disabled People (PFRON). The protection of the rights of students with disabilities is monitored by the Defender.

(c) Special scholarships for students with disabilities

Pursuant to the Higher Education Law,¹³⁸ a student who, after completing one field of study continues studying for a second degree in a different field, is not entitled to financial assistance e.g. in the form of a special scholarship for persons with disabilities. The Defender received complaints which showed that this regulation does not include cases when a student becomes disabled in the course of or after completing studies. It happens that people in this situation are not able to work in their acquired profession and must gain further qualifications. Such students are not entitled to the special scholarship for persons with disabilities, although they did not use it during their studies for the first degree. In the current legal status, studies for a second degree must be paid for. In order to support people who have become disabled, it is very important to assist them in retraining. This would allow their further professional development and allow them to perform specific social roles. Therefore, it seems reasonable to grant such persons the right to a special scholarship for persons with disabilities. Such a solution is also supported by the constitutional principle of social justice. The Defender petitioned¹³⁹ the Minister of Science and Higher Education for a position on the above issues.

The Minister stated¹⁴⁰ that the Ministry of Higher Education was working on a legislative amendment to the Higher Education Law. She assured the Defender that she would consider introducing amendments that would regulate the possibility of applying for a special scholarship for disabled students who study for a second degree in cases where the disability was acquired during the studies or after graduation.

5. Work and employment (Article 27 of the Convention)

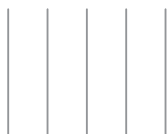
(a) Adaptation of lawyers' examinations to the needs of persons with disabilities

Analysis of complaints submitted to the Office of the Human Rights Defender and of legal acts in force yields a conclusion that further changes are necessary to adjust the conditions of taking entry exams for lawyer trainings and lawyer profes-

¹³⁸ Act of 27 July 2005 (Dz. U. No 164, item 1365, as amended).

¹³⁹ RPO-738223-I/13 of 10 September 2013.

¹⁴⁰ Letter of 25 September 2013.





sional examinations to the needs of persons with disabilities. The Defender believes it is necessary to introduce and apply the following facilitations in this respect: adjust the computer application to meet the needs of persons with a vision impairment who need to use screen reader programmes; to regulate the procedure of taking entrance examinations by persons with a vision impairment in the case of a computer malfunction; introducing the possibility for the person taking an exam to dictate an answer to a person designated by the examination board if the person who takes the exam is unable to write; exam time extension for people with a metabolic disability (diabetes) to accommodate the necessary breaks resulting from this disability. Absence of the above solutions may result in a violation of the constitutional principle of equality, as well as of the principle of freedom of the choice and exercise of a profession. The Defender petitioned the Minister of Justice whereby she asked his position on the issue and to consider changes in the legislation governing these matters.¹⁴¹ The Defender awaits his reply.

(b) Discrimination of persons with mental disorders on the labour market

One of the issues undertaken by the Defender for several years is the protection of the rights of people with mental health problems. The Defender and the Polish Psychiatric Association organised a conference on “Persons with mental illnesses – the first victims of crises.” The Defender particularly highlighted the situation of persons with mental health problems on the labour market and the quality of the support they receive from the entities referred to in the National Mental Health Protection Programme.¹⁴² The Defender commissioned a qualitative sociological study whose aim is to deepen the knowledge on the activities and the needs associated with socio-professional rehabilitation, especially with the activities relating to the return to and entry into the labour market of people with mental health problems carried out on three interrelated levels: voivodeship authority institutions, organisations which professionally support persons with mental illnesses, as well as the beneficiaries of programmes in this area. The study was carried out in six selected voivodeships. Its findings and recommendations will be published in 2014. A publication prepared by the Expert Committee on People with Disabilities on the status of and challenges associated with the implementation of the National Mental Health Protection Programme is also scheduled for 2014.

¹⁴¹ RPO-707225-I/12 of 12 December 2013.

¹⁴² http://www2.mz.gov.pl/wwwfiles/ma_struktura/docs/npoz_zdrpub_03112011.pdf



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

(a) Separate electoral districts for local referenda

In her petition to the Chairman of the National Electoral Commission the Defender emphasised issues related to separate electoral districts in the context of the need for possible legislative changes aimed at ensuring better protection of human and citizen rights.¹⁴³ Separate districts are designed to create organisational conditions to allow the vastest possible group of people to exercise their voting rights. Organising electoral districts in *inter alia* health care institutions and welfare care homes allows people with disabilities, the ill, the elderly and those who find it difficult to walk to vote in elections. This is the solution applied pursuant to the Electoral Code¹⁴⁴ which defines the procedure of setting up separate electoral districts in health care institutions, welfare care homes, prisons and pre-trial detention centres, as well as in external facilities of such prisons and detention centres. The Act on the local referendum¹⁴⁵ does not contain similar regulations and therefore in local elections separate electoral districts are not always established. The Act provides only that the referendum must be carried out in permanent districts. Hence, there are opinions that creating such districts in the case of a local referendum is not a statutory obligation. The Defender agreed with the position of the National Electoral Commission which identified the need to set up separate districts in the present legal status and issued a recommendation to election commissioners to that effect. In the Defender's opinion, explicit provisions on the need to create separate districts should be introduced to the Act on the local referendum, as is the case with the Electoral Code.

The Chairman of the National Electoral Commission fully shared the view of the Defender on the need to amend the Act on the local referendum by introducing a statutory obligation to set up separate electoral districts for local referenda.¹⁴⁶ The Defender also petitioned the Head of the Local Self-Government and Regional Policy Committee of the Sejm on the issue.¹⁴⁷ The Defender awaits the reply.

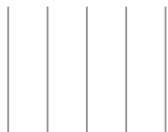
¹⁴³ RPO-748842-I/13 of 2 October 2013.

¹⁴⁴ Act of 5 January 2011 (Dz. U. of 2011, No 21, item 112, as amended).

¹⁴⁵ Act of 15 September 2000 (Dz. U. of 2013, item 706).

¹⁴⁶ Letter of 8 October 2013.

¹⁴⁷ RPO-748842-I/13 of 20 November 2013.





7. Participation in cultural life, recreation, leisure and sport (Article 30 of the Convention)

(a) Accessibility of TV programmes to persons with disabilities

The Defender often stressed the importance of legal solutions for the elimination of digital exclusion of persons with disabilities. One of the problems has been highlighted in complaints submitted to the Defender is the interpretation of the provision of Article 18a(1) of the Act on broadcasting¹⁴⁸ which obliges TV broadcasters to ensure accessibility of programmes to disabled persons with vision or hearing dysfunctions by introducing adequate features: audio description, subtitles for the hearing impaired and translations into sign language, so that at least 10% of the quarterly programming, excluding advertising and telesales, had such features. The working group for monitoring the implementation of the provisions of the Act in respect to persons with disabilities at the National Broadcasting Council suggested an interpretation of this provision limiting the accessibility of programmes to people with sensory disability. Under this proposal all the features (audio description, subtitles for the hearing impaired, interpretation into sign language) must be at least 10% of the total quarterly programming, and the proportions between them are left to the discretion of the broadcaster. In the Defender's opinion, such an interpretation is incorrect and its adoption would result in greater threat of digital exclusion of persons with sensory disability. In the opinion of the Defender, the features listed in the provision in question should be considered separately. The Defender requested the Chairman of the National Broadcasting Council¹⁴⁹ to issue a position on the matter.

The Chairman of the National Broadcasting Council explained¹⁵⁰ that the regulations of the Act on broadcasting are the result of a compromise between the current state of the electronic media market and the legitimate expectations of persons with disabilities, adopted with the assumption of a gradual increase in broadcaster obligations. The precise definition of the manner in which the broadcaster is to fulfil the obligation to provide the minimum programming accessible to persons with disabilities may give rise to doubts as to the interpretation. From the justification of the draft Act amending the Act on broadcasting it follows that the regulator referred to the 10% threshold for all the three techniques when introducing features for disabled persons.

In the light of the above explanations, it seems necessary to precisely define the obligations of TV broadcasters to ensure accessibility of programmes to persons with sight and hearing impairments. The Defender requested the Minister of Culture and National Heritage¹⁵¹ to consider introducing necessary legislative changes in this area.

¹⁴⁸ Act of 29 December 1992 (Dz. U. of 2011, No 43, item 226, as amended).

¹⁴⁹ RPO-715848-I/12 of 21 January 2013.

¹⁵⁰ Letter of 19 February 2013.

¹⁵¹ RPO-715848-I/12 of 22 July 2013.



Doubts are raised *inter alia* by the provision authorising the National Broadcasting Council to determine, by way of an ordinance, a share of programmes with features for persons with disabilities in total programming that is lower than the statutory share. The Defender did not dispute the validity of lower requirements for certain TV programmes, but in her opinion the decision in this case should not be arbitrary. In addition, the regulation contained in the Act on copyright and related rights¹⁵² may impede adaptation of TV programmes by TV stations to the needs of persons with disabilities without prior consent of their authors. The rights of authors should be duly respected, yet making each adaptation of a work to the needs of persons with disabilities dependent on the consent of the author may seriously hinder or even altogether prevent these persons' access to TV programme.

The Minister informed¹⁵³ the Defender that the Act on broadcasting is currently being reviewed with a view to amending it and that the Defender's remarks would be analysed in detail. If the practice of broadcasters, as well as of the National Broadcasting Council, confirms the observations contained in the letter, the Ministry will try to introduce the necessary legislative changes in order to ensure the vastest possible access to TV programmes to persons with disabilities. Ordinances of the National Broadcasting Council are not subject to a consultation procedure similar to that by which ministries are bound. The Minister also stated it was impossible to introduce a regulation to allow fair use for persons with disabilities, including the use of derivative works for a commercial purpose, without the consent of the authors, into the Polish law. Therefore, the Defender will consider taking further steps on this issue.

(b) Protection of the rights of disabled athletes

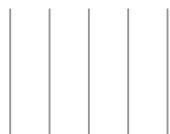
The Defender was concerned with non-provision of adequate medical care to athletes over 23 qualified to represent Poland during Special Olympics. Pursuant to the Act on sport,¹⁵⁴ the costs of medical care of athletes qualified to the national team in Olympic and Paralympic sports are financed from the state budget, from the part administered by the minister in charge of health. The regulation excludes athletes who represent Poland at Special Olympics. Nearly 300 athletes participate in preparations for summer and winter Special Olympics. Undoubtedly, one of the elements necessary to create appropriate conditions for these athletes to represent Poland is to provide them with medical care. In order to implement the provisions of the Convention on the Rights of Persons with Disabilities, it is a necessary to amend the Act on sport by extension of statutory rights to include this group of athletes. The Defender requested the Minister of Sport and Tourism¹⁵⁵ for an opinion on this issue.

¹⁵² Act of 4 February 1994 (Dz. U. of 2006, No 90, item 631).

¹⁵³ Letter of 16 August 2013.

¹⁵⁴ Act of 25 June 2010 (Dz. U. z 2010, No 127, item 857, as amended).

¹⁵⁵ RPO-733564-I/13 of 1 July 2013.





The Minister explained¹⁵⁶ that in her view the existing provisions do not discriminate against Special Olympics participants. The regulator granted preferences in terms of financing the costs of medical care from the state budget, from the part administered by the minister in charge of health, solely to athletes qualified to the national team in Olympic and Paralympic sports. Nonetheless, the Ministry of Sport and Tourism is currently working to amend the Act on sport and takes into account opinions of different sport circles as well as the Convention on the Rights of Persons with Disabilities. The Defender will monitor the progress of legislative work in this area.

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

(a) Mechanism to coordinate Convention implementation

September 2013 saw the first anniversary of ratification of the Convention on the Rights of Persons with Disabilities¹⁵⁷ by Poland. By virtue of one of its provisions, States Parties have undertaken to designate one or more focal points within government for matters relating to the implementation of the Convention. Currently, these tasks are performed by the Ministry of Labour and Social Policy. The Convention also recommends establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels. Poland has not yet decided to establish such a mechanism. In the opinion of the Defender, the coordination mechanism would allow harmonisation of the actions taken by state authorities and could serve as an effective tool for the exchange of information between the executive bodies.

In addition, States Parties were committed to designate or establish a body to monitor the implementation of Convention provisions. In the justification of the request for ratification of the Convention it was proposed to designate the Human Rights Defender as the institution competent for promotion, protection and monitoring of Convention implementation in Poland. In the opinion of the Defender, it is necessary that the duties of the Defender as the monitoring body are expressly enshrined in the Act on the Human Rights Defender.¹⁵⁸ Therefore, the Defender requested the Minister of Labour and Social Policy¹⁵⁹ for information on whether and when it is planned to establish or designate the coordination mechanism, as well as to consider the preparation of a relevant draft amendment to the Act on the Human Rights Defender.

¹⁵⁶ Letter of 13 August 2013.

¹⁵⁷ Convention of 13 December 2006 (Dz. U. of 2012, item 1169).

¹⁵⁸ Act of 15 July 1987 (Dz. U. of 2001, No 14, item 147, as amended).

¹⁵⁹ RPO-638035-1/09 of 26 June 2013.



In his response, the Minister explained¹⁶⁰ he did not plan to submit establishing a coordination mechanism for consideration by the Council of Ministers, which does not mean, however, that he meant to refrain from performing the task that consists in coordinating the implementation of the Convention by competent ministers. He also informed that the Government Plenipotentiary for Disabled People had been in touch with the competent ministries with a view to the planned appointment of a working group for direct exchange of information on the implementation of the provisions of the Convention. In addition, the Minister explained that the Ministry did not plan to amend the Act on professional and social rehabilitation and employment of disabled persons¹⁶¹ which would also amend the Act on the Human Rights Defender. He suggested that the Act could be amended on Deputy or Senate initiative. The Minister declared readiness to cooperate on this matter. The Defender will continue to monitor the establishment of the coordination mechanism within government and will take steps to draft the amendment of the Act on the Human Rights Defender.

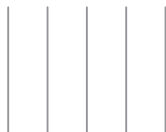
(b) Action to foster Convention implementation

The Defender acted to popularise the conclusions of the monograph entitled *Major Challenges Following the Ratification of the UN Convention on the Rights of Persons with Disabilities by Poland*¹⁶² that provides recommendations for the institutions responsible for Convention implementation. The discussion opened with a conference held in Warsaw entitled *Labour market for persons with disabilities*. The purpose of the meeting was to develop conclusions and recommendations for public authorities and social organisations in the light of the requirements posed by the Convention to Poland. During the discussion, it was agreed to promote professional activity of persons with disabilities in an open labour market. Meanwhile, the current regulations do not support professional activity of persons with disabilities. Taking up work by such people gives rise to the risk of losing state aid, which is granted precisely because of the disability. In the view of meeting participants, it is necessary to introduce fundamental changes in this respect so as to achieve the objectives of the Convention which assume that persons with disabilities would fully enjoy their rights, including the right to work.

¹⁶⁰ Letter of 26 July 2013.

¹⁶¹ Act of 27 August 1997 (Dz. U. of 2011, No 127, item 72).

¹⁶² *Najważniejsze wyzwania po ratyfikacji przez Polskę Konwencji ONZ o Prawach Osób Niepełnosprawnych* [Major challenges after ratification of the UN Convention on the Rights of Persons with Disabilities by Poland], Principle of equal treatment. Law and practice, No 6, Bulletin of the Human Rights Defender 2012, No 10.





9. Accessible format (Article 49 of the Convention)

(a) Accessibility of the text of the Convention

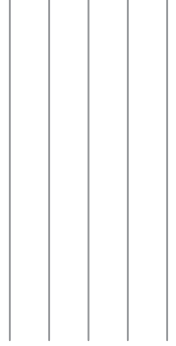
The Convention on the Rights of Persons with Disabilities was published in the Journal of Laws on 25 October 2012. In her petition to the President of the Government Legislation Centre, the Defender emphasised¹⁶³ that, contrary to the provisions of the Convention, the implementation of which should be one of the objectives of government policy, the text of the Convention is not available in a form appropriate for persons with disabilities. The Defender decided that absence of actions of public institutions that consist in providing relevant information on the rights of persons with disabilities may be a sign of discrimination of such persons within the meaning of the Act on the implementation of certain European Union regulations on equal treatment.¹⁶⁴ In the Defender's opinion, the formats of legal acts published on the website of Official Journals, in particular the text of the said Convention, should be immediately adapted to the needs of persons with disabilities. In her petition, the Defender requested the President of the Government Legislation Centre's position and information about the activities planned in this regard.

The President of the Government Legislation Centre explained¹⁶⁵ that in the present legal status international treaties are submitted for publication in the form of paper copies certified as true copies, and then published in the Journal of Laws or in Monitor Polski – the Government Official Journal in the form of scans. The President stated that any initiative to change the way of publication of the texts of international treaties in Official Journals belonged to the Minister of Foreign Affairs. The President of Government Legislation Centre pointed out that the translation of the text of the Convention into Polish is available at the website of the Office of the Government Plenipotentiary for Disabled People. The Defender will continue to act to enforce publishing of the Convention in a format accessible to persons with disabilities.

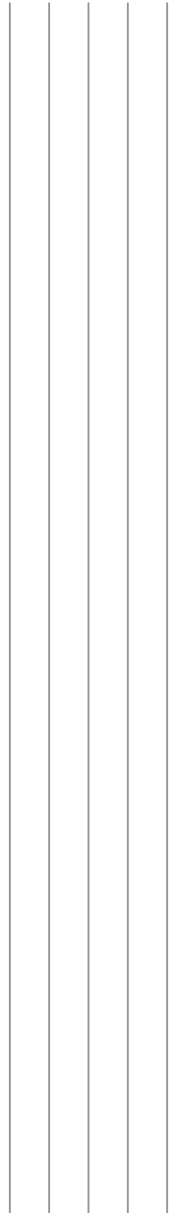
¹⁶³ RPO-724528-I/13 of 22 February 2013.

¹⁶⁴ Act of 3 December 2010 (Dz. U. of 2010, No 254, item 1700, as amended).

¹⁶⁵ Letter of 8 April 2013.



III. Activity of the Expert Committees





There are three Expert Committees at the Defender, namely, the Expert Committee on Elderly People, on People with Disabilities and on Migrants, with their work being coordinated by the Main Coordinator for Social Councils and Expert Committees. They are advisory bodies composed of persons having considerable academic or practical experience, usually resulting from their activity in non-governmental organisations, who are highly esteemed by the public. The tasks of the Expert Committees include substantive support for actions taken by the Defender, by means of, *inter alia*, proposing the priority areas of activity, conducting analyses and monitoring of the observance of the principle of equal treatment on grounds of age, disability, sex, nationality, ethnic origin, region and denomination. The experts of the committees work on a voluntary basis, devoting their own time and energy, which should be particularly appreciated in view of budgetary restrictions on the Office of the Defender.

In 2013, the task of all three committees was i.a. to disseminate and conduct a public debate on conclusions and recommendations included in three monographs, namely, “Strategies of Actions in Ageing Society”, “Major Challenges Following the Ratification of the UN Convention on the Rights of Persons with Disabilities by Poland” and “Observance of the Rights of Foreigners in Poland.” Public consultation on the monographs took place in the form of debates organised throughout the country.

1. Expert Committee on Migrants¹⁶⁶

During the meetings of the Expert Committee on Migrants, the main issues discussed concerned the situation of foreigners in the Polish labour market and the policy for integration of foreigners in Poland.

The Committee prepared the compendium entitled *How to Use the Abolition*, addressed to foreigners who participated in the last abolition campaign.

At the invitation of the Wrocław City Office, the Expert Committee convened a meeting on the camp of the Romanian Roma. The members of the Expert Committee and the representatives of the Defender visited the Roma in their camp, met with the NOMADA organisation which provides assistance to the Roma and attended a meeting with local authorities, representatives of local governments, as well as of the Voivodeship Office, the Police and the Representation of the European Commission in Wrocław, acting as mediators in the social and legal conflict.

Other activities of the Expert Committee on Migrants are presented in the section entitled *Preventing discrimination on grounds of race, ethnic origin or nationality*.

¹⁶⁶ Members of the Expert Committee on Migrants: Krystyna Iglicka (co-chair), Barbara Imiołczyk (co-chair), Malika Abdoulvakhabova, Maciej Bohosiewicz, Ambassador Ksawery Burski, Irena Dawid-Olczyk, Paweł Dąbrowski, Maciej Duszczyk, Grzegorz Dziemidowicz, Justyna Frelak, Katarzyna Gmaj, Aleksandra Grzymała-Kazłowska, Maria M. Kenig-Witkowska, Witold Klaus, Tomasz Knothe, Agnieszka Kunicka, Magdalena Lesińska, Katarzyna Łakoma, Sławomir Łodziński, Katarzyna Przybysławska, Irena Rzeplińska, Tomasz Sieniow, Teresa Sotowska, Marcin Sośniak, Dariusz Supeł, Maciej Szcząska-Wójcik, Ton Van Anh.



2. Expert Committee on People with Disabilities¹⁶⁷

In 2013, the activities of the members of the Committee focused on monitoring of the implementation and the promotion of the Convention on the Rights of Persons with Disabilities, including the public consultation of the monograph entitled “Major Challenges Following the Ratification of the UN Convention on the Rights of Persons with Disabilities by Poland.”

An important project of the Committee in 2013 was to prepare a tool, i.e. questionnaires, to assess the implementation of the Convention at the local level (gminas and powiats). The Committee also participates in drawing up the so-called ‘alternative’ report of the Defender to the government report on the implementation of the Convention on the Rights of Persons with Disabilities by Poland.

The work of the task force on mental health protection resulted in drafting the report entitled “Mental health protection in Poland: challenges, plans, barriers, good practices.” Other activities of the Expert Committee on People with Disabilities are presented in the section entitled *Activity of the Human Rights Defender to support, protect and monitor implementation of the Convention on the Rights of Persons with Disabilities and to prevent discrimination on grounds of disability.*

3. Expert Committee on Elderly People¹⁶⁸

Apart from conducting public consultation of the monograph entitled “Strategies of Actions in Ageing Society”, the Expert Committee focused on the problem of ensuring appropriate care for elderly persons in welfare care homes and on monitoring the progress of work on a government document entitled *Assumptions of Long-Term Policy for Seniors in Poland for 2014-2020.*

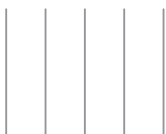
The members of the Committee also focused on the image of elderly persons in the society and the media which may constitute a specific source of discrimination of

¹⁶⁷ Members of the Expert Committee on People with Disabilities: Monika Zima-Parjaszewska (co-chair), Barbara Imiołczyk (co-chair), Anna Błaszczak (secretary), Barbara Abramowska, Ireneusz Białek, Dominika Buchalska, Mateusza Brząkowski, Piotr Kowalski, Paweł Kubicki, Marta Lempart, Bartosza Marganiec, Dagmara Nowak-Adamczyk, Małgorzata Radziszewska, Katarzyna Roszewska, Elżbieta Sadło, Halina Szpilman, Scholastyka Śniegowska, Michała Urban, Aleksander Waszkielewicz, Paweł Wdówik, Ewa Wojdyr, Marek Wysocki, Jacek Zadrozny, Jarosław Zbieranek, Anna Figurniak, Sylwia Górka, Dorota Siwiec.

¹⁶⁸ Members of the Expert Committee on Elderly People: Barbara Szatur-Jaworska (co-chair), Barbara Imiołczyk (co-chair), Magdalena Kuruś (secretary), Anna Chabiera (secretary), Dorota Bieniasz, Barbara Bień, Piotr Błędowski, Wiesława Borczyk, Jarosław Derejczyk, Krzysztof Głomb, Stanisława Golinowska, Jerzy Hausner, Waldemar Hoff, Grzegorz Matejczuk, Joanna Mielczarek, Barbara Mikołajczyk, Jarosław Mojsiejuk, Krystyna Rawska, Grażyna Staniszevska, Hanna Szczebleska, Beata Tokarz- Kamińska, Ewa Tułodziecka-Czapska, Gertruda Uścińska.



elderly people. Their work resulted i.a. in the conference entitled “On the ways we talk about old age” and the related publication. Other activities of the Expert Committee on Elderly People are presented in the section entitled *Preventing discrimination on grounds of age*.





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





The Defender continued international cooperation in the area of equal treatment, focused on the European Network of Equality Bodies EQUINET of which the Defender has been a member since 2011. At the moment Equinet's members are 41 independent institutions dealing with preventing discrimination from 31 European countries. The aim of the Network is to promote actions for equal treatment, in particular preventing discrimination on grounds of race, national or ethnic origin, gender, age, disability, religion or beliefs, and sexual orientation.

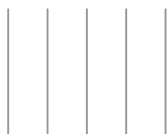
Representatives of the Defender participated in trainings and seminars devoted to the implementation of the principle of equal treatment, and took active part in the work of two Equinet working groups involved in the analysis of anti-discrimination regulations in the Member States (*Working Group on Equality Law in Practice*) and communication strategy in the area of equal treatment (*Working Group on Communication Strategies and Practices*). The work resulted *inter alia* in two publications devoted to combating discrimination: *Equality Law in Practice – Comparative analysis of discrimination. Cases in Europe* and *Tackling the 'Known Unknown.' How Equality Bodies can address under-reporting of discrimination through communications*, whose co-authors are the representatives of the Office of the Defender. In November 2013, a representative of the Defender was elected by the General Assembly to sit on the Board of the organization.

Under a Council of Europe project for preventing discrimination on grounds of sexual orientation and gender identity "LGBT Project" the Defender organised a conference entitled "European standards and good practices in gender recognition." Partners of the Conference were the Council of Europe and the "Trans-fuzja" Foundation. The conference will be discussed in the part on "Preventing discrimination on grounds of sexual orientation and gender identity."

International cooperation in the area of equal treatment also resulted in the organization of two other major conferences whose partners were international organizations and institutions. The Defender, in cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR), organised a conference on "Combating violence against women, including multiple discrimination. Poland on the way to ratification of the Convention on the prevention and combating of violence against women and domestic violence" whose aim was *inter alia* to present the Defender's recommendations in this area. The conference will be discussed in the part entitled "Preventing discrimination on grounds of sex."

In cooperation with the European Union Agency for Fundamental Rights, the Defender organised a conference on "Anti-Semitism – diagnosis of the phenomenon in Poland compared to the situation in the European Union." The conference will be discussed in the part entitled "Preventing discrimination on grounds of racial or ethnic origin or nationality."

In addition, representatives of the Office of the Defender attended a number of international meetings and conferences devoted to the implementation of the prin-





ciple of equal treatment and preventing discrimination, such as the *Equinet Legal Training* (20-21 March), the seminar organised by the Academy of European Law on the European Union law on equal treatment of the sexes (22-23 April), the meeting devoted to *Discussions on the application of the Race Equality Directive and the General Framework Directive* (16 May 2013), the seminar of the European Commission against Racism and Intolerance (ECRI): *Seminar with National Specialized Bodies to Combat Racism and Racial Discrimination* (30-31 May), the seminar *Gender Equality Training on Equal Pay* (18-19 September 2013), the seminar *Combating Discrimination and Promoting Equality: Engaging and Working with Duty Bearers* (24-25 October 2013), and the meeting of the European Union Agency for Fundamental Rights with national human rights protection institutions (7-8 October 2013).



V. Activity of other public bodies in the area of equal treatment





1. 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 have significant influence the level of protection of the rights of an individual also in Poland and constitute an important source of information for the Parliament.

A. Selected judgments of national courts

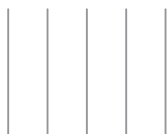
(a) Compensation for defective termination of an employment contract (Article 45(1)) and compensation for infringement of the principle of equal treatment in employment (Article 183d of the Labour Code)

Judgment of the Supreme Court of 14 February 2013 (ref. III PK 31/12).

Lodging claims by an employee for defective termination of an employment contract (Article 45(1) in conjunction with Article 264(1) of the Labour Code) is not a prerequisite of claiming compensation pursuant to Article 18^{3d} of the Labour Code for discriminatory grounds of the termination.

The Labour Code does not contain a regulation establishing a relationship between the claim pursuant to Article 45(1) of the Labour Code and a claim pursuant to Article 18^{3d} of the Labour Code. They are independent and separate employee claims due for different violations of the law by the employer.

Claims pursuant to article 45(1) of the Labour Code aim to sanction only one specific behaviour of employers and their goal is to reduce the economic effects of unlawful termination. With regard to compensation pursuant to Article 18^{3d} of the Labour Code, the effect of violating the principle of equal treatment of workers in employment by the employer is of no significance to the essence of his responsibility, as the very violation is sanctioned by the right of the employee to compensation. Article 18^{3d} of the Labour Code does not limit the responsibility of the employer for a damage to the employee's property, and thus it also covers personal injury and breach of personal rights of the employee, which is not covered by the claims pursuant to Article 45(1) of the Labour Code. Unlike the provision in question, Article 18^{3d} of the Labour Code does not provide for the upper limit of a compensation.





Termination can be justified within the meaning of Article 45(1) of the Labour Code, and the employer may be required to pay the employee compensation pursuant to Article 18^{3d} of the Labour Code that grants an employee the right to compensation for the very unlawfulness of the act or omission of the employer. This right is also due to an employee in the absence of a damage, and thus the compensation also serves to compensate for a damage to non-property assets (redress).

(b) Amount of compensation for mobbing

Judgment of the Supreme Court of 21 June 2013 (ref. III BP 4/12).

Redress for mobbing should be kept within reasonable limits, to maintain the existing conditions and standards of living of the wronged person and may not lead to the enrichment of the wronged person. It only serves to remedy the harm caused by disturbance of health as a result of mobbing.

(c) Conditions of refraining from the obligation of equal treatment of employees

Judgment of the Supreme Court of 27 June 2013 (ref. I PK 28/13).

Exclusion from length of service, calculated for the right to a jubilee award, of periods of work completed by termination of the employment relationship by the employer without notice due to the fault of the employee (and in respect of periods prior to 2 June 1996 also abandonment of work) does not violate the principle of equal treatment in employment within the meaning of Article 11² of the Labour Code.

According to the Supreme Court, the similarity of the situation of employees with a specific length of service required to obtain a jubilee award does not exclude the possibility of refraining from the obligation of their equal treatment, if: (1) such refraining is justified for well justified reasons; (2) it serves an interest which should be given precedence over the interest of the employees treated unequally; (3) it is justified by a sufficiently important values.

(d) Means of protection against discrimination for Customs Service officers

Judgment of the Supreme Court of 28 May 2013 (ref. I PK 262/12).

In respect of officers of the Customs Service (before 1 January 2011), the means of protection against discrimination are to be found in the provisions of the Civil Code which concern the protection of personal rights, not in Article 18^{3a} and subsequent provisions of the Labour Code.

The Supreme Court held that Article 189 of the Act in the Customs Service,¹⁶⁹ which stipulates that claims relating to the employment relationship of officers in matters not mentioned in Article 188(1) of the Act are to be heard by a court competent

¹⁶⁹ Act of 27 August 2009 (Dz. U. of 2013, item 1404).



for matters concerning labour law, does not constitute grounds for free application of substantive law provisions of the Labour Code, including the provisions on the prohibition of discrimination. Instead, Customs Service officers should seek protection in the event of potential discrimination the provisions of the Civil Code on the protection of personal rights.

(e) Conditions of abolishing the prohibition of discrimination on grounds of age

Judgment of the Supreme Administrative Court of 9 July 2013 (ref. II GSK 391/12).

Abolishing of the prohibition of discrimination pursuant to Article 6 of Directive 2000/78/EC may result only from an express decision of the regulator in this regard.

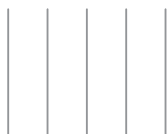
The Supreme Administrative Court examined the cassation against the judgment of the Voivodeship Administrative Court which upheld the decision of the Minister of Justice on dismissing a person who turned 65 from the position of a court enforcement officer. The Supreme Administrative Court acknowledged the claims of misinterpretation and, consequently, incorrect application of Article 15a(1)(3) of the Act on court enforcement officers and enforcement¹⁷⁰ pursuant to which the Minister of Justice dismisses a court enforcement officer from his/her position when the officer turns 65.¹⁷¹ The Minister of Justice and the Voivodeship Administrative Court considered that the provision is mandatory and there are no grounds to assume that a court enforcement officer who turns 65 could continue to exercise the profession.

The Supreme Administrative Court held that on the day when the decision to dismiss the court enforcement officer was issued, the Act of 3 December 2010 on the implementation of some regulations of European Union regarding equal treatment was in force. The said Act implemented, *inter alia*, Directive 2000/78/EC¹⁷² into Polish law. The regulator, however, only adopted new legal solutions without taking any steps associated with national legal acts already in force whose adjustment was necessary for full implementation of the said Directive. The provisions of the Act on the implementation did not cover all areas of life where the problem of discrimination on grounds of age may occur. In the opinion of the Supreme Administrative Court, the provisions of the Act on the implementation do not remove doubts which may arise in connection with the lack of provisions adapting national law to the needs arising from the implementation of Directive 2000/78/EC. The effects of the omission of the regulator in the area of adapting national law may not be a burden to citizens.

¹⁷⁰ Act of 29 August 1997 (Dz. U. of 2011, No 231, item 1376, as amended).

¹⁷¹ Currently, in accordance with Article 15a(1)(3a), added by Article 11(8)(a)(2) of the Act of 13 June 2013 (Dz. U. of 2013, item 829), amending the Act on court enforcement officers and enforcement of 23 August 2013, the Minister of Justice dismisses court enforcement officers when they turn 70.

¹⁷² Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, pp. 16–22).





Interpretation of Article 15a(1)(3) of the Act on court enforcement officers required the Minister of Justice, in the absence of appropriate legislative action, to apply the provisions of Directive 2000/78/EC, in particular Article 2(2) of the Directive, directly. The Minister of Justice inappropriately invoked Article 6 of the Directive, which justifies different treatment on grounds of age. The said provision is addressed to the Member State and it depends on its decision whether and to what extent the provision could be applied. The decision of the law application body that this specific case concerns abolishing of the prohibition of discrimination pursuant to Article 6 of Directive 2000/78/EC without an express decision of the regulator in this regard was incorrect. The Supreme Administrative Court ruled that Poland did not take advantage of considering that in the case of court enforcement officers different treatment on grounds of age does not constitute discrimination.

(f) Shorter working time of persons with disabilities

Judgment of the Constitutional Tribunal of 13 June 2013 (ref. K 17/11).

The fact that shorter working time is applied to a disabled person with severe or mild disability depending on obtaining a medical certificate on the grounds for the application of the shorter working time norm without the possibility to appeal against the refusal to issue such a certificate by a physician violates Article 2 in conjunction with Article 69 of the Constitution.

Instead of the previous norm of 7 hours a day and 35 hours a week, the Act amending the Act on professional and social rehabilitation and employment of disabled persons¹⁷³ introduced norms of 8 hours a day and 40 hours a week for disabled persons. The Constitutional Court disagreed with the assumption of the regulator that disabled employees should be, in principle, treated in the same way as able-bodied employees. This is, in the opinion of the Tribunal, at odds with the principle of social justice, enshrined in Article 2 of the Constitution, in conjunction with Article 69 of the Constitution that guarantees state assistance in training for work to disabled persons.

The Tribunal also considered that the 2010 amendment of the provisions of the Act took place without sufficiently convincing grounds and, therefore, the contested provision, to the extent in which it relates to persons with disabilities that entered into an employment relationship before its entry into force, violates the constitutional principle of loyalty of the state to the citizen and legal certainty (Article 2 of the Constitution of the Republic of Poland).

The Tribunal also emphasised that the contested provision was incompatible with the principle of correct legislation: neither the contested regulation nor other applicable law do not regulate the procedure of conduct or the procedure of appeal for medical certificates on the advisability of applying the shorter working time norm to an employee with severe or mild disability, which raises doubts and difficulties in the

¹⁷³ Act of 29 October 2010 (Dz. U. of 2010, No 226, item 1475).



application of this provision in practice, making the right granted to the employee difficult, if not impossible, to enforce.

(g) Social pension also for persons residing abroad

Judgment of the Constitutional Tribunal of 25 June 2013 (ref. P 11/12).

The condition of staying in the territory of the Republic of Poland as a necessary condition for entitlement to a social pension is clearly contrary to the requirements of compensatory justice because it excludes persons entitled to a social pension from the process of equitable distribution of social benefits from the state budget solely on the basis of a non-factual, arbitrary and anachronistic criterion.

The Social Insurance Institution made a decision to withhold payment of a social pension due to the departure of the person declared completely unable to work to study in the UK. The Appellate Court assessed the decision and turned to the Constitutional Court with a legal query. The Constitutional Tribunal examined compliance of Article 2(1) of the Act on the social pension¹⁷⁴ to the extent in which it makes granting and exercising the right to a social pension dependent on the requirement of residence in the territory of the Republic of Poland with the principles of the democratic state under the rule of law, social justice, equality and the right to social security, arising from the Constitution. The Tribunal held that the condition of staying in the territory of the Republic of Poland as a necessary condition for entitlement to a social pension is clearly contrary to the requirements of compensatory justice.

(h) Consequences of incomplete implementation of secondary legislation of the European Union, including the definition of “extended family”

Judgment of the Voivodeship Administrative Court in Warsaw of 15 March 2013 (ref. IV SA/Wa 154/13).

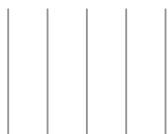
Implementation of Directive 2004/38/EC¹⁷⁵ by Poland is not full as it does not contain the so-called mechanisms to facilitate entry and stay of persons not covered by the definition of family members and partners the partner with whom the Union citizen has a durable relationship, duly attested.

The absence of a definition of “extended family” in Polish law may not result in discrimination.

The Border Guard and other public authorities should refer directly to the provisions of directives which explicitly state that facilitations of entry into and stay in the host Member State also cover the “the partner with whom the Union citizen has a durable relationship, duly attested.”

¹⁷⁴ Act of 27 June 2003 (Dz. U. of 2013, item 982).

¹⁷⁵ 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 (OJ L 158, 30.4.2004, pp. 77–123).





The dispute between the complainant and the Border Guard concerned the possibility of direct application of Directive 2004/38/EC which stipulates, *inter alia*, facilitations, in accordance with national legislation, of entry and stay of members of the “extended family.” According to the Border Guard, the complainant was not the Directive’s beneficiary as Polish law does not provide for a civil union, which is the relationship with the Polish citizen referred to by the complainant.

The Court ruled it was possible to refer directly to the provisions of Directive 2004/38/EC which explicitly state that facilitations of entry into and stay in the host Member State also cover the “the partner with whom the Union citizen has a durable relationship, duly attested.”¹⁷⁶ Thus, the Court admitted that the citizen of the Dominican Republic was right.

(i) Request to make an annotation on entering into a civil union into a birth certificate

Judgment of the Supreme Administrative Court of 19 June 2013 (ref. II OSK 475/12).

The constitutional definition of marriage as a relationship between a man and a woman and substantive law regulations based on this norm are not subject to intensive interpretation.

Entries into vital records are for register purposes only, they do not form the rights and freedoms of personal life, family life or freedom of movement, they are only serve to record events that have an impact on marital status.

Not making an annotation on entering into a civil union in vital records does not violate the provisions of Private International Law. Article 7 of this Act, which stipulates that foreign law shall not be applied if its application would have effects contrary to the fundamental principles of the legal order of the Republic of Poland, does not deprive the Act of legal significance to the field of public law relations.

The Supreme Administrative Court considered a cassation which challenged the judgment of Voivodeship Administrative Court on the request to make an annotation on entering into a civil union outside of Poland into a birth certificate.

The Court held that the complaint was not based on justified grounds. Rules for the interpretation of Article 47 of the Constitution and Article 8 Convention for the Protection of Human Rights and Fundamental Freedoms, and the extensive case law of the Supreme Administrative Court on this matter show that the constitutional definition of marriage as a relationship between a man and a woman and substantive law regulations based on this norm are not subject to intensive interpretation. Failing to annotate a birth certificate on entering into a civil union does not constitute a viola-

¹⁷⁶ A similar ruling was issued by the Voivodeship Administrative Court in Warsaw in judgments of 22 June 2013 (ref. IV SA/Wa 2093/13) and of 8 August 2013 (ref. IV SA/Wa 154/13).



tion of the provisions of Article 7 of Private International Law.¹⁷⁷ Article 7 of this Act stipulates that foreign law shall not be applied if its application would have effects contrary to the fundamental principles of the legal order of the Republic of Poland. This provision gives rise to prohibition of making entries in vital records if it is contrary to the fundamental principles of the legal order.

(j) Refusal to recognise gender reassignment of a married person

Judgment of the Supreme Court of 6 December 2013 (ref. I CSK 146/13).

One may not legitimise gender reassignment of a married person because it would breach Article 18 of the Constitution of the Republic of Poland which defines marriage as a union of a man and a woman – persons of different sexes.

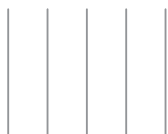
When ruling in cases on gender reassignment recognition, one must take into account the interests of minor children.

The petitioner brought a case against his parents to determine that he is a woman stating that is unmarried and has no children. The Regional Court ruled that the defendant is a female. The prosecutor applied for resumption of the proceedings due to the fact that the acknowledgment of the action led to legitimisation of a marriage of two women, which is contrary to the Polish law. As a result of the proceedings, the action was dismissed. The court pointed out that in a case on determination of a particular sex, the defendants should be all persons related by relevant legal and family relations with the petitioner.

The Supreme Court dismissed the cassation. In its justification, the Court pointed out, *inter alia*, that sex determines social roles that a person can perform. For the law, the roles of a husband or wife, father or mother are very important. Their correct fulfilment is important not only for the family community, but also the state community. For this reason, the law determines what people can marry and creates institutions that would guarantee the fulfilment of the tasks that the state community assigns to relations established by submitting a statement will about getting married.

The case law of the European Court of Human Rights shows that regulation of family law is the sole competence of national legislators and their courts. Polish law – The Constitution (Article 18) and the Family and Guardianship Code (Article 1(1)) – recognises marriage as a union of a man and a woman. The requirement of a different sex of spouses applies to the entire period of marriage duration. In the current legal status, the problems arising from transsexualism of one of the spouses can only justify the dissolution of marriage by divorce (Article 56 of the Family and Guardianship Code). Sex determines the status of mother and father in their relations with the child whom the law protects. Determination of the membership of a father or a mother of the child to a sex other than that indicated by the role of that person in the process of conception and birth is important for the child because it relates the person from

¹⁷⁷ Act of 4 February 2011 (Dz. U. of 2012, No 80, item 432).





whom his/her origin is assigned. When ruling in cases on gender reassignment recognition, one must not only take into account the intent of the transsexual to recognise his/her sex specified in the birth certificate, but also circumstances on the part of the child.

In a case on establishing membership of a particular sex (Articles 23 and 24 of the Civil Code in conjunction with Article 189 of the Code of Civil Procedure), brought by a transsexual who is married with children, the defendants must be not only his/her parents, but also his/her the spouse whom he/she had not divorced and his/her children (necessary participation). The judgment in this case has *ex nunc* effects.

B. Selected judgments of international courts

(a) Qualification of Roma children to special schools

Judgment of the European Court of Human Rights of 29 January 2013, complaint No 11146/11 (case Horváth and Kiss versus Hungary).

The state has the obligation to equalise the opportunities and pursue an active policy that integrates the society, instead of deepening the existing divisions.

The Court acknowledged the argument that Roma children have special educational needs, but it pointed out that catering to these needs cannot take place by sending them to special schools on a mass scale. This practice violates the right to education, protected by Article 2 of Protocol No 1 to the Convention,¹⁷⁸ is discriminatory and violates Article 14 of the Convention. Such education policy deepens the segregation of children and makes it harder for them to leave the inferior education system.

(b) Access of Roma children to education

Judgment of the European Court of Human Rights of 30 May 2013, complaint No 7973/10 (Lavida and others versus Greece).

Segregation of children at school and preventing Roma children from attending school with children of different nationality stands for discrimination and violation of the right to education.

A “Roma” school has not been set up as a school intended specifically for this national group, it did not offer any additional classes designed to help its students assimilate with the society, it did not provide any support to those who wanted to attend other “regular” schools. The Court held that failure to take any actions aimed at combating discrimination violated the right of Roma children to education.

¹⁷⁸ Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (Dz. U. of 1993, No 61, item 284, as amended, hereinafter: Convention).



(c) Freedom of association

Judgment of the European Court of Human Rights of 9 July 2013, complaint No 35943/10 (case Horváth and Kiss versus Hungary).

The freedom of association does not cover hate speech or incitement to violence.

The Court held that the role of the state is to protect the democratic system, and it can take preventive measures not only when a given movement starts direct action in order to seize power in the country. Dissolution to the Hungarian Guard Movement that was involved in the organisation of anti-Roma rallies and paramilitary force demonstrations was clearly intended to protect the order, to prevent crime and to protect the rights and freedoms of others.

(d) Concept of disability

Judgment of the Court of Justice of the European Union of 11 April 2013, cases C-335/11 and C-337/11.

The concept of disability should be interpreted in such a way that it stands for a pathological condition caused by an illness diagnosed medically as curable or incurable, where this disease results in incapacitation arising in particular from long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder a person's full and effective participation in society on an equal basis with others.

The Court of Justice of the European Union ruled that both curable and incurable diseases that involve physical, mental and psychological limitations may be classified as disability. The Court of Justice of the European Union also referred to Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation¹⁷⁹ ruling that employers must take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to employment. It includes a possible reduction in their hours of work, if it allows continuation of employment.

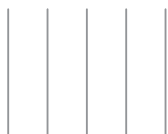
(e) Reasonable accommodation

Judgment of the Court of Justice of the European Union of 7 April 2013, case C-312/11.

Member States should actively and effectively combat the manifestations of discrimination against persons with disabilities, allowing them equal exercise of the right to work.

The Court of Justice of the European Union ruled that the Member States must require all employers to adopt practical and effective measures for all persons with disabilities to enable such persons to participate in employment. Such activities include the adaptation of a workplace, equipment, appropriate division of tasks between em-

¹⁷⁹ Directive of 27 November 2000 (OJ L 303, 2.12.2000, pp. 0016-0022)





ployees or training. Yet, such measures should not impose a disproportionate burden on the employer. The Court emphasised that that obligation covers all employers. It is not sufficient for Member States to provide support and incentives.

(f) Persons with disabilities in penitentiary units

Judgment of the European Court of Human Rights of 12 February 2013, complaint No 45705/07 (case D.G. versus Poland).

Prisoners shall have access to the health services without discrimination on the grounds of their legal situation

Non-compliance with Recommendation of the Committee of Ministers to member states of the Council of Europe on the European Prison Rules¹⁸⁰ which state in particular that prison authorities must ensure protection of all prisoners under their care and prisoners have access to health care in the country without discrimination on grounds of their legal situation, may result in violating Article 3 of the Convention. The Court pointed out that the architectural barriers that exist in Polish penitentiary units can cause suffering to inmates with disabilities. The Court ruled that the applicant was not afforded adequate medical care, and the decisions issued by the national authorities were not justified by temporary improvement in the health condition of the applicant.

(g) Discrimination on grounds of sex in terms of remuneration

Judgment of the Court of Justice of the European Union of 28 February 2013, case 427/11.

The difference in pay must be justified by objective factors unrelated to any discrimination based on sex.

The provision of Article 141 of the Treaty establishing the European Community¹⁸¹ (currently Article 157 of TFEU¹⁸²) and the provisions of Directive 75/117/EEC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women¹⁸³ should be interpreted to mean that:

- Employees perform the same work or work to which equal value can be attributed if, taking account of a number of factors such as the nature of the work, the training requirements and the working conditions, those persons can be considered to be in a comparable situation, which is determined by a national court;
- In relation to indirect pay discrimination, it is for the employer to provide objective justification for the difference in pay between the workers who consider that they have been discriminated against and the comparator;

¹⁸⁰ Recommendation Rec(2006)2 of 11 January 2006.

¹⁸¹ Treaty establishing the European Community (OJ C 321E, 2006).

¹⁸² Treaty on the Functioning of the European Union of 25 March 1957 (Dz. U. of 2004, No 90, item 864/2).

¹⁸³ Directive of 10 February 1975 (OJ L 45, p. 19).



- The employer’s justification for the difference in pay, which discloses a *prima facie* case of gender discrimination, must relate to the comparators who, because of the fact that their situation is described by valid statistics which cover enough individuals, do not illustrate purely fortuitous or short-term phenomena, and which, in general, appear to be significant, have been taken into account by the referring court in establishing that difference;
- The interests of good industrial relations may be taken into consideration by the national court as one factor among others in its assessment of whether differences between the pay of two groups of workers are due to objective factors unrelated to any discrimination on grounds of sex and are compatible with the principle of proportionality.

(h) Parental leave

Judgment of the Court of Justice of the European Union of 20 June 2013, case C-7/12.

It is not permitted that a worker who has taken parental leave is assessed in his or her absence on the basis of assessment principles and criteria which place him or her in a less favourable position as compared to workers who did not take parental leave.

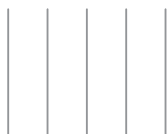
The Court of Justice of the European Union ruled that in a situation where, as part of an assessment of workers in the context of abolishment of officials’ posts due to national economic difficulties, a worker who has taken parental leave is assessed in his or her absence on the basis of assessment principles and criteria which place him or her in a less favourable position as compared to workers who did not take parental leave. In order to ascertain whether or not that is the case, the national court must *inter alia* ensure that the assessment encompasses all workers liable to be concerned by the abolishment of the post, that it is based on criteria which are absolutely identical to those applying to workers in active service and that the implementation of those criteria does not involve the physical presence of workers on parental leave.

(i) Discrimination on grounds of sex in employment

Judgment of the European Court of Human Rights of 19 February 2013, complaint No 38285/09 (case *García Mateos versus Spain*).

Failure to shorten working time and to adjust it to the obligations arising from care of a small child – as authorised by national law – stands for discrimination on the grounds of sex.

The Court ruled that the failure to execute a resolution favourable to the applicant by the national court violated the prohibition of discrimination on grounds of sex and breached Article 6(1) combined with Article 14 of the Convention. The national law system cannot grant illusory rights – it cannot equip a citizen with theoretical guarantees and then deprive him of practical opportunities for their enforcement. The case concerned the lack of effective enforcement of rights which, although formulated in a neutral manner, affected a much higher percentage of women than men.





(j) Domestic violence

Judgment of the European Court of Human Rights of 28 May 2013, complaint No 3564/11 (case X and others versus Austria).

Failure to protect women against domestic violence breaches their right to equal protection of the law and this failure does not need to be intentional.

In the Court's opinion the actions of the authorities indicated discrimination of the applicant on grounds of sex, *inter alia* by pressuring her by the police into withdrawing her criminal complaint, the comments of social workers who disdained the situation of the applicant, and avoidance of penalty by the perpetrator. The Court stressed that the victims of domestic violence are particularly vulnerable to harm. Therefore, one should expect active State involvement in their protection.

Judgment of the European Court of Human Rights of 16 July 2013, complaint No 74839/10 (case Mudric versus the Republic of Moldova).

The State's failure to protect women against domestic violence breaches their right to equal protection of the law.

The Court held that the State's failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional. Despite the existence of regulations enabling the authorities to initiate criminal proceedings against the perpetrator of violence, it took them almost a year to do so. In the Court's opinion, the above clearly demonstrates that the authorities' actions were not a simple failure or delay in dealing with violence against the applicant, but amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards her as a woman.

(k) Grounds for applying for the refugee status

Judgment of the Court of Justice of the European Union of 7 November 2013, cases C-199/12, C-200/12 and C-201/12.

One cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin.

Article 9(1) of Directive 2004/83 on minimum standards for the qualification and status of third country nationals or stateless persons¹⁸⁴ as refugees or as persons who otherwise need international protection and the content of the protection granted in conjunction with Article 9(2)(c) of this act should be interpreted that imprisonment which sanctions homosexual acts and which is actually applied in the country of origin must be regarded as being a punishment which is disproportionate or discriminatory and thus constitutes an act of persecution. In addition, persons applying for the refugee status who contend that they are persecuted because of their homosexual orientation may constitute a "particular social group" within the meaning of the law of the Union. When examining an application for refugee status the competent authori-

¹⁸⁴ Directive of 29 April 2004 (OJ L 304, 30.09.2004 pp. 0012-0023).



ties cannot expect that the person applying for asylum would avoid the risk of persecution by concealing his homosexuality in his country of origin or that he should exercise restraint in expressing his sexual orientation.

(l) Civil partnerships

Judgment of the European Court of Human Rights of 7 November 2013, complaints No 29381/09 and 32684/09 (Vallianatos and others versus Greece).

Differences based solely on considerations of sexual orientation are unacceptable.

The Court held that different treatment based on sexual orientation requires particularly convincing and weighty reasons by way of justification not to be considered discrimination and that the State's margin of appreciation is narrow. Differences based solely on considerations of sexual orientation are unacceptable. The Court pointed out that a state, when it opts to enact legislation introducing a new system of registered partnership as an alternative to marriage for unmarried couples, must include same-sex couples in its scope. The state, however, has no positive obligation to institutionalise such partnerships.

(m) Homophobic statements and discrimination in employment

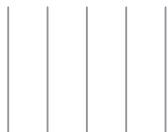
Judgment of the Court of Justice of the European Union of 25 April 2013, case C-81/12.

Homophobic statements of the representative of a professional football club may result in the imposition of the burden of proving that the club does not have a discriminatory employment policy.

A representative of a professional football club declared that would never employ an athlete who is homosexual, and the club has never distanced itself from this declaration. In considering the matter, the Court of Justice of the European Union noted that Directive 2000/78/EC¹⁸⁵ may apply to situations concerning declarations relating to the conditions of access to employment, including the conditions of recruitment. The specific characteristics of the recruitment of professional footballers are irrelevant as sport is subject to European Union law to the extent that it constitutes an economic activity.

The Court of Justice of the European Union stressed that the mere fact that statements such as those at issue might not emanate directly from a given defendant is not necessarily a bar to establishing, with respect to that defendant, the existence of facts from which it may be presumed that there has been discrimination. A defendant employer cannot deny the existence of facts from which it may be inferred that it has a discriminatory recruitment policy merely by asserting that statements suggestive of the existence of a homophobic recruitment policy come from a person who, while

¹⁸⁵ Directive of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, pp. 0016–0022).





claiming and appearing to play an important role in the management of that employer, is not legally capable of binding it in recruitment matters. According to the Court of Justice of the European Union the fact that such an employer might not have clearly distanced itself from the statements concerned is a factor which the court hearing the case may take into account in the context of an overall appraisal of his employment policy. A *prima facie* case of discrimination on grounds of sexual orientation may be refuted with a body of consistent evidence, such as a reaction by the defendant concerned clearly distancing itself from public statements on which the appearance of discrimination is based, and the existence of express provisions concerning its recruitment policy aimed at ensuring compliance with the principle of equal treatment.

(n) Conflict of beliefs

Judgment of the European Court of Human Rights of 15 January 2013, complaints No 48420/10, 59842/10, 51671/10 and 36516/10 (case Eweida and others versus the United Kingdom).

Freedom of thought, conscience and religion is one of the foundations of a “democratic society” within the meaning of the Convention.

The case concerned restrictions on wearing of religious symbols in a visible way at work and dismissing employees because of their refusal to fulfil certain duties that could, in their opinion, suggest promoting homosexuality.

The Court stressed that regard must be had in particular to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, subject in any event to the margin of appreciation enjoyed by the State.

In the Eweida case, the Court held that in the case of ground staff members of British Airways – where there is no evidence of any real encroachment on the interests of others – by forbidding to wear a cross at work the domestic authorities failed sufficiently to protect her right to manifest her religion. However, in the case of Shirely Chaplin the reason for requesting her to take off a cross, i.e. the protection of the health and safety in the hospital in order to reduce the risk of injury when taking care of patients, was more serious than in the case of Nadia Eweida. Therefore, the Court held that interference in the freedom to manifest her religion by Mrs Chaplin was necessary in a democratic society.

In Ladele and McFarlane cases, the Court held that the national authorities which initiated disciplinary proceedings because of a refusal to perform their duties by the applicants because of their religious beliefs, as well as the courts that dismissed the petition on discrimination, exceeded their freedom. The Court recalled that differences in treatment resulting from sexual orientation require particularly serious, justifying reasons. The Court ruled that the most important thing was whether the employer's action was intended to implement a policy of providing services without discrimination.



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

a) Government Plenipotentiary for Equal Treatment¹⁸⁶

In 2013, the Plenipotentiary *inter alia* completed work on the National Action Plan for Equal Treatment for 2013-2016, which was adopted by the Council of Ministers on 10 December 2013; she implemented the project “Equal Treatment as a Standard of Good Governance” under which 500 officials were trained; she took steps to prepare for the ratification of the Convention on preventing and combating violence against women and domestic violence¹⁸⁷ and organised 16 regional conferences on local anti-violence policy, describing stereotypes associated with sex as a source of violence against women.

b) General Police Headquarters¹⁸⁸

Within the framework of the programme “POWER – yes, VIOLENCE – no!” aimed at combating violence in police families, the basic training programme for police officers and managerial courses was supplemented with content relating to domestic violence. A questionnaire has also been developed to examine the attitudes of police officers starting basic courses towards the problem of domestic violence. On the basis of the programme material, draft handbooks for police officers carrying out interventions in the case of violence in police families were prepared. A detailed list of Police managers, psychologists from the Voivodeship Police Headquarters/Warsaw Police Headquarters and the coordinators of the programme “POWER – yes, VIOLENCE – no!” was prepared. They will attend training by the Nationwide Emergency Service for Victims of Domestic Violence “Blue Line.”

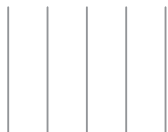
The “Blue Line” Emergency Service, in cooperation with the Department of Prevention of the Office for Prevention and Road Traffic of the National Police headquarters, developed an application for Programme PL 14 “Preventing violence in the family and violence on grounds of sex.” The project aims to complement the process of implementation of the programme “POWER – yes, VIOLENCE – no!” whose main task is to develop adequate attitude of superiors who decide on the manner and rules of responding to disclosure of violence in a police family.

The National Police Headquarters also developed tools for estimating the threat to life and health in connection with domestic violence and algorithms of conduct

¹⁸⁶ <http://www.rownetraktowanie.gov.pl>.

¹⁸⁷ Council of Europe Convention of 11 May 2011, signed by Poland on 18 December 2012.

¹⁸⁸ Letter of 24 October 2012, ref. Gpc-952/12.





for police officers in such situations.¹⁸⁹ Two tools for estimating the threat to life and health in connection with domestic violence have been developed: part A – violence against adults, part B – violence against children, and *Practical handbook for police officers. Estimating the risks associated with individual cases of domestic violence*.

The *Anti-Discrimination Guide for Police Officers*, developed jointly with the Office of the Defender,¹⁹⁰ was distributed in Police units in 4 000 copies and published on police websites for download.

The adoption of a formal Equal Treatment Policy at the Voivodeship Police Headquarters in Gorzów Wielkopolski was indicated as an example of good practice.

c) Chief Labour Inspectorate¹⁹¹

Observance of the principle of non-discrimination was examined in the course of 107 inspections of employment agencies, of which 32 inspections were carried out on the basis of the complaints and applications of the persons for whom the agency sought work.¹⁹² Violations were revealed in 10 agencies, including one confirmed the validity of the complaint. In eight agencies non-compliance with the prohibition of discrimination on grounds of sex and in two agencies on grounds of age was discovered. In most cases, the irregularities consisted in placing offers for people of a specified sex or age in the advertisements for customers of the agencies. In connection with detection of offences pursuant to Article 121(3) of the Act on the promotion of employment and the labour market,¹⁹³ six applications for punishment were submitted to courts.

In the framework of control of legality of employment, other gainful work and work of foreigners, the inspectors investigated the observance of the principle of equal treatment for foreigners in terms of working conditions and other terms of employment. In the period between January and June, this issue was examined during 287 inspections which covered 1,687 foreigners. In two inspected entities violations were discovered which consisted in the application of less favourable contracts and setting lower rates of remuneration for the same work.

In the first half of 2013, the National Labour Inspectorate also carried out 123 inspections based on information on refusal to employ a person due to applying a discriminatory criterion in the recruitment process, including 75 inspections on the basis of the complaints and applications of job applicants. Different shortcomings were revealed in 18 entities, of which in five the validity of complaints was confirmed. In 14 entities non-compliance with the prohibition of discrimination on grounds of sex was

¹⁸⁹ On the initiative of the Minister of the Interior, in cooperation with Nobody's Children Foundation and the "Blue Line" Emergency Service.

¹⁹⁰ K. Łaskiewicz (ed.), *Po pierwsze człowiek. Działania antydyskryminacyjne w jednostkach Policji. Praktyczny poradnik*, Warsaw 2013.

¹⁹¹ Letter of 23 September 2013, ref. GNP-306-0799-16-3/13.

¹⁹² The inspections were carried out between January and June 2013.

¹⁹³ Act of 20 April 2004 (Dz. U. of 2013, item 674).



discovered, in two on grounds of age and in one on grounds of disability. In one case an application for punishment of the person who, the Inspector's opinion, committed an offence was submitted to the court.

In 2013, the National Labour Inspectorate continued its preventive and information activities in the area of equal treatment and non-discrimination on the labour market.

d) Office of Electronic Communications¹⁹⁴

In the framework of annual inspections, the Office of Electronic Communications randomly selected post offices in order to check the degree to which persons with disabilities have access to their services. In May 2013, employees of regional branches of the Office of Electronic Communications inspected 481 establishments of Poczta Polska S.A., which represented 5.7% of all its establishments. In the summary of the inspection, the Office of Electronic Communications expressed the opinion that the degree of adaptation of the inspected establishments to providing services to people with disabilities has not improved significantly compared to previous years and is still considered insufficient.

Under the auspices of the Office of Electronic Communications a *Good Practice Guide – WCAG 2.0* was published, developed by the Widzialni Foundation, which explains how to prepare websites to make them accessible to as many digitally excluded users as possible.

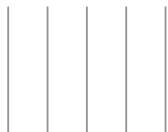
The President of the Office of Electronic Communications also runs a Certification Programme, driven by the need to equalise the opportunities of persons with disabilities in access to telecommunication services. The Programme is designed to increase the activity of disabled people on the market for telecommunication services. Its main objective is to create special services, including commercial offer, for those groups of people and to improve the qualifications, skills and efficiency of functioning of persons with disabilities on the market of telecommunication services, thanks to which they will be able to take advantage of new technologies as well as new and affordable forms of communication. The Programme involves the promotion of telecommunication operators that meet certain conditions by granting a Certificate of the President of the Office of Electronic Communications in the category *Without Barriers*. The Programme is also intended to arouse interest of the disabled in the offer addressed specifically at them.

e) Central Statistical Office¹⁹⁵

Information about the remunerations of men and women is provided by a survey carried out every two years: *The Remuneration Structure*. The results of the survey will

¹⁹⁴ Letter of 12 February 2014, ref. BDG-WOK-0746-1/14(2).

¹⁹⁵ Letter of 6 February 2014, ref. GP-09-0652-1/2014.





be available in the publication *The Structure of Remunerations by Occupations as in October 2012* (the expected date of issue: February 2014).

The studies *Rail Transport* and *Road Transport* – data on the rolling stock and urban transport fleet adapted to transporting persons with disabilities were published in 2013 in a publication entitled *Transport – Performance in 2012* (in 2012, 122 stations were adjusted to the needs of persons with disabilities, i.e. 38% of the total number of stations; in 2011 the figure was 35%).

In 2013, the results of a regular study *National and ethnic associations* were published.¹⁹⁶ Within the framework of the 2012 study, also data on cases of unequal treatment on grounds of nationality or ethnic origin, reported to associations of minority representatives, were collected. Of the 133 associations that participated in the study, 24 entities (18%) showed that they were contacted by individuals who have experienced unequal treatment because of their nationality or ethnicity.

f) Office of the Polish Financial Supervision Authority¹⁹⁷

The PFSA was one of the co-organisers of the campaign “Before you sign” addressed *inter alia* at the elderly. Its purpose is to draw attention to the risks associated with the conclusion of financial agreements, including primarily short-term loans with high interest rates (the so-called ‘payday loans’), and with the use of financial services, which are not subject to specific supervision of the state.¹⁹⁸

g) Supreme Audit Office¹⁹⁹

In 2013, the Supreme Audit Office finalised inspections whose findings concerned the observance of the principle of equal treatment: *Ensuring the right to equal remuneration of men and women in the public sector; Professional activation and mitigating the effects of unemployment among people aged 50+ and Social employment as an instrument of action for the resolution of difficult life situations and strengthening the activity of the people at risk of social exclusion*.

Statistical studies commissioned by the Supreme Audit Office of remunerations of over 120,000 people employed on the basis of a contract of employment in public sector units, of which half were women, in groups of comparable positions showed

¹⁹⁶ The basic results of the study concerning national and ethnic associations with more than 250 members are published annually in the Statistical Yearbook of the Republic of Poland, in the section *Population. Denominations*. Data for 2012 can be found in Table 33, pp. 217-218. The full results of the study *National and ethnic associations* for 2009-2011 are available in the publication entitled *Denominations. National and ethnic associations in Poland 2009-2011*, pp. 183-398.

¹⁹⁷ Letter of 11 February 2014, ref. L.dz.DOK/WPR/0735/4/2/2014/DB.

¹⁹⁸ Social campaign “Don’t be fooled. Check before you sign” is co-organised by: Bank Guarantee Fund, Polish Financial Supervisory Authority, Ministry of Finance, Ministry of Justice, National Bank of Poland, Police and the Office of Competition and Consumer Protection – more information at: http://www.knf.gov.pl/o_nas/komunikaty/kampania_spoleczna.html.

¹⁹⁹ Letter of 5 February 2014, ref. KST/KSP-462-001/2014.



that men earn more than women. This is confirmed in the majority of public administration units, municipal companies and companies of the State Treasury examined by the Supreme Audit Office.

According to the Supreme Audit Office, unambiguous assessment of the observance of the principle of equal pay for men and women is very difficult as there is no tool in Poland to monitor the level of wage gaps or objectives measures to determine the impact of individual factors on remuneration. In the opinion of the Supreme Audit Office, a revision of the remuneration system, also in terms of equal pay for men and women, allow employers to effectively implement this principle, which may also result in improved work efficiency and motivation of employees.

The inspection entitled *Professional activation and mitigating the effects of unemployment among people aged 50+* covered the years 2010-2012. The findings of the Supreme Audit Office show that in these years the number of unemployed aged 50+ increased steadily and the dynamics of this growth was higher than for other groups in a special situation on the labour market. The inspection showed too little effectiveness of activation measures, measured by starting permanent employment.

In the information from the inspection concerning people at risk of social exclusion, the Supreme Audit Office draws attention to low efficiency in achieving the objectives of social employment, measured by the percentage of participants who became economically independent in relation to the number of participants who completed training with a positive result. In the opinion of the Supreme Audit Office, the Act on social employment²⁰⁰ should be amended.

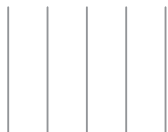
h) Border Guard²⁰¹

The Plenipotentiary of the Commander in Chief of the Border Guard for Protection of Human Rights and Equal Treatment prepared statistics on the professional situation of men and women in service and started cooperation with the Plenipotentiary of the Minister of the Interior for Equal Treatment. Regardless of the above, also a Plenipotentiary of the Commander in Chief of Nadwiślański Border Guard Regional Unit for equal treatment. In addition, certain organisational units of the Border Guard developed anti-mobbing procedures and organised a series of trainings on preventing mobbing and discrimination.

The Commander in Chief of Nadwiślański Border Guard Regional Unit commissioned a team of psychologists to conduct an anonymous survey in units and organisational units of the Regional Unit in order to diagnose the problem of mobbing. The survey will cover 250 officers and employees by the end of Q1 of 2014. Any further actions aimed at preventing mobbing in service will depend on its results.

²⁰⁰ Act of 13 June 2003 (Dz. U. of 2011, No 43, item 225).

²⁰¹ Letter of 12 September 2013 and 10 February 2014, ref. KG-NK-117/II/14.





i) Office for Foreigners²⁰²

In 2013, the Office for Foreigners continued actions resulting from the Agreement on standard procedures in identifying, preventing and responding to cases of sexual violence or violence on grounds of sex against foreigners staying in centres for applicants for the refugee status. In the framework of the implementation of the Agreement, 76 Meetings of Local Cooperation Teams were held in 2013. 22 cases of violence were detected. The victims received adequate assistance and care.

The Office also participates in six partner projects to support the process of integration of foreigners.²⁰³ From mid-2013, the Office has also implemented the project “Improving the efficiency of migration management” in cooperation with the International Organization for Migration. It assumes the organisation of trainings in diversity management, *inter alia* for the employees of centres for foreigners, offices serving foreigners, social welfare centres, teachers, representatives of the sectors of education, health care and the police.

j) Ombudsman for Children²⁰⁴

From complaints to the Ombudsman for Children it appears that the minor foreigners staying in guarded centres do not fulfil the schooling obligation as they may not attend classes outside the centre, and the centre’s authorities do not organise such classes in the centre. Another problem was the lack of provision of free health care services to minor foreigners staying in Poland illegally. The Ombudsman for Children requested the Minister of Health to take legislative action in this area.

²⁰² Letter of 6 February 2014, ref. BSZ- 073-307/2014/RW.

²⁰³ *Inter alia*: “Refugees – my neighbours” (between 2012 and 30 June 2013); “Give them a chance! Legal and informational assistance to persons with special needs seeking protection in Poland and preventing sexual violence on grounds of sex in centres for applicants for the refugee status” (between 2012 and 30 June 2015); “STRANGERS? Closer” (until 30 June 2014); “Integration and acceptance. Refugees in the Polish society” (until 30 June 2014), and permanent programme “Youth in Action.”

²⁰⁴ Letter of 16 September 2013, ref. ZSM/074/1/2013/AJ.

VI. **Conclusions and recommendations
on actions required to ensure
the observance of the principle
of equal treatment**



The fundamental reason behind adopting the Act on the implementation of some regulations of the European Union regarding equal treatment²⁰⁵ was to define the methods of preventing discrimination on grounds of sex, race, ethnic origin or nationality, religion, denomination, beliefs, disability, age and sexual orientation. Three years from its entry into force, a post-legislative review of its effects is necessary.

The Act aroused controversy already at the stage of its drafting. The major reservations concerned the adoption of a closed list of discriminatory acts and unequal protection against discrimination by indicating the areas where the Act grants legal protection to victims of discrimination on the basis of only certain selected criteria. In the course of legislative work it was also assumed that in the event of a breach of the principle of equal treatment the victim will only be eligible to a compensation for damages, not to redress for harm.²⁰⁶ As a result, to date common courts ruled on the basis of the above Act only in a small number of cases. **In 2013, the total amount of compensations awarded in such cases in Poland was PLN 1 200.**²⁰⁷ The problem is that pursuant to the EU regulations sanctions for violation of the principle of equal treatment should be effective, proportionate and dissuasive. Thus, in order to prevent discrimination in Poland effectively it is necessary for the legislator to take urgent intervention with regard to the above issues.

The discussion on the implementation of the Act on equal treatment must touch upon the *National Action Plan for Equal Treatment for 2013-2016*, adopted in December 2013. Effective implementation of the Plan will beyond any doubt contribute to improving the observance of the principle of equal treatment in Poland. However, the Plan was adopted with a considerable delay²⁰⁸ and it does not take into account numerous proposals of non-governmental organisations and the Human Rights Defender. It seems that some public administration offices and institutions still do not attach due importance to the principle of equal treatment, as evidenced by their insufficient involvement in the work on the Plan.

Until now Poland has not ratified Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms²⁰⁹ which formulated a general ban on discrimination. The ratification of the Protocol would allow to significantly enhance the protection against discrimination in Poland.

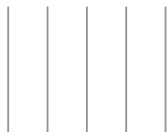
²⁰⁵ Act of 3 December 2010 (Dz. U. No 254, item 1700, as amended).

²⁰⁶ Article 13 of the Act on equal treatment.

²⁰⁷ Information from the Ministry of Justice: Compensation and redress in civil law cases concerning the violation of the principle of equal treatment awarded by common courts in 2013.

²⁰⁸ Pursuant to Article 32 of the Act on equal treatment, the first report on the implementation of the National Action Plan for Equal Treatment was to be presented by 31 March 2013.

²⁰⁹ Convention of 4 November 1950 (Dz. U. of 1993, No 61, item 284, as amended).





1. Preventing discrimination on grounds of disability and implementation of the Convention on the Rights of Persons with Disabilities

In September 2013 a year passed since Poland ratified the Convention on the Rights of Persons with Disabilities. Thus, initial conclusions and recommendations on effective implementation of the Convention can be formulated. The most serious reservations are: **absence of a long-term strategy** for persons with disabilities and **non-designation of a focal point within government** whose task, pursuant to Article 33(1) of the Convention, is to facilitate action related to its implementation in different sectors and at different levels. Contrary to the common belief, the Government Plenipotentiary for Disabled People is not the focal point. His tasks are specified in the Act on professional and social rehabilitation and employment of disabled people²¹⁰, but do not cover other areas of public, social or economic life.

In the Defender's opinion, one of the priority problems which require urgent intervention of the legislator is to **eliminate the institution of legal incapacitation** in its present shape and to replace it with a system of supported decision-making which, respecting the will and preferences of persons with disabilities, would ensure protection from exploitation and abuse without taking away the capacity to perform acts in law. The problem of legal incapacitation is related with the regulation of the Family and Guardianship Code, which discriminates persons with disabilities in their right to get married and start a family. Appropriate changes in these areas should allow to withdraw Poland's reservations and interpretative declaration to the Convention on the Rights of Persons with Disabilities.

It is also necessary to continue actions for **popularisation of inclusive education** to allow the vastest possible group of students with disabilities to attend public schools close to their place of residence. One must not forget children and youth who require special organisation of instruction, curriculum, methods and conditions of learning. Hearing-impaired children are in a particularly difficult situation as they should be provided with universal opportunities to learn Polish Sign Language and Polish as an additional language.

Accessibility of the so-called built environment to persons with disabilities remains a pressing problem. For many years the Defender has postulated introduction of a definition of "universal design" to the Building Law²¹¹ and popularisation of universal design by introducing it to curricula for all professions that have to do with creating the built environment. The postulates also concern availability of information and adjustment of websites of public institutions to the needs of persons with

²¹⁰ Act of 27 August 1997 (Dz. U. of 2011 No 127, item 721, as amended).

²¹¹ Act of 7 July 1994 (Dz. U. of 2013, item 1409).



disabilities. Studies on this subject explicitly show that the direction of changes in this regard is positive, but their pace is much too slow.

Finally, **efforts must be intensified to promote employment of persons with disabilities in an open and non-discriminatory labour market.** This involves also facilitation of self-employment of such persons. A positive step in this direction could be full adjustment of entry exams for legal training and professional examinations to the needs of persons with various disabilities.

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

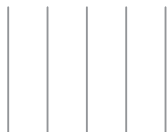
The Defender monitors penal proceedings in hate crimes on an ongoing basis. Analysis of preparatory proceedings files in cases concerning xenophobic acts, anti-Semitism and racism shows that in some instances the prohibited act was qualified incorrectly (i.e. failure to conduct proceedings in relation to Article 119, 256 or 257 of the Penal Code) and decisions to discontinue proceedings may have been due to incomplete hearing of evidence. Data of the Ministry of Justice show that still only **few hate crime perpetrators are convicted by a valid court verdict.** In 2012, there were only 47 such convictions in Poland (with the total number of convictions being 408 107).²¹²

In the Defender's opinion, it is necessary to introduce further corrections to the manner in which proceedings in discrimination crime cases are conducted.

The issue of access to education of foreigners staying in guarded centres is also of great importance. It should be noted that in detention the right of foreigners to education may not be exercised at an adequate level. It is an additional argument in favour of introducing a **statutory ban on placing juveniles and their guardians in guarded centres,** which has been raised by the Defender on multiple occasions. The absolute minimum in terms of exercising the right to education, which should be ensured by the Border Guard in cooperation with education authorities already at this stage, is to provide juveniles with the possibility to attend classes taught by qualified teachers on the basis of existing curricula.

The situation of a group of Romanian Roma who set up their camp in Wrocław exposed weakness of the state authorities in terms of integration policy for this social group. There is no doubt that **the problem of providing adequate help and support to Roma people** is not only local and requires action and coordination at the central level. It is necessary to work out solutions that would allow covering Roma and other migrants in a similar situation with a special government support

²¹² According to the data provided by the Statistical Management Information Division at the Department of Strategy and Deregulation of the Ministry of Justice.





programme. The Defender is critical of the formalistic attitude of the Wrocław authorities and their reluctance to accept proposals for improvement of the dramatic situation of migrants.

3. Preventing discrimination on grounds of age

In December 2013, the Council of Ministers adopted a document entitled *Assumptions of Long-Term Policy for Seniors in Poland for 2014-2020*²¹³, which is undoubtedly a step towards providing the elderly with dignified living conditions, making use of their potential and preserving their physical and psychological welfare, as well as professional and social activity, independence and self-reliance. Adoption of the Assumptions was welcomed by the Defender, but it should be noted that there is no implementing document that would define the procedure of implementing them. Actions taken by the Ministry of Labour and Social Policy cover only a part of planned changes. Therefore, responsibilities of other ministries in this respect should be defined at the government level and the work should be intensified.

Two indices, namely Global AgeWatch Index²¹⁴ and Active Ageing Index²¹⁵, published in 2013, point to the importance of urgent actions aimed at improving the situation of elderly people in Poland. Their purpose is to provide comparable data for creation and implementation of public policies aiming at ensuring optimal solutions for living conditions of ageing societies and monitoring the changes. **According to both indices, Poland is at the last place among all European Union Member States.** The comparative analyses will be continued.

Another important problem is the widespread negative, stereotypical image of elderly people in the society and the established ways of talking about old age which may be a source of discrimination of elderly persons in the society. Therefore, it is necessary to conduct intergenerational dialogue and social campaigns overcoming

²¹³ Resolution No 238 of the Council of Ministers of 24 December 2013 on adoption of Assumptions of Long-Term Policy for Seniors in Poland for 2014-2020 (M.P. of 2013 item 118).

²¹⁴ The index was developed and constructed by HelpAge International using the data from the UN, the World Bank, WHO, ILO, UNESCO and the Gallup World Poll, with the assistance from a panel of more than 40 independent experts in ageing, health, social protection and human development. The index consists of data referring to 4 domains, including specific indicators, i.e. income security, health status, education and employment, and enabling environment. Poland is at the 62nd place (out of 91 analysed countries), and in the health status category at the distant 87th place. For more information: <http://www.helpage.org/global-agematch/>.

²¹⁵ AAI is the result of the work of the European Commission, the United National Economic Commission for Europe (UNECE) and the European Centre for Social Welfare Policy and Research in Vienna. It presents the position of a country in terms of active ageing policy in four domains, namely, employment, participation in society, independent, healthy and secure living and capacity and enabling environment for active ageing. For more information: <http://www1.unece.org/stat/platform/display/AAI/Active+Ageing+Index+Home>



the stereotypical and negative image of seniors and promoting social inclusions of people of any age.

The **problem of the so-called reversed mortgage**, which is of utmost importance for seniors, remains unsolved. The only available model at present is the sales model, assuming the transfer of ownership to a property in exchange for life annuity paid in instalments. The model does not secure full rights and needs of seniors. The credit model, currently unavailable in the Polish market, offers greater possibilities, since real property ownership remains with the borrower and it offers the heirs the option to purchase the property. This issue requires urgent intervention of the legislator.

The Defender received alarming reports from some welfare care homes on significant shortcomings in providing health care services to seniors. Thus, it is necessary to establish **senior care standards**, not only for such establishments, and to intensify control and prevention for the purpose of **deinstitutionalisation**.

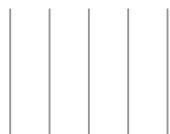
Actions to improve the quality of health care for elderly persons should be continued, including the systematic increase of expenditure on care benefits and carer's allowances for care in stationary facilities and at home, and on increasing the number of specialists in geriatrics.

The Defender continues to note restrictions on employing people over specific age in certain functions or professions. It should be emphasised that every such restriction must be rationally justified and may not be based on arbitrary criteria. Therefore, it is necessary to **analyse legal acts in terms of whether it is necessary to preserve some regulations that prevent further employment or performance of a function due to reaching certain age in the Polish legal system**.

4. Preventing discrimination on grounds of sex

As the ratification procedure of the Council of Europe Convention on preventing and combating violence against women and domestic violence is underway, actions should be intensified to adjust national regulations and practice to Convention standards. Existing legal acts and other programme documents on preventing and combating violence as well as the process of collecting and analysing data and conducting studies should **take into account the specific nature of violence on grounds of sex, including the special situation of elderly and disabled women**. It is necessary to ensure legal protection measures also in the case of violence in universities, schools or in women's or girls' sports, as well as in the case of mobbing or sexual harassment.

As the knowledge of representatives of services which prevent violence on grounds of sex is insufficient, it is extremely important to continue trainings to provide information on the violence mechanism and stereotypes, remedies and forms of support available to women. It is also important to conduct social and educational campaigns





on unequal treatment and violation of fundamental human rights, with constant emphasis on specific problems of elderly and disabled women.

The participation of women in public life and decision-making is insufficient. **The presence of women in public authority bodies at each level is clearly insufficient.** The approaching election will verify the efficiency of the solution adopted in the Electoral Code and concerning the selection of the list of candidates.²¹⁶ Experience thus far points to the need to not only strengthen legal mechanisms by supplementing the quota system with placing candidates of different sex alternatively on election lists, but also to conduct wide-scale information and education campaigns addressed to various social groups.

There is a clear lack of gender balance at senior positions in enterprises. The number of women which influence the most important economic and financial decisions is still much lower than men. Appreciating the recommendations implemented in this respect, adopting statutory regulations on a requirement of gender balance in management and supervisory boards of companies should be considered. First of all, such solutions should be introduced in companies with the participation of the State Treasury and in municipal companies.

The judgments of the European Court of Human Rights in cases of *Tysic v Poland* and *R.R. v Poland* are still not executed. The analysis of acts of objection against physicians' opinions or certificates lodged to the Medical Committee for the Commissioner for Patients' Rights proves that the procedure is inefficient and its introduction solely delivers on the formal requirements of the European Court of Human Rights towards Poland. The procedure must be significantly reduced and simplified, strict formal requirements should be abandoned and objections to certificates in oral form should be allowed.

An increasingly urgent problem is the discrimination of fathers during determination of marital status rights, most often in cases concerning the determination of the child's parentage, denial of paternity or ineffectiveness of acknowledgment of paternity, as well as the custody of the child. The regulations in force still limit the access of citizens to genetic tests as the means of evidence. Numerous interventions of the Defender over the course of many years to regulate the procedure for DNA tests have proven ineffective. Mechanisms should be developed and implemented to ensure equal right of custody of the child to both parents.

²¹⁶ Act of 5 January 2011 (Dz. U. of 2011 No 21, item 112, as amended).



5. Preventing discrimination on grounds of sexual orientation and gender identity

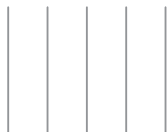
Acts of violence motivated by hatred towards non-heterosexuals and transgender persons are a particularly drastic form of discrimination. Complaints about disrespectful treatment of non-heterosexuals and transgender persons by Police officers are particularly disturbing. All acts of this kind require decisive response from their superiors and law enforcement bodies. Further actions are necessary towards **enhancing the knowledge and awareness of Police officers as to hate crimes**, including the specific nature of discrimination on grounds of sexual orientation and gender identity.

The issue of gender recognition of transgender persons remains unsolved. In the Defender's view, **it is necessary to adopt a comprehensive legal act on the issue that would define a fast, transparent and accessible procedure**. It is particularly important to consider resigning from the current litigious proceedings, which are particularly painful for family members of transgender persons, in gender recognition cases and replacing them with non-litigious proceedings.

The problem of the scope of competence of the National Labour Inspectorate was revealed when the Defender carried out explanatory proceedings on termination of a civil law contract due to sexual orientation of the contractor. At present, the Inspectorate may only supervise compliance with Labour Law. The Act on equal treatment is separate from the Labour Law. In the case of persons employed on the basis of a civil law contract, the Inspectorate may only examine occupational health and safety and legality of employment. The Defender believes it is thus necessary to extend the competence of the National Labour Inspectorate which would allow effective prevention of discrimination also on grounds of other characteristics listed in the Act on equal treatment.

6. Preventing discrimination on grounds of religion, denomination or beliefs

In order to execute the judgment of the European Court of Human Rights in the case of *Grzelak v Poland*, the Ministry of National Education has drawn up draft Ordinance changing the rules of organising ethics lessons in Polish schools, which is compliant with the guidelines of the Court. The Defender receives complaints from pupils which demonstrate that the issue requires further supervision by education boards and intensification of actions in the area of **training of teachers who can teach ethics and preparation and improvement of textbooks and other teaching materials**, also in the form of e-learning.





The Defender also receives complaints that prisons do not respect the religion or denomination of prisoners as they fail to adapt food to religious requirements and prevent prisoners from practicing their religion. Prison Service officers should pay particular attention to the standards resulting from the European Convention for the Protection of Human Rights and Fundamental Freedoms and other international documents.

The lack of the possibility of ritual slaughter by churches and religious associations raises significant doubts as to its constitutionality, since it may constitute discrimination on grounds of religion and denomination. The issue is currently analysed after consultation with representatives of churches and religious associations.



Annexes





Annex 1.

Defender's studies and reports on equal treatment published in 2013

In 2013, the Defender published five independent reports with recommendations on problems related to discrimination. "Equal Treatment Principle – Law and Practice" series included the following publications:²¹⁷

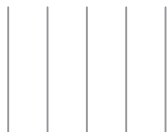
1. Elderly People in the Financial Services Market. Analysis and Recommendations;
2. Counteracting Violence Against Women, Including Elderly and Disabled Women. Analysis and Recommendations;
3. Intergenerational dialogue. Between Idea and Practice. Inspirations;
4. Accessibility of Websites of Public Institutions to People with Disabilities. Analysis and Recommendations;
5. Execution of the Right of Juvenile Foreigners to Education. Report of the HRD.

Within the framework of performing the task related to conducting independent studies on discrimination, the following studies were commissioned in 2013:

1. *Knowledge of officials of the obligations resulting from the Act on sign language and other means of communication.* The study focused on verifying the knowledge of officials about the obligations imposed on public administration authorities by the Act on sign language and other means of communication and the quality of services provided to entitled persons by public administration authorities. Persons entitled to use the facilities are deaf persons and deafblind persons.
2. *Equal treatment of mentally ill persons in the labour market.* The aim of the study was to analyse rehabilitation and promotion of social and professional activity of mentally ill persons, as well as to describe selected practices in this regard in Poland, with a particular emphasis on re-entry and entry on the labour market.
3. *Equal treatment as perceived by non-heterosexuals in health care.* The study aimed at extending knowledge about the treatment of non-heterosexuals by health care professionals, collecting experiences of respondents in this area and identifying the major problems requiring attention of the public institutions.

The results of the studies carried out in 2013 will be published in 2014 in the form of a report from the series *Equal Treatment Principle – Law and Practice*.

²¹⁷ All publications are available at <http://rpo.gov.pl>.





Annex 2.

Information and statistical data regarding the issues of equal treatment

1. Submitted cases relating to equal treatment and ban on discrimination

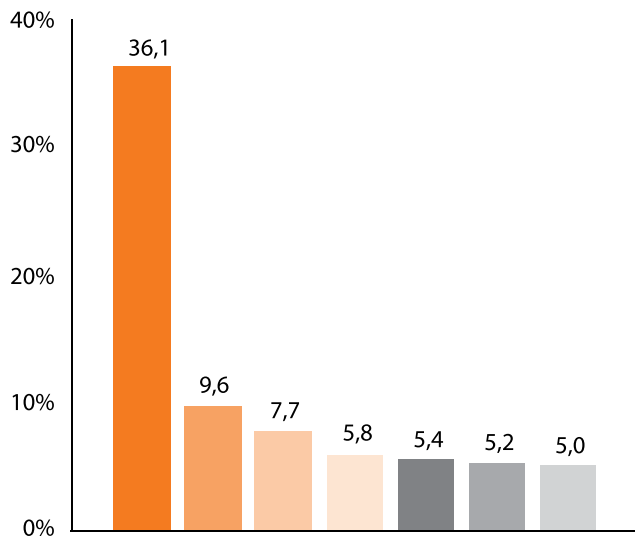
In 2013, 845 cases concerning equal treatment were submitted to the Human Rights Defender.

2. Problem areas targeted by new cases (applications) submitted to the Defender (by type of discrimination)

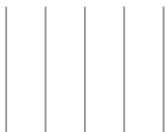
No.	Type of discrimination		Number	%
1.	4	Principle of equality before the law	44	5.2
2.	4.1	Ban on unequal treatment/discrimination	27	3.2
3.	4.1.3	Ban on unequal treatment/discrimination on grounds of sex	39	4.6
4.	4.1.4	Ban on unequal treatment/discrimination on grounds of religion or denomination	42	5.0
5.	4.1.5	Ban on unequal treatment/discrimination on grounds of sexual orientation	65	7.7
6.	4.1.6	Ban on unequal treatment/discrimination on grounds of age	49	5.8
7.	4.1.7	Ban on unequal treatment/discrimination on grounds of nationality and race	81	9.6
8.	4.1.8	Ban on unequal treatment/discrimination on grounds of disability	305	36.1
9.	4.1.9	Ban on unequal treatment/discrimination of social and professional groups	7	0.8
10.	4.1.10	Ban on unequal treatment/discrimination in terms of taxes	6	0.7
11.	4.1.11	Ban on unequal treatment/discrimination of persons without permanent registered residence	5	0.6
12.	4.1.13	Ban on unequal treatment/discrimination on grounds of race or ethnic origin	18	2.1
13.	4.1.14	Ban on unequal treatment/discrimination on grounds of beliefs (irreligion)	1	0.1
14.	4.1.15	Ban on unequal treatment/discrimination on grounds of political views	2	0.2
15.	4.1.16	Ban on unequal treatment/discrimination on grounds of gender identity	20	2.4
16.	4.1.17	Ban on unequal treatment/discrimination on grounds of financial and legal situation	46	5.4
17.	4.1.18	Ban on unequal treatment/discrimination on grounds of education or occupation	9	1.1
18.	4.1.20	Ban on unequal treatment/discrimination on other grounds	79	9.4
Total			845	100



Major problem areas relating to equal treatment



- Ban on unequal treatment/discrimination on grounds of disability
- Ban on unequal treatment/discrimination on grounds of nationality
- Ban on unequal treatment/discrimination on grounds of sexual orientation
- Ban on unequal treatment/discrimination on grounds of age
- Ban on unequal treatment/discrimination on grounds of financial and legal situation
- Principle of equality before the law
- Ban on unequal treatment/discrimination on grounds of religion or denomination

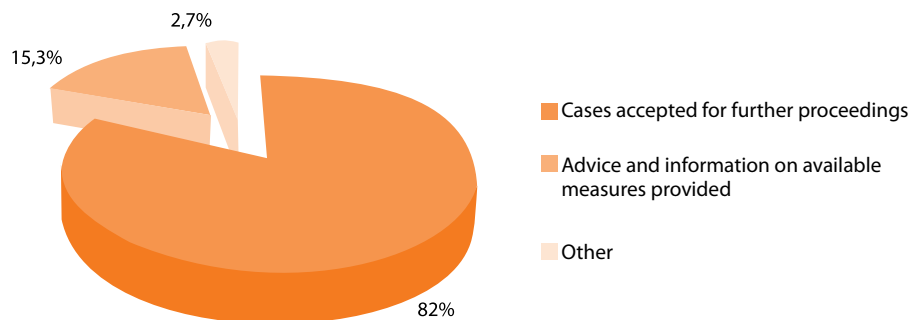




3. Cases examined (submitted in 2013 and earlier)

1	Manner of investigation		Number	%
	2		3	4
Cases accepted for further proceedings	1	Total (2+3)	1 653	82.0
	2	Cases accepted for further proceedings	483	23.9
	3	As general petitions	1 170	58.1
Advice and information on available measures provided	4	Total (5)	308	15.3
	5	Advice and information on available measures provided	308	15.3
Other	6	Total (7+9)	54	2.7
	7	Complaint referred to a competent authority	20	1.0
	8	Complaint returned to be supplemented with necessary information	10	0.5
	9	Not accepted for further proceedings	24	1.2
Total			2 015	100

Manner of investigation

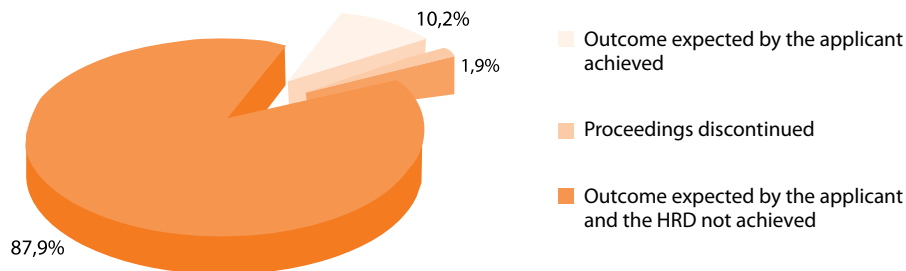




4. Completed proceedings in cases undertaken

Results	Manner of completion		Number	%
1	2		3	4
Outcome expected by the applicant achieved	1	Total (2+3)	160	10.2
	2	Applicant's claims confirmed	94	6.0
	3	General petition of the HRD acknowledged	66	4.2
Proceedings discontinued	4	Total (5+6)	30	1.9
	5	Proceedings pending (ongoing procedure)	10	0.6
	6	The HRD refrained from further proceedings (objective reasons)	20	1.3
Outcome expected by the applicant not achieved	7	Total (8+9+10)	1 373	87.9
	8	Applicant's claims not confirmed	201	12.9
	9	General petition of the HRD not acknowledged	1 169	74.8
	10	Measures available to the HRD exhausted	3	0.2
Total			1 563	100

Completion of cases undertaken





Annex 3.

Information and statistical data regarding the issues of equal treatment in terms of activity of courts and prosecutors' offices

In 2013, district and regional courts considered 11 cases and the appellate court one action brought for compensation for infringement of personal rights pursuant to Article 448 of the Civil Code, including due to violation of the principle of equal treatment pursuant to Article 13 of the Act on the implementation of some regulations of the European Union regarding equal treatment. The courts considered 12 cases, of which 3 were dismissed, two referred and one discontinued. Six cases remain to be considered in 2014.

Furthermore, in 2013 district and regional courts considered 172 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 Code²¹⁸, of which 31 were accepted in whole or in part and 71 were dismissed. As regards actions brought by men, 255 were examined, of which 41 were accepted in whole or in part and 65 dismissed.

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), one action brought by a woman was considered. In cases where actions had been brought by men, 3 cases were considered, of which 2 were dismissed.

In cases for compensation and redress in connection with mobbing (Article 94(3) § 3-4 of the Labour Code), 192 cases, where actions had been brought by women, were considered, of which 17 actions were accepted in whole or in part and 73 were dismissed. Among actions brought by men, 138 were considered, of which 12 were accepted in whole or in part and 42 dismissed.

In cases concerning employment discrimination (Article 11(3) of the Labour Code), 63 cases were considered (without distinction on grounds of sex), of which 6 were accepted in whole or in part and 26 were dismissed.

The data of the General Headquarters of the Police²¹⁹ show that in 2013 there were 61 reported crimes under Article 119 of the Penal Code (violence or unlawful threats), 267 crimes under Article 256 of the Penal Code (promotion of fascism and totalitarianism) and 146 crimes under Article 257 of the Penal Code (insulting a group or a person on discriminatory grounds).

²¹⁸ Act of 26 June 1974 (Dz. U. of 1998 No 21, item 94, as amended).

²¹⁹ Letter of 7 February 2014, ref. Lok.Gpc-181/148/14.

