REPORT
on the Activities
OF THE COMMISSIONER FOR HUMAN RIGHTS
in the Area of Equal Treatment
and on the Observance of the Principle of Equal Treatment in the Republic of Poland
in 2016

SUMMARY

This Report has been drawn up pursuant to Article 212 of the Constitution of the Republic of Poland of April 2, 1997 (Journal of Laws No. 78, item 483, as amended). The provision stipulates that the Commissioner shall annually inform the Sejm and the Senate of his activities and of the state of compliance with human and civil freedoms and rights, including, as per Article 19(1)(1)-(3) of the Act on the Commissioner for Human Rights of July 15, 1987 (Journal of Laws of 2017, item 958, as amended), of his activities in the area of equal treatment and results thereof, the compliance with the principle of equal treatment in the Republic of Poland, and the conclusions and recommendations for actions to be taken to ensure that the principle of equal treatment is respected. In addition, the Report has been drawn up pursuant to Article 19(2) of the Act on the Commissioner for Human Rights, which makes its publishing obligatory.

This English-language document is a summary of the Report on the activity of the Commissioner for Human Rights in the area of equal treatment in 2016. The full version of the Report is available only in Polish.

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Summary

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Foreword by the Commissioner for Human Rights

The principle of equal treatment and non-discrimination is one of the basic constitutional values. The positive obligations of the State in this regard stem both from national and international legislation. By the decision of the Sejm and Senate, the Commissioner for Human Rights is the independent body for the implementation of this principle and, in line with the *Act implementing certain European Union regulations on equal treatment*, is legally obliged to analyse, monitor and support equal treatment of all persons. According to the legislator's intention, the Commissioner is also required to submit to the Sejm and the Senate annual reports on his/her activities in this area, in addition to general reports on the observance of human and civil rights and freedoms.

The significance of these issues is reflected in the reports of international bodies which, in 2016, assessed the situation in Poland. The Commissioner for Human Rights of the Council of Europe as well as the UN Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights paid much attention to the progress and challenges in the field of implementation of the principle of equal treatment and non-discrimination, pointing to shortcomings which still exist both in terms of implementation of the law and in the legislation as such.

It should be emphasized, however, that those most affected by violations of this principle are the citizens, particularly those belonging to groups at risk of social exclusion, such as senior persons, persons with disabilities, ethnic and religious minorities and non-heterosexual persons. In 2016, as earlier, meetings held across the country were an important element of my work as the Commissioner for Human Rights. At almost every meeting the participants raised problems related to discrimination or exclusion. The staff of the CHR Office and myself did our best to ensure that each such case is thoroughly examined.

The wide range of problems related to the implementation of the principle of equal treatment is reflected in the statistics concerning applications submitted to the Commissioner's Office. By far the most numerous were cases relating to the protection of the rights of persons with disabilities (over 33%). This is particularly important considering that physical or mental disability may affect anyone as a result of illness, accident or old age. Other submissions concerned cases of discrimination on other grounds, including gender (9.7%), sexual orientation (9.5%), nationality (7.2%), age (6.9%) and other.

A survey conducted by my Office also indicates that 92% of people who experienced discrimination in 2016 did not report this fact to any public institution. This

justifies the conclusion that the degree to which equal and effective protection against discrimination is ensured in Poland is insufficient. In these circumstances, it is the duty of the Commissioner for Human Rights to take proactive measures aimed not only at counteracting, but most importantly at preventing discrimination. I intend to continue this work in 2017.

Commissioner for Human Rights
Adam Bodnar, Ph.D.

Foreword by Deputy Commissioner for Human Rights

2016 was a time of intense activity of the Commissioner in three areas concerning equal treatment: violence against women and domestic violence, non-payment of child maintenance, and hate speech and prejudice-motivated crime. These three areas are an excellent illustration of the fact that issues of equal treatment are interdisciplinary by nature. All departments of the CHR Office, supported by external experts, are involved in the Commissioner's activities in these fields.

The first field concerns violence against women and domestic violence, which are among the most drastic forms of human rights violation. The fact that people suffer from violence in their own homes is one of the most severe pathologies of the contemporary world. Unfortunately, Poland still lacks mechanisms that would allow to immediately isolate the perpetrator from the victim even though, as we have pointed out on numerous occasions in letters to the relevant ministers, the safety and protection of the victim should be the priority in such cases. Moreover, people suffering from this type of violence are often denied specialist and comprehensive assistance. The way domestic violence cases are treated is often affected by stereotypes concerning gender that drive some police officers, judges and prosecutors. Full implementation of the Convention on preventing and combating violence against women and domestic violence requires a number of measures which were not taken after its signing in 2012 nor after its ratification in 2015. Therefore, in 2016, the Commissioner's activities were focused on the functioning of municipal interdisciplinary teams and on the Blue Card procedure, as well as on the mechanisms for isolating the perpetrators from the victims and, in particular, on eviction orders for perpetrators. Most of these activities need to be continued.

The second field is child maintenance. The problem of non-payment of child maintenance has remained unsolved for years. One million children in Poland are deprived of child maintenance and there are a few hundred thousand parents who fail to pay it. The total indebtedness of parents towards children exceeds PLN 10 billion. The effectiveness of enforcement of child maintenance payments by bailiffs is estimated at 19.5%. The Child Maintenance Fund from which child support is paid when enforcement proves ineffective, provides aid to about 300 thousand children as the rest do not meet the income threshold criterion which has not been changed since 2007. Having regard to the interdisciplinary nature of non-payment of child maintenance, on February 16th, 2016, the Commissioner for Human Rights and the Ombudsman for Children established an Expert Team on Child Maintenance, comprised of lawyers, judges, bailiffs, representatives of NGOs, employer organizations,

academics and representatives of the penitentiary system. A broader public debate on the problem of non-payment of child maintenance was successfully initiated and a bill was submitted to the Sejm concerning amendment of the Penal Code so as to allow a broader use of electronic tagging of offenders in child maintenance cases, in line with the recommendations of the Expert Team. Drawing on the experts' experience, the Commissioner for Human Rights and the Ombudsman for Children have worked out and presented to the relevant public authorities proposals for changes aimed at improving the situation with regard to child maintenance payment, including more effective enforcement by bailiffs, more effective support from the Child Maintenance Fund and improvement of employment figures concerning persons obliged to pay child maintenance. Not all of these proposals have been accepted by the Government, so there is still work to be done.

The third major area of our activity in 2016 were issues related to hate speech and prejudice-motivated crime. What concerns us the most is the increasing "boldness" of the perpetrators. In comparison with 2015, last year there were more direct attacks on victims, both verbal and physical. Secondly, although compared with other crimes the scale of hate crime is still not high, according to the National Prosecutor's Office the numbers are rising. Moreover, one must remember that such acts affect not just the victims but all other people who belong to the targeted group. When a crime is motivated by xenophobia, other people belonging to the same ethnic or religious group may feel threatened. Therefore, even if such crimes are not committed on a massive scale, they cannot be dismissed as insignificant. We tried to react to every case, to monitor the reactions of the enforcement authorities and to highlight the importance of swift and resolute action by the State.

All of these issues require further efforts. In 2017, we will continue to persuade public authorities to take steps for change.

Sylwia Spurek, Ph.D.
Commissioner for Human Rights' Deputy for Equal Treatment

Introduction

An important component of work of the Commissioner for Human Rights, as an independent Equality Body, is to widely disseminate information on the standards of legal protection against unequal treatment and discrimination, as well as the ability to properly classify any specific legislation or event as infringing upon the principle of non-discrimination. It is therefore important to point out the basic findings in this regard.

Equality before the law is one of the fundamental principles of human rights protection and compliance with it is a precondition for implementation of other fundamental rights. The equal treatment injunction occupies a prominent place both in the national regulations and in the acts of international law. The Polish Constitution sets out the general idea and scope of the principle of equality, and expresses the prohibition of discrimination in political, social and economic life for whatever reason[1], as well as the equality of women's and men's rights[2]. According to the recorded case law of the Constitutional Tribunal, the principle of equality expressed in Article 32 of the Constitution of the Republic of Poland means that all subjects of law (addressees of legal norms) characterized by an essential (relevant) feature should be treated equally in an equal degree and measure, without any discriminatory or favourable difference. At the same time, the principle of equality presupposes a different treatment of those law entities which do not share the relevant feature[3].

Discrimination, on the other hand, is a type of unequal treatment provided for under the law, and means less favourable treatment of individuals because of their features or personal characteristics, without any reasonable justification. As the Supreme Court rightly points out: *the negative classification of discrimination as a form of unequal treatment provided for under the law serves to counter the most socially reprehensible and harmful manifestations of this phenomenon*[4]. The most commonly cited reasons for discrimination include: gender, race, ethnicity, nationality, citizenship, religion, belief, worldview, disability, age, sexual orientation or gender identity, but they may also include other personal characteristics such as appearance, social or material status.

Under international law, the principle of equality has already been known since the adoption of the Universal Declaration of Human Rights[5]. According to Article

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1 Article 32 of the Constitution of the Republic of Poland

2 Article 33 of the Constitution of the Republic of Poland

3 See i.a.: Constitutional Tribunal's judgement of 22 February 2005, file ref. no. K 10/04, OTK 17/2/A/2005. See also CT's judgement of 23 October 2001, file ref. no. K 22/01, OTK 7/215/2001.

4 See i.a.: Supreme Court's judgement of 21 January 2011, file ref. no. II PK 169/10, Supreme Court's judgement of 20 May 2011 , file ref. no. II PK 288/10

5 Universal Declaration of Human Rights, adopted in Paris by the United Nations General Assembly on 10 December 1948

2 of the Declaration, *every human being is entitled to enjoy all the rights and freedoms set forth in the Declaration, irrespective of race, colour, sex, language, religion, political opinion or other beliefs, nationality, social origin, property, birth or any other differences*. The obligation to observe the principle of equal treatment has also been established in international agreements binding on Poland, enacted within the framework of the United Nations, i.e. the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966. Under the a/m agreements, Poland is obliged to guarantee men and women an equal opportunity to exercise all the rights set forth in the Covenants and also to respect the principle of non-discrimination regardless of differences such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other circumstance[6].

Poland's obligations to implement the principle of equal treatment and non-discrimination are also derived from other fundamental human rights treaties such as the 1951 Convention on the Status of Refugees[7], the 1965 International Convention on the Elimination of All Forms of Racial Discrimination[8], the 1979 Convention on the Elimination of All forms of Discrimination against Women[9], the 1989 Convention on the Rights of the Child[10], or the 2006 Convention on the Rights of Persons with Disabilities[11].

In the European system, the basic act obliging to respect the principle of equal treatment is the Convention for the Protection of Human Rights and Fundamental Freedoms[12], in which Article 14 stresses that the rights and freedoms mentioned in the Convention should be provided by the states parties thereto without discrimination of any kind. The principle of equality is also referred to in the European Social Charter of 1961[13], ratified by Poland, the Framework Convention for the Protection

[6] Article 2(1) and Article 3 of the International Covenant on Civil and Political Rights adopted in New York by the United Nations General Assembly on 19 December 1966 (Journal of Laws – Dz. U. of 1977 No. 38, item 167) and Article 2(2) and Article 3 the International Covenant on Civil and Political Rights adopted in New York by the United Nations General Assembly on 19 December 1966 (Dz.U. of 1977 No. 38, item 169).

[7] Article 3 Convention relating to the Status of Refugees, made in Geneva on 28 July 1951 (Dz.U. of 1991 No. 119, item 515).

[8] Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination adopted in New York by the United Nations General Assembly on 21 December 1965 (Dz.U. of 1969 No. 25, item 187).

[9] Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women adopted in New York by the United Nations General Assembly on 18 December 1979 (Dz. U. of 1982 No. 10, item 71).

[10] Article 2 The Convention on the Rights of the Child adopted in New York by the United Nations General Assembly on 20 November 1989 (Dz. U. of 1991 No. 120, item 526 as am.).

[11] Article 5 of the Convention on the Rights of Persons with Disabilities adopted in New York by the United Nations General Assembly on 13 December 2006 (Dz. U. of 2012 , item 1169).

[12] The Convention for the Protection of Human Rights and Fundamental Freedoms made in Rome on 4 November 1950 (Dz. U. of 1993 No. 61, item 284; hereinafter: European Convention on Human Rights).

[13] European Social Charter made in Turin on 18 October 1961 (Dz. U. of 1999 No. 8, item 67).

of National Minorities of 1995[14], and the Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) of 2011[15].

The principle of equality before the law and the particular situation of groups exposed to discrimination is also subject to numerous recommendations by international organizations.

In 2016, the Human Rights Committee[16] recommended complementary legal protection by introducing a comprehensive prohibition of discrimination including also such grounds as sexual orientation, disability, religion, age and political beliefs, also in such areas as education, health care, social protection and housing. The Committee found it necessary to improve the availability and effectiveness of remedies for each discrimination form. The Committee also emphasized the need to supplement the Penal Code with provisions penalizing hate speech and other crimes motivated by prejudice against disability, age, sexual orientation and gender identity. It is worth noting that at present the Polish Penal Code penalizes offenses motivated by prejudice only on such grounds as nationality, ethnicity, race, politics, religion or the victim's religious non-belief while omitting other grounds for discrimination[17].

Similar recommendations addressed to Poland, regarding state protection against discrimination, have been issued by the Committee on Economic, Social and Cultural Rights[18]. In addition, the Commissioner for Human Rights of the Council of Europe[19] called for ratification of further instruments, including the revised European Social Charter and its additional Protocol, which provide for a collective complaint mechanism, as well as Protocol 12 to the European Convention on Human Rights, which provides for a general prohibition of discrimination. It should be emphasized that such recommendations were addressed to Poland once again[20].

Poland's important obligations in the area of equal treatment are, however, primarily the result of the European Union law. The Charter of Fundamental Rights establishes a general prohibition of discrimination in particular on the grounds

[14] The Framework Convention for the Protection of National Minorities made in Strasburg on 1 February 1995 (Dz. U. of 2002, No. 22, item 209).

[15] The Convention on Preventing and Combating Violence Against Women and Domestic Violence, opened for signature on 11 May 2011 in Istanbul; the Convention entered into force in August 2014 (Dz. U. of 2015 , item 961).

[16] Concluding remarks of the Human Rights Committee relating to the 7th Periodic Report of the Government of the Republic of Poland on the implementation of the International Covenant on Civil and Political Rights, adopted on 31 October 2016.

[17] Article 119, 256 and 257 of the Act of 6 June 1997 (Dz.U. of 2016 item 1137, as am.).

[18] Concluding remarks relating to 6th Periodic Report of Poland on the implementation of the International Covenant on Economic, Social and Cultural Rights, adopted on 7 October 2016 (E/C.12/POL/CO/6).

[19] Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Poland on 9 – 12 February 2016.

[20] See Concluding remarks by Committee on the Rights of the Child to the combined third and 4th Periodic Report of Poland adopted at 17th session on 14.09. – 2.10. 2015 (CRC/C/POL/CO/3-4), or the Report by the European Commission against Racism and Intolerance regarding Poland (fifth monitoring cycle) adopted on 20 March 2015 (ECRI(2015)20).

of gender, race, colour, ethnic or social origin, genetic features, language, religion or belief, political opinions or any other opinions, affiliation to a national minority, property, birth, disability, age or sexual orientation[21]. The specific duties of the Member States are regulated by the directives on equal treatment in the different spheres of social and economic life[22].

The first changes related to the necessity of adapting Polish legislation to the EU standards on equal treatment were reflected in the Labour Code[23]. According to the provisions of Article 11^2 of the Labour Code, employees have equal rights for equal fulfilment of the same obligations, which relates in particular to the equal treatment of men and women in employment. On the other hand, Article 11^3 of the Labour Code prohibits any, direct or indirect, discrimination in employment, particularly on the grounds of gender, age, disability, race, religion, nationality, political beliefs, trade union affiliation, ethnicity, religion, sexual orientation or due to employment for either definite or indefinite time and full or part-time.

These regulations have been further particularized by the provisions of Chapter IIa of the Labour Code, dedicated in total to equal treatment in employment. Article 18^{3a}(1) of the Labour Code specifies the scope of application of the equal treatment principle by referring to areas such as the establishment and termination of employment, terms of employment, promotion and access to training in order to improve professional qualifications. The Labour Code regulations are complemented by the Act on the Promotion of Employment and Labour Market Institutions, which requires compliance with the principle of equal treatment in access to and the use of labour market services and labour market instruments, regardless of the conditions mentioned therein[24].

The Act implementing certain European Union regulations on equal treatment[25] is the key legislative act that provides protection against discrimination. The Act de-

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[21] Article 21 et seq. of the Charter of Fundamental Rights.

[22] Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood (OJ EC L 359 of 19.12.1986, p. 56; OJ EU special Polish edition, chapter 5, v. 1, p. 330); Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment irrespective of racial or ethnic origin (OJ EC L 180 of 19.07.2000, p. 22; OJ EU special Polish edition, chapter 20, v. 1, p. 23); Council Directive 2000/78/EC of 27 November 2000 establishing general framework conditions for equal treatment in employment and occupation (OJ EC L 303 of 02.12.2000, p. 16; OJ EU, special Polish edition, chapter 5, v. 4, p. 79); Council Directive 2004/113/WE of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ EU L 373 of 21.12.2004, p. 37); 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 (OJ EU L 204 of 26.07.2006, p. 23); Directive 2014/54/UE of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (OJ EU L 128 of 30.04.2014, p. 8).

[23] of 26 June 1974 (Dz. U. of 2016 item 1666, as am.).

[24] Article 2a of the Act of 20 April 2004 on the Promotion of Employment and Labour Market (Dz. U. of 2015, item 149 as am.).

[25] The Act of 3 December 2010 (Dz.U. No. 254, item 1700 as am.); hereinafter also the equal treatment act).

termines the areas and ways of preventing violations of the equal treatment principle on the grounds of gender, race, ethnicity, nationality, religion, belief, worldview, disability, age and sexual orientation. The catalogue of conditions relating to the prohibition of unequal treatment – as opposed, for example, to the regulations of the Labour Code – is closed. The scope of the Act on Equal Treatment covers the areas defined in Articles 4 – 8 and is determined by the scope of the provisions of the implemented directives. It includes areas such as:

1) participation in vocational training,
2) conditions for taking up and pursuing economic or professional activity,
3) joining and working in trade unions, employers' organizations and professional associations,
4) access to, and conditions of, using labour market instruments,
5) access to, and conditions of, the use of services, including housing services, goods and the acquisition of rights and energy, if they are offered to the public,
6) social security,
7) health care,
8) education and higher education.

The scope of protection granted to the particular social groups exposed to discrimination is differentiated according to the legally protected feature, which raises doubts as to the compliance with the constitutional standard referred to in Article 32.

Under the Equal Treatment Act, the Commissioner for Human Rights executes the tasks of an independent Equality Body. The Commissioner also acts as an independent body for the promotion, protection and monitoring of the implementation of the Convention on the Rights of Persons with Disabilities[26]. The Commissioner's main tasks comprise dealing with applications addressed to him, including complaints of breach of the equal treatment principle, and taking appropriate action in accordance with the Act on the Commissioner for Human Rights[27].

In the period covered by this Report, the Commissioner's Office received 622 cases concerning the broad issue of equal treatment. However, in the Commissioner's opinion, this number is largely disproportionate to the actual scale of discrimination in Poland. It should be borne in mind that people at risk of discrimination and social exclusion often lack trust in public institutions, have low legal awareness and no knowledge of the authorities offering help to discrimination victims.

Studies ordered by the Commissioner show[28] that 92% of persons who had experienced discrimination did not report this to any public institution, primarily due to a lack of confidence that such reporting might change anything. This might also indicate the low effectiveness of the legal and practical mechanisms for promoting

[26] The Convention on the Rights of Persons with Disabilities made in New York on 13 December 2006 (Dz. U. of 2012 , item 1169).

[27] The Act of 15 July 1987 (Dz. U. of 2014 item 1648, as am.).

[28] A research made by Kantar Public „Legal Awareness in the Context of Equal Treatment", November 2016.

equal treatment. It should be noted, however, that most people correctly evaluate some exemplary events as discriminatory while few people are aware that they are also illegal[29].

For these reasons, the Commissioner is required to conduct proactive actions including analysing, monitoring and promoting equal treatment of all, conducting independent research on discrimination as well as developing and issuing independent reports and recommendations on issues related to discrimination.

Bearing in mind the content of Article 1 of the Equal Treatment Act, the analytical and research activities of the Commissioner address the following grounds for discrimination: sex, race, ethnic origin, nationality, religion, belief, worldview, disability, age and sexual orientation.

Within these responsibilities, the Commissioner issued a series of three reports in 2016, titled *The Rule of Equal Treatment. Law and practice*[30]*:*

– Access to justice for persons with disabilities. Analysis and recommendations.
– Availability of community support for the elderly from the point of view of representatives of municipalities of the Dolnośląskie province. Analysis and recommendations.
– Equal treatment in employment irrespective of gender identity.

Analysis and recommendations.

The Commissioner also ordered anti-discrimination research on the functioning of the institution of a personal assistant of a person with disabilities and on hate crimes including the psychological and social consequences of experiencing prejudice-related crimes by persons belonging to selected vulnerable groups. The results of the research will be published in the form of reports in 2017.

Considering the significance and interdisciplinary nature of the tasks related to the implementation of the equal treatment principle and the protection of the rights of persons with disabilities, the Commissioner implements them with the support of the Deputy Commissioner for Equal Treatment. The organizational structure of the Commissioner's Office includes a separate Equal Treatment Department comprising the Anti-Discrimination Law Unit and the Migrants and National Minorities Rights Unit.

In addition, work is continued by the committees of social experts appointed by the Commissioner, including the committees which are implementing directly the principle of equal treatment, i.e. the Expert Committee on Elderly People, the Expert Committee on Persons with Disabilities and the Expert Committee on Migrants. These committees constitute bodies of consultative and advisory nature.

[29] Inter alia, 77% recognize as discrimination the refusal to service Ukrainians in a restaurant but only 25% believe that discrimination against access to services is prohibited in Poland; 74% perceive as discrimination the non-promotion of a young mother based solely on her potential child-related absence but only 33% are convinced that discrimination in employment – regardless of the type of contract – is prohibited.

[30] The reports of the series are available at: https://www.rpo.gov.pl/pl/content/zasada-rownego-traktowania-prawo-i-praktyka-raporty-rpo

As required by the provisions of the Act on the Commissioner for Human Rights, the Commissioner's annual report includes information on compliance with the equal treatment principle in the Republic of Poland. Therefore, the summary of the Commissioner's activities in 2016 is complemented by the review of the case law of the national and international courts and the most important problems in the area of equal treatment recognized by other public bodies.

Most of the issues raised by the Commissioner in his interventions to various authorities remain relevant and require further action to adopt solutions to ensure the highest possible standard of human rights protection while taking account of the principle of non-discrimination.

I. The Commissioner's activity in the area of equal treatment and its results – general interventions, selected individual cases and other actions

The Commissioner's activity in the area of equal treatment as regards race, ethnicity, nationality, age, gender, sexual orientation, gender identity, religion, belief or worldview is discussed below. Information on the prevention of discrimination on the grounds of disability has been presented in a separate chapter due to the Commissioner's role in promoting, protecting and monitoring the implementation of the provisions of the Convention on the Rights of Persons with Disabilities.

1. Counteracting discrimination on the grounds of race, ethnicity, nationality or religion

A) Racist, national, ethnic or religious attacks on foreigners residing in Poland

The more and more frequent signs of various types of violence whose victims are foreigners residing in Poland, especially those from Middle Eastern or African countries and Muslims, have caused the Commissioner's concern. Such events are accompanied by a public discussion on internet forums, where hateful behaviour is often met with acceptance or even support from internet users. Also, the law enforcement statistics show that in Poland there is a risk of criminal offences motivated by national, ethnic, racial or religious hatred. It is clear that the number of such offenses against Muslims and people of Arab origin has been increasing.

This situation has also raised concerns at the United Nations Human Rights Committee. On 31 October 2016, in the Final Notes concerning the 7th Republic of Poland's Progress Report on the implementation of the provisions of the International Covenant on Civil and Political Rights, the Committee pointed to the insufficient response of the authorities to this particular type of crime.

In the Commissioner's opinion, prejudice-motivated crimes require the authorities of the state, notably the Police and prosecutors, to respond with determination by detecting and prosecuting such crimes as well as punishing the perpetrators. The manner in which the state authorities' representatives describe or comment on the phenomenon of hate crime is also of importance. The Commissioner asked[31] the Chief Police Commander whether the Police was carrying on or planning a preventive or educational action that would focus on ensuring the safety of foreigners.

[31] XI.518.70.2016 of 25 November 2016

The Commander assured[32] that all cases of racial assault or similar were investigated by the Police with due diligence. The statistics conducted by the Police provide an objective view of the scale of hate crimes based on the initiated proceedings and the acts discovered. The Commander also confirmed that effective public education and anti-discrimination prevention could help reduce hateful behaviour but the police are not the leading force for such activities. Also, the police may not be held responsible for investigating the causes of possible radicalization of social attitudes and the increased number of hate crimes.

B) Counteracting hatred-motivated violence towards foreigners studying in Poland

The Commissioner has received numerous complaints about public incitement to hatred on the grounds of national, ethnic or religious affiliation, or about insulting individuals on such grounds, and also – what is particularly disturbing – about physical, often violent, assaults motivated by national or ethnic origin. Many of these cases involved acts of hate crime, and have therefore become the subject of interest of law enforcement authorities. During the meeting of the National and Ethnic Minorities Committee of the Polish Sejm on 25 February 2016, the Commissioner called for countermeasures, especially educational ones, and for strongly opposing hate speech and hate crime. The problems of students-foreigners were also discussed by the Commissioner during a meeting with the Erasmus program students who talked about dislike and aggression motivated by national or ethnic origin which they experienced themselves or which was experienced by those close to them. In the Commissioner's opinion, a strong response to the xenophobia experienced by foreigners studying in Poland is needed from the Ministry of Science and Higher Education. According to the Commissioner, the dissemination of an anti-discrimination standard among Polish authorities would be a clear signal of opposition to all forms of hatred. A model of such a standard has been developed within the framework of the "University Standards for Combating Violence and Discrimination" being implemented by the Media Research Centre of the Cracow Pedagogical University, the Autonomy Foundation, the Society for Anti-Discrimination Education and the Foundation for Social Diversity. The Commissioner requested the Minister of Science and Higher Education[33] to assess the situation of foreign students in Poland in terms of the risks involved in the growing social aversion or hostility towards people of other national, ethnic or racial origin and the activities of extreme nationalist circles.

[32] Letter of 14 December 2016
[33] XI.518.38.2016 of 21 May 2016.

C) Education of children belonging to national and ethnic minorities

The Commissioner received information on the difficulties in teaching the languages of national and ethnic minorities, as well as the history, geography and culture of the minorities. This situation is mainly due to a limited access to textbooks and educational materials adapted to the current curriculum for this group of students. The Commissioner also pointed to the issue of teaching the children of Ukrainian citizens living in Poland. New solutions are needed that will enable Ukrainian children to learn their mother tongue along with the Polish children belonging to the Ukrainian minority, which would be conducive to mutual integration. The Commissioner requested the Minister of National Education[34] to provide an assessment of the system of edition and distribution of the textbooks for pupils belonging to national minorities, as well as an analysis of the possibility to co-teach selected subjects to the Ukrainian minority students and the children of the foreigners from Ukraine.

In reply, the Commissioner was informed[35] that the Ministry annually finances textbooks and ancillary books to educate pupils to the extent necessary to sustain their sense of national, ethnic and linguistic identity. Copies of the textbooks are provided free of charge to students through school libraries. Electronic versions of the materials are posted on the Scholaris educational portal for free use by interested parties. In the case of textbooks for learning the Ukrainian language as a national minority language, no publishing plan has been adopted. In this situation, the Ministry for National Education has endeavoured to recruit textbook authors under contracts with universities or by competitions announced for this purpose. Five colleges reported their willingness to develop textbooks. However, work on them has been delayed due to the started reform of the education system and the planned changes to the curriculum. Regarding the joint teaching of children belonging to the Ukrainian minority and children being Ukrainian citizens, the Ministry of Education explained[36] that both pupil groups had the right to express their will to maintain their national and linguistic identity but, due to the different rules of organization of this teaching as well as the different ways of funding, the groups can not be combined for joint study.

[34] XI.813.1.2016 of 11 February 2016.
[35] Letter of 1 March 2016.
[36] Letters of 1 March 2016 and 17 August 2016.

D) Situation of national and ethnic minorities following the change of municipalities' borders in the Opolskie Voivodeship

As of January 1, 2017, the borders of some municipalities in the Opolskie Voivodeship were changed pursuant to the Council of Ministers Ordinance on the borders of certain municipalities and towns, the granting of town status to certain municipalities, and the change of municipalities' names[37]. The Opole city boundaries were extended by parts of certain municipalities entered into the Minister of Internal Affairs' registers of municipalities in which additional names may be used in the minority language (German), and an auxiliary language (German). Polish citizens belonging to minorities could enjoy the rights provided for in the Act on National and Ethnic Minorities and Regional Languages, and the change of the administrative boundaries deprived them of those rights. In the Commissioner's opinion, the current legal regulations require changes or additions as they are not adapted to the international norms binding on the Republic of Poland, such as the European Charter for Regional or Minority Languages drawn up in Strasbourg on 5 November 1992. The Explanatory Report to the Charter contains a provision that when units of administrative division can not be adapted to the regional or minority language they must at least remain neutral and their formation (change) can not have a negative impact on the language. The Commissioner requested[38] the President of the Council of Ministers to comment on the issue.

E) Processing for statistical purposes the information on nationality / ethnic origin of the perpetrators of crimes or offenses, or persons suspected of having committed them

In response to one of the Commissioner's interventions, Chief of the Voivodeship Police in Cracow presented data on the number of crimes and offenses committed by Roma nationals, which might have suggested that the police were processing information on the nationality of perpetrators of offenses or persons suspected of having committed them. In his address to the Commander, the Commissioner[39] reminded that the data on national or ethnic origin are sensitive and, as a rule, can not be processed for statistical purposes, also by the Police. The Commissioner asked whether there was indeed a practice in the Provincial Police Headquarters or its subordinate units to develop statistical information on the national or ethnic affiliation of perpetrators of offenses (or suspects). In his reply to the Commissioner,

[37] Regulation of 19 July 2016 (Dz.U. item 1134).
[38] V.600.1.2016 of 15 December 2016.
[39] XI.816.11.2015 of 26 January 2016.

the Commander assured[40] that no such practice existed and the data presented to the Commissioner was a result of a one-off analysis of the current records in the electronic registers of investigations, inquiries and offense cases. After this assurance, the Commissioner completed the proceedings.

F) The legal situation of Roma immigrants in Poland

Foreign nationals – citizens of the European Union who do not have financial means or health insurance and who do not stand a real chance of employment encounter difficulties in registering their stay in Poland and thus obtaining the right to stay in our country for more than 3 months. Most often, it is Romanians of Roma origin living in many Polish cities who face this situation. On April 8, 2016, during a seminar on the situation of Roma immigrants in Poland organized by the Commissioner, he met a group of Roma people living in camps in Wroclaw and Poznan. One of the most important topics discussed during that meeting was the problem of registering the stay of Roma people on Polish territory as foreigners – citizens of the European Union. Most Roma migrants are unable to meet the conditions necessary to register their stay in Poland. In principle, in addition to taking up studies and marrying a Polish citizen, these conditions require employment, conducting a business or possessing financial means and health insurance which, in the case of Roma immigrant communities, is extremely difficult without the support of the state. Therefore, facilitating the registration process of EU citizens in Poland is both timely and urgent. The Commissioner requested information[41] from the Minister of Internal Affairs and Administration if any work had been going on to amend the legislation to facilitate the registration of EU citizens' stay in Poland.

The Minister informed[42] that the issue of registration of foreigners' stay in Poland, inter alia Romanians of Roma origin, had been analysed and stated that the issue should be regulated by the law. As a result, the Office for Foreigners has started work on a bill amending the Act on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members.

G) Situation of Roma families in Limanowa

The Commissioner received a complaint regarding a project being implemented by the Limanowa town government, whose aim was to improve the living conditions of several Roma families residing in the town. With funding from the Government Program for the Integration of the Roma Community in Poland for the

[40] Letter of 19 February 2016.
[41] XI.540.4.2015 of 10 June 2016.
[42] Letter of 13 July 2016.

years 2014-2020, the Limanowa authorities had purchased new houses in towns located in other municipalities, i.e. in Czchów (the municipality of Czchów) and Marcinkowice (the municipality of Chełmiec) for the Roma who live in a building owned by the city. Some families opposed leaving their hometown and moving to Czchów. The reason for their opposition was the Czchów municipal government's reaction to the mere information about the possible relocation of the Roma from Limanowa. Upon receiving that information the Mayor of Czchów issued an ordinance prohibiting the occupancy of the real estate purchased by the Limanowa municipal government[43]. Earlier, however, all the project beneficiaries had declared before the notary that they would leave their current place of residence within the time allowed after the new building was made available to them. In the declarations filed by them, the Roma submitted themselves to enforcement procedure and their declarations in the form of notarial deeds had become enforcement titles to which the District Court in Limanowa appended the enforcement clause.

On 17 February 2016 a meeting was held between representatives of the Commissioner, the Roma families from Limanowa, the Deputy Head of Małopolska voivodeship administration and the Mayors of Limanowa and Czchów. Subsequently, in his address to the Head of Małopolska voivodeship administration, the Commissioner suggested[44] that the authority should undertake mediation between the local authorities and the Roma families. The Head of Małopolska voivodeship administration joined in and suggested preparing an alternative aid proposal for the Roma families as the goal of the commenced mediation. The Commissioner was kept[45] informed about subsequent mediation meetings.

Despite the ongoing mediation, the Limanowa authorities began to carry into effect the enforced declaration made by the Roma in their notarial statements. In view of the imminent eviction of the Roma, the Commissioner decided to file lawsuits with the Limanowa District Court against the Limanowa municipality[46], in which he motioned for removal of the enforceable executive orders and for securing the lawsuits by suspending the ongoing enforcement proceedings. At the Commissioner's request, the District Court suspended the execution pending the consideration of the submitted lawsuits[47].

The Commissioner also intervened in connection with the ordinance issued by the Mayor of Czchów, who prohibited the occupancy of the property purchased in that town by the local government of Limanowa. After the Head of Małopolska voivodeship administration, acting as the supervisory authority, appealed to the Voivodeship Administrative Court in Kraków the order and the resolution of the Czchów town council which had approved it, the Commissioner joined the pro-

[43] Ordinance by the Mayor of Czchów No. 12/2016 of 17 February 2016, approved by the Town Council resolution in Czchów No. XIII/139/2016 of 16 March 2016.
[44] XI.816.13.2015 of 19 February 2016.
[45] E.g. letter z 9 March 2016.
[46] XI.816.13.2015 of 23 December 2016.
[47] Decisions of the District Court in Limanowa of 5 January 2017.

ceedings initiated by the Court. The Commissioner objected[48] ,inter alia, that none of the conditions set out in the law on municipal government existed that would authorize the local authorities of the Czchów municipality to issue ordinance regulations. The Commissioner also recognized that by depriving the Roma of even a potential opportunity to occupy their property, the local authorities committed discrimination on the grounds of ethnic background and illegally violated the right to protect private life. In this regard, in the Commissioner's opinion, the Czchów municipality violated the European Convention for the Protection of Human Rights and Fundamental Freedoms[49]. The Voivodeship Administrative Court has recognized the contested acts of local law as null and void[50].

H) Difficulties in submitting applications for granting international protection in Poland by foreigners undergoing border checks

The Commissioner kept receiving information about a group of several hundred foreigners who for some time had been unsuccessfully trying to enter Poland to apply for international protection. According to the law in force, the declarations of intention to apply for such protection, submitted during border control, should result in the admission of a foreigner to Poland and acceptance by the Border Guard of the appropriate request for such protection. The consideration of the applications is the responsibility of the Head of the Office for Foreigners and, until the final decision is taken, the foreigner resides legally in Poland. In the meantime, according to the complaints received by the Commissioner, in many cases the Border Guard officers conducting check-ins at border crossing points did not accept the declarations submitted by foreigners; thus they did not allow to submit the application for protection and consequently denied foreigners the right to enter Poland. Despite the repeated denials, foreigners repeatedly tried to cross the border, often with the same result.

In the first place, the Commissioner submitted an intervention[51] to the Border Guard Commander-in-Chief to take action that would eliminate possible irregularities in the conduct of the Border Guard officers.

In response, the Commander informed the Commissioner about an inspection made at the Terespol border crossing point which had been the subject of most complaints submitted to the Commissioner. Although, according to the Commander, the inspection did not confirm the irregularities in the conduct of the BG officers, in order to avoid any doubts about such practices some guidelines were developed for dealing with foreigners who do not meet the conditions for entry into the

[48] The Act z 8 March 1990 (Dz.U. of 2016 , item 446 as am.).
[49] Convention of 4 November 1950 (Dz. U. of 1993 No. 61, item 284 as am.).
[50] Judgement by the Voivodeship Administrative Court in Cracow of 1 February 2017.
[51] XI.543.7.2015 of 14 January 2016

territory of Poland when it may be presumed that they enter to seek international protection (refugee status). In that document, the Commander pointed out that foreigners are allowed to enter the territory of the Republic of Poland when they express their will to seek protection and expressly or impliedly are afraid to return to their country of origin.

The situation on the eastern border was also investigated by representatives of the Commissioner's Office during unannounced visits at border crossing points in Terespol and Medyka[52]. The first visit confirmed the cases in which the Border Guard denied the right of entry to Poland to persons that either directly expressed their intention to apply for international protection or described the situation in their country of origin in a manner that could indicate such intention. Both visits showed that the law regulations relating to border checks, as well as the procedures for accepting the protection applications at the border, did not adequately safeguard the rights of foreigners who sought such protection. This mainly concerned the way the Border Guards documented the inquiries that are conducted by BG officers individually with each foreigner crossing the border and during which questions are asked about the reason for arrival in Poland. Conclusions from the visit were presented by the Commissioner to the Border Guard representatives, the Ministry of Internal Affairs and Administration and the Office for Foreigners at the seminar entitled "Refugees on the border" held in the Office of the Commissioner for Human Rights on 9 November 2016. The Border Guard made then a declaration to start working on the unification of the procedures in force, including documentation of the inquiries, at all crossing points. This work is being monitored by the Commissioner.

l) No possibility to appeal to the administrative court the consul's decision to refuse a visa to foreigners

The Commissioner kept receiving complaints about the inability to appeal to the administrative court a consular decision to refuse visas to foreign nationals – non-EU citizens. The Aliens Act[53] states that a visa is either issued or refused by the consul. In case of refusal, there is a remedy in the form of a reconsideration request submitted again to the consul. If the negative decision is upheld, the foreigner is not entitled to complain to the administrative court. However, the rule that makes it impossible to use that route of appeal may be considered non-compliant with the Constitution of the Republic of Poland and the Charter of Fundamental Rights of the European Union. The right to a trial, understood as the right to start a court procedure, does not imply that any application will be considered positively but

[52] The Commissioner's representatives inspected the border crossing point in Terespol on 11 August 2016. The inspection in Medyka took place on 6-7 October 2016.

[53] The Act of 12 December 2013 (Dz.U. item 1650, as am.).

only that the consul's decision will be evaluated for legal compliance. On the other hand, the regulation of the Community Code on Visas, applicable to the Member States of the European Union including Poland, provides that aliens have the right to an impartial examination of a visa application and that right should be protected by a judicial review procedure. Depriving non-EU citizens of this possibility violates fundamental EU principles. In the Commissioner's opinion, the issue or refusal to issue a visa is an administrative matter because during its consideration an entity's rights vis-à-vis public authority are arbitrated. The administrative court should be competent to arbitrate it as the court which controls the operation of the public administration. The Commissioner requested[54] the Minister of Internal Affairs and Administration to initiate a legislative initiative that would result in foreigners being able to appeal a consul's refusal to issue a visa to the administrative court.

In response to the Commissioner's intervention, the Minister of Foreign Affairs pointed out[55] that, under the Community Visa Code, a Member State defines in its national law how to set up an appeal procedure and what legal remedies are available to the person concerned. Taking advantage of the liberty granted under the above provision, the Polish legislator decided that the appeal proceedings before the Polish consul consist in submitting a request for re-consideration of the case by the authority that issued the visa decision. The reply from the Minister of Foreign Affairs is currently being analysed. The Commissioner is considering taking further action on this issue.

J) Foreigners' access to classified information in proceedings conducted under the Aliens Act

The cases investigated by the Commissioner regarding the legalization of foreigners' stay and the recognition of foreigners as Polish citizens revealed the problem of the parties being denied access to documents classified as "secret" or "top secret". The refusal was not followed by the justification of the relevant administrative decision issued by the authority. The refusal of access to the collected file or waiving the justification of the decision formally do not deprive the foreigner, as a party to the proceedings, of the right to appeal a negative decision to a higher authority or appeal to the administrative court a decision issued in review proceedings but they limit these rights considerably. The person to whom the decision relates is unaware of its factual basis nor do they know on what evidence the authority based its decision. In the Commissioner's opinion, in case of such a refusal, the foreigner – party to the proceedings – is not adequately protected against the authority's arbitrary decision regarding their stay in Poland. The need to provide the party with an effective redress procedure was also referred to by the European Court of Human Rights

[54] VII.510.4.2016 z 19 August 2016.
[55] Letter of 23 November 2016.

and the Court of Justice of the EU in their judgements which declared it unacceptable to deprive a party of the opportunity to access the case file without applying protective mechanisms that would mitigate the effects of refusal of such access. In the Commissioner's opinion, in the current legal circumstances foreigners are not afforded access to effective remedies or appeals in line with the guarantees of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the EU. The Commissioner requested[56] the Minister of Internal Affairs and Administration to initiate a legislative initiative within the scope indicated.

The Minister agreed[57] with the thesis that the obligatory refusal of access to information classified as "secret" or "top secret" could raise legitimate doubts. However, it should be borne in mind that in accordance with the Act on the Protection of Classified Information, such information is classified as "top secret" only in cases that involve the gravest risks to the security of the State and public order. The Commissioner's arguments do not indicate the absolute necessity to change the current law. The Minister agreed with the Commissioner that the issue raised in the intervention should be subject to a comprehensive assessment but it would require an in-depth analysis of the national case law and the case law of international courts and tribunals.

K) Equal access to religious or ethics education for all students

According to a study ordered by the Commissioner, the availability of minority religious education and ethics classes in the school education system has improved in recent years. The Commissioner's recommendations included in the report titled: "The availability of minority religious classes and ethics classes within the school education system[58]" mainly concern the improvement of organizational solutions but also the introduction of some changes in the law. The Commissioner postulates that school principals be obliged to inform parents and pupils about the rules governing the organization of religious minority classes and ethics classes. In the Commissioner's opinion, to demand to file a declaration of refusal to participate in religious or ethics classes or to request that the wish to attend such classes be expressed in the presence of other parents and students is a violation of the freedom of conscience and religion and of the right not to disclose one's worldview, religion or belief. It is also important for schools to show more initiative in organizing religion or ethics lessons, and not just delegate that task to the parents and pupils concerned. It is necessary to change the regulations appropriately so that

[56] XI.533.2.2016 z 19 August 2016.
[57] Letter of 21 October 2016.
[58] See https://www.rpo.gov.pl/sites/default/files/BIULETYN%20RZECZNIKA%20PRAW%20OBYWATELSKICH%202015%20No.%206.pdf

the churches and denominations are also eligible to apply for organizing religious education. Organizational improvements are also needed so that students are not discouraged from taking classes due to e.g. commuting difficulties or additional time of waiting for a class. School principals should also ensure that ethics classes are conducted by teachers with appropriate qualifications. The obligation to organize ethics classes should arise from the Education Act and not solely from ordinance regulations. Such a legal solution would enhance the legal protection of persons experiencing discrimination on the grounds of religion, belief or worldview. The Commissioner requested[59] the Minister of National Education to consider taking appropriate action.

The Minister shared some of the doubts indicated in the report[60], but pointed out that the Ministry did not plan any changes to the legislation in force. The Minister acknowledged that some practices are unacceptable, such as asking parents to declare refusal for their child to attend religion or ethics classes or charging them with the task of organizing such lessons. On the other hand, the Minister disagreed with the request for the Ministry to gather statistical data on the number of pupils involved in different religions classes and ethics classes, which in the Commissioner's opinion would allow for an ongoing assessment of the availability of these classes in educational institutions. The Ministry also did not share the opinion regarding the obligation to inform parents about the possibility of organizing such classes at school.

2. Counteracting discrimination on the grounds of gender

A) Protection of the rights of persons experiencing domestic violence

A person experiencing domestic violence may apply to the court to oblige the perpetrator to leave a jointly occupied dwelling under the provisions of the Act on Counteracting Domestic Violence[61]. In civil proceedings the court may require a domestic violence perpetrator to leave the home regardless of whether the perpetrator can be charged with committing a crime.

In their complaints to the Commissioner, people experiencing violence indicate that, despite the actions taken, they are unable to evict and isolate the perpetrator

[59] XI.5601.4.2016 z 29 April 2016.

[60] Letter of 8 June 2016.

[61] The Act z 29 July 2005 (Dz.U. of 2015 , item 1390).

from the victims of the violence in a short term. In the Commissioner's opinion, it is necessary to observe the legal deadline of one month for setting a hearing after petition is filed to commit a violent offender to leave a jointly-occupied dwelling due to grossly abusive conduct and the use of threats and violence. It also seems reasonable for the court to limit subsequent hearings which delay the time of the ruling. The Commissioner asked the Minister of Justice whether the ministry intended to take steps to improve the conduct of such proceedings to ensure more effective protection of the rights of people experiencing domestic violence[62].

The Minister replied[63] that the provisions of the Act on Counteracting Domestic Violence provided for a rapid recognition of cases. Solutions concerning the time limits for case recognition were indicative only for the courts. It might be helpful to stimulate court presidents to comply with the provisions of the Regulation of the Minister of Justice on the proper organization and timing of meetings and hearings in order to ensure the smooth conduct of the proceedings.

B) Housing problems of people affected by domestic violence

The Convention on Preventing and Combating Violence Against Women and Domestic Violence[64], ratified by Poland, provides for the adoption of the necessary measures to order the perpetrator of domestic violence to leave the victim's place of residence and to prohibit contact with the victim. In turn, according to the Act on Counteracting Domestic Violence [65], a person affected by domestic violence obtains free assistance, including assistance in acquiring a home. Unfortunately, despite these regulations, the extent of the support actually provided must improve.

The cases investigated by the Commissioner reveal that it is the victims of violence that decide to leave their home to protect themselves and their children from further acts of violence and to avoid potential retaliation from the perpetrator for taking legal action against them. When leaving home, a person experiencing domestic violence should be guaranteed help in a specialist support centre. Unfortunately, such facilities are too small in number and they offer too short a stay – up to three months with the possibility of extension in justified cases. Housing conditions in a temporary housing facility may disqualify the victims of violence from the group entitled to rent a communal property. Sometimes the victim is forced to return to the apartment occupied jointly with the perpetrator. The state of the communal housing stock remains a problem which directly translates into the availability and the waiting time for renting a council flat. In this connection, the Commissioner

[62] IV.7214.62.2014 z 29 April 2016.
[63] Letter of 5 July 2016.
[64] Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), made in Istanbul on 11 May 2011 (Dz.U. of 2015 , item 398
[65] The Act z 29 July 2005 (Dz.U. of 2015 , item 1390).

requested[66] the Minister of Infrastructure and Construction to undertake legislative work to improve the housing situation of the victims of domestic violence, including special preferences for the use of municipal housing assistance.

The Minister disagreed[67] with the Commissioner's proposal to indicate in the legislation in force special preferences for the use of municipal housing assistance for victims of domestic violence, including priority in obtaining a flat. Such a provision could lead to a charge of discrimination against other persons from the so-called "socially vulnerable group of people", e.g. single parents with minor children, homeless people, sick people, pensioners or annuitants. He emphasized that the regulations in force[68] provide substantial protection for people experiencing domestic violence.

C) Adaptation of Polish legislation regarding the isolation of the perpetrator from the victim of violence

The existing legislation provides for a number of measures to isolate the perpetrator of domestic violence from the victim. However, in the Commissioner's view there is a need to adopt a measure promptly applicable in the case of immediate danger, irrespective of pending criminal proceedings because not every manifestation of domestic violence will meet crime criteria. It is therefore a measure that can be applied where there is no basis for arrest or prosecution because detention, as a remedy which deprives the perpetrator of liberty, should be applied proportionately and with extreme caution. In many situations a temporary but prompt leaving by the perpetrator of the premises occupied jointly with the victim of violence seems satisfactory. The Commissioner requested[69] information from the Minister of Family, Labour and Social Policy about the progress of work on the announced[70] amendment to the Police Act.

The minister explained[71] that the ministry was considering introducing such solutions into the Act on Counteracting Domestic Violence as will guarantee the subjectivity and autonomy of the family and will impact more effectively those who use violence.

[66] IV.7211.149.2016 z 8 November 2016.
[67] Letter of 2 December 2016.
[68] The Act of 21 June 2001 on the Protection of Residents' Rights, Municipal Housing Stock and Amendments to the Civil Code (Dz.U. of 2014 item 150 as am.).
[69] XI.518.47.2015 z 31 October 2016.
[70] Letter of 5 January 2016.
[71] Letter of 5 December 2016.

D) Refusal to allocate grants to the Centre for Women's Rights, the Lubuskie Centre for Women's Rights BABA and the Empowering Children Foundation

Assistance to victims of domestic violence, including especially women experiencing all kinds of violence, currently offered by the state is insufficient. Non-governmental organizations play an important role in providing specialist, professional support to violence victims, especially in the case of elderly women and women with disabilities. Therefore, the Commissioner was concerned by the news of the refusal to provide financial support from the Victims and Post-penitentiary Aid Fund to organizations offering assistance to women victims of violence and to children. According to the justification of the refusal to grant targeted subsidies for the implementation of tasks by the Centre for Women's Rights and the Lubuskie Centre for Women's Rights BABA, the both organizations did not receive grants because the aid was provided only to women victims of crime and the Fund Administrator had given special importance to ensure the most comprehensive implementation of aid for all the crime victims. The Empowering Children Foundation, which specializes in helping children, also did not receive a grant.

In his intervention[72] to the Minister of Justice, the Commissioner stressed that both the Centre for Women's Rights and the BABA were pursuing most of the tasks listed in the Minister's for Justice ordinance on the Victims and Post-penitentiary Aid Fund[73] by offering broad support to women victims of violence. In the ordinance there is no provision that would indicate that organizations which specialize in assisting a particular group of victims are to be excluded from the possibility of obtaining targeted subsidies from the Fund. The Commissioner requested the Minister of Justice to clarify how the current support system for victims of violence with special needs was being organized, including women experiencing domestic violence, and to provide information on what basis the tasks being implemented by the above-mentioned organizations had been rated as non-comprehensive.

According to the reply[74], the idea of the 9th competition of offers was to provide assistance to each and every victim without any discrimination. The actual activities of the Centre for Women's Rights to date, intended solely to help women, are not a comprehensive, non-discriminatory aid. In the case of the Lubuskie Association for Women BABA and the Empowering Children Foundation, the Administrator chose the offers which guaranteed comprehensive assistance to all those in need – regardless of gender – with greater geographical coverage.

[72] XI.815.29.2016 z 11 June 2016.
[73] XI.815.29.2016 z 11 June 2016.
[74] Letter of 29 July 2016.

In response, the Commissioner drew the attention[75] of the Minister of Justice to the fact that certain groups of society – particularly women victims of gender-based violence and their children – were particularly vulnerable to violence and required targeted and integrated support. Administering general aid to these groups might not meet their needs and even lead to further harm. The Commissioner also asked about any changes in providing aid in the victim's place of residence.

E) Launching a telephone helpline for people affected by domestic violence

The Commissioner has repeatedly emphasized the need to increase the protection of people experiencing domestic violence, including the launching of a nationwide 24-hour free telephone helpline for women victims of gender-based violence and victims of domestic violence. The task of creating such a helpline has been included in the National Program for the Prevention of Domestic Violence for 2014-2020 and scheduled to be launched as of 2017. The obligation to establish a telephone helpline for advice on all forms of violence while preserving the confidentiality or anonymity of callers is imposed on Poland by Article 24 of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence. The Commissioner also emphasized the need for training people to operate the helpline to be able to address the specific needs of women with disabilities, older women and women migrants and to adapt the helpline to assist deaf women, for example through providing video-translation services in the Polish sign language and manually-coded language. In this connection, the Commissioner requested [76] the Minister of Family, Labour and Social Policy for information about the progress of the relevant works.

The Minister announced[77] that a 24-hour nationwide free telephone line for victims of domestic and gender-based violence would be created in 2017. The State Agency for the Prevention of Alcohol-Related Problems has announced a competition for NGOs to implement the task called National Emergency Service for Victims of Domestic Violence "Blue Line". One of its tasks will be a telephone helpline for domestic violence victims available for 24 hours a day. The helpline offer for domestic violence victims will include i.a. psychological and legal consultations and interventions. Skype communicator consulting will continue.

[75] Letter of 9 December 2016.
[76] XI.816.1.2015 z 8 November 2016.
[77] Letter of 13 December 2016.

F) Domestic violence prevention system

In connection with the announcement that the Ministry of Family, Labour and Social Policy is working on a draft amendment to the Act on Counteracting Domestic Violence, the Commissioner pointed to the problems and deficiencies stemming from the provisions of the current law and its application, which appear in complaints directed to the Commissioner for Human Rights Office. The main problem is the insufficient number of specialized facilities for violence victims causing limited access to such support and shelter facilities. The obligation to implement this form of assistance rests with local government units – the municipality and the district – but the actual fulfilment of these obligations should be subject to more effective supervision. The functioning of correctional and educational intervention programs addressed to those who use violence also can not be considered sufficient. It seems necessary to carry out a systematic analysis of access in Poland to facilities implementing the aforementioned programs and the performance of tasks by local governments related to the development and implementation of the programs.

Moreover, shortcomings in anti-violence programs are visible, especially as regards their low content level and generality. In the Commissioner's opinion, a closer cooperation is needed between the justice system and the authorities responsible for counteracting violence and directly involved in helping people affected by it. It is also worth to consider amending the law on counteracting domestic violence by introducing periodic monitoring by working groups of the situation of people affected by violence after the closure of the Blue Card procedure. Moreover, there is a need to introduce a law provision on the minimum scope of training (including supervision) and the rules for remuneration of members of the Interdisciplinary Team. In order to align the provisions of the Act on Counteracting Domestic Violence with the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), the Commissioner has recognized the need to extend the definition of domestic violence used by the law in such a way that it also covers economic violence and the relationships of persons who are no longer in a permanent relationship or marriage and do not live together but nevertheless acts of violence occur between them. The Commissioner requested[78] the Minister of Family, Labour and Social Policy to present her views on the matter and to inform about the proposed solutions regarding amendment of the Act on Counteracting Domestic Violence.

The Minister advised[79] that work was under way on changes in the area of counter-violence that would increase the security and protection of individuals vulnerable to, or affected by, violence and to guarantee the subjectivity and autonomy of

[78] III.518.16.2016 of 7 December 2016.

[79] Letter of 13 January 2017.

the family. In addition, the introduction of regulations aimed at streamlining the actions directed at people using violence is considered.

The Commissioner will continue to monitor the implementation of the Act on Counteracting Domestic Violence.

G) Protection of the rights of sexual offense victims

The cases being investigated by the Commissioner have revealed a problem with the implementation of the Code of Criminal Procedure which specifically regulates the mode of interrogating witnesses who are victims of sexual offenses. The hearing, which is to provide the procedural body with all information about the circumstances of the offence and the offender, should be conducted immediately after the offense has been filed and in such a way as to minimize secondary victimization. From the cases examined by the Commissioner it appears however that in practice, from the moment the public prosecutor is notified until a court hearing more than 3 months might elapse. The Commissioner requested[80] the Attorney General to take appropriate action, in particular to streamline the flow of information between the prosecution and the courts, to ensure effective protection of victims' rights and shorten the waiting periods for hearing.

The prosecutor shared[81] the Commissioner's concern about the irregularities in appointing distant dates for court sessions to hear the victims. Issues related to properly applying the procedures for interviewing victims and witnesses were emphasized among others in the "Attorney's General Guidelines on the Rules of Procedure in Cases Involving the Crime of Rape" published on December 18, 2015. They point to the necessity of sending letters to the courts presidents requesting them to expedite the examination of applications or to set earlier hearing dates in the situations when court hearings are not scheduled promptly or the hearing dates are distant.

The Commissioner also requested[82] the Minister of Justice to investigate the problem and take action to ensure effective protection of the rights and freedoms of sexual offense victims.

The Minister agreed[83] with the Commissioner that the scheduling of hearings of sexual abuse victims should be regulated. This issue will be dealt with by the Department of Legislation of the Ministry of Justice.

[80] BPK.518.5.2015 of 17 February 2016.
[81] Letter of 2 March 2016
[82] BPK.518.5.2015 of 8 September 2016
[83] Letter of 10 October 2016

H) Work on withdrawal from the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence

The Commissioner was concerned about the media information about the ongoing government work aimed at withdrawing from the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence[84]. The entry into force of the Convention was a milestone in ensuring protection of the fundamental rights and freedoms of women experiencing gender-based violence. The Convention is based on the premise that the implementation of legal and effective equality between men and women is of fundamental importance while the source of violence is the perpetrators' conviction of the stereotyped, secondary role of women. Thus, the Convention indicates that the lack of effective support for women victims of violence is a form of indirect discrimination on the grounds of gender. The Convention comprehensively addresses the issues of helping victims, prosecuting and punishing perpetrators and preventive and educational actions. There is no doubt that the current problem is to ensure the actual realization of the rights guaranteed by that international agreement. The Commissioner requested the Government Plenipotentiary for Equal Treatment[85] for information if any work was going on that would lead to Poland's withdrawal from the Convention.

The Plenipotentiary[86] informed that on November 28, 2016 he had received a draft request for withdrawal from the Convention, together with a justification, which had been circulated by the Ministry of Justice for inter-ministerial consultations. However, in a subsequent letter[87] the Plenipotentiary assured the Commissioner that the Government had not started work or intended to start work to withdraw from the Convention. Thus, the draft request for withdrawal from the Convention of 28 November 2016, prepared and circulated by the Ministry of Justice for consultations, has remained unconsidered and is not being processed.

I) Protection of teachers from dismissal during pregnancy and maternity leave

Protection of the employment relationship of nominated teachers during pregnancy and motherhood, including those employed as teachers of religion requires comprehensive regulation in the Teachers Charter. The lack of such regulation rais-

[84] The Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) made in Istanbul on 11 May 2011 (Dz.U. of 2015 , item 961)
[85] XI.816.1.2015 of 9 December 2016.
[86] Letter of 23 December 2016.
[87] Letter of 10 January 2017.

es doubts as to the compliance with the constitutional protection of motherhood and parenthood and with the provisions of EU law.

The above conclusions derive from the analysis of an individual case in which the employment relationship with a nominated religion teacher was terminated during pregnancy. As a legal basis, a provision of Teachers Charter was quoted, which stipulates that the employment relationship with a teacher employed by nomination shall be dissolved, inter alia, if the referral to teach religion at school is cancelled. This occurred despite the fact that the provisions of the Teachers Charter on the issues arising from employment but not regulated by the Charter are referred to the Labour Code. The special protection, guaranteed in the Labour Code, afforded to women during pregnancy and maternity should also cover nominated teachers in the event the referral to teach religion is cancelled. In the current legal situation, it is also questionable whether a dismissed teacher can effectively demand restoration and compensation for unemployment. The Commissioner requested[88] the Minister of Family, Labour and Social Policy and the Minister of National Education to present their views on the matter, and to take appropriate action to ensure proper protection for women who are pregnant or on a leave related to parenthood.

The Minister of National Education advised[89] that the protection of employment of parenting teachers is regulated by the provisions of labour law while the religion teachers' situation is different. Religion teacher employment is based exclusively on a personal written referral to a kindergarten or school, issued by the competent authorities of churches and religious associations. The religion teacher's employer is the school principal and it is he or she that does all the work related to the employment and dismissal of the teacher while the person to be employed is chosen by church authorities. The referral to work as a religion teacher can be cancelled and is tantamount to losing the right to teach religion. Revocation of the referral is an autonomous decision of the church authorities and the basis for terminating the employment relationship with the teacher. The school principal only confirms the termination of the employment. Such legislative structure allows churches and religious associations to remain autonomous in the selection of personnel and any interference by the Minister of National Education would be outside the law.

The Ministry of Family, Labour and Social Policy is aware[90] of the lack of legal regulations on the protection of the employment relationship of a pregnant religion teacher in the case her referral to teach religion in a kindergarten or school is cancelled but the legislative initiative in this area belongs to the Minister of National Education.

[88] III.7041.36.2015 of 7 January 2016.
[89] Letter of 11 February 2016.
[90] Letter of 23 February 2016.

J) Protection of pregnant women from dismissal from professional military service

The cases investigated by the Commissioner revealed the insufficient protection against dismissal of pregnant women and contract workers. Under the rules in force, a woman who is a contract soldier may be released from service up to 6 weeks before the birth of a child due to the expiration of the contractual period. The provisions of the Act on Military Service of Professional Soldiers[91] provide protection against dismissal during maternity leave, paternity leave or parental leave but do not protect pregnant women soldiers from dismissal while the regulations of other uniformed services do provide such protection. The specific role of public authorities in promoting maternity arises from the Constitution. Also EU legislation guarantees a certain standard of protection of the employment of pregnant women. The case law of the Court of Justice of the EU clearly indicates that unfavourable treatment of a woman because of her pregnancy or maternity constitutes direct discrimination on grounds of gender. The Commissioner submitted an intervention[92] to the Minister of National Defence to launch a legislative initiative to eliminate the problem.

The Minister confirmed[93] that it was necessary to develop additional solutions that would provide adequate protection of pregnant women in contractual military service. The Minister announced that the appropriate amendment would be proposed during the forthcoming change of the Act on Military Service of Soldiers.

K) Availability of legal pregnancy termination procedures

According to the ruling of the Constitutional Tribunal[94] on the conscientious objection clause, the provisions of the Act on the Professions of Doctor and Dentist[95] are non-compliant with the Constitution to the extent that they impose the obligation on a doctor declining a health service incompatible with their conscience to indicate a realistic option of obtaining such a benefit from another doctor or other health care entity. In the opinion of the Constitutional Tribunal, the legislator should use other, more effective ways to inform the patient about a realistic option of obtaining a health service.

Individuals covered by social security and persons entitled to free health care under separate provisions shall be entitled to free termination of pregnancy in a public health care facility in the cases provided for in the Act on Family Planning,

[91] The Act of 11 September 2003 (Dz.U. of 2014 , item 1414, as am.).
[92] WZF.7043.26.2015 of 2 March 2016
[93] Letter of 25 April 2016
[94] Judgement of 7 October 2015, file ref. no. K 12/14
[95] The Act of 5 December 1996 (Dz.U. of 2017 , item 125).

Protection of the Human Foetus and Conditions for Termination of Pregnancy [96]. Allowing the possibility of pregnancy termination in the cases described in the Act implies the need to create a system that will guarantee a real and non-discriminatory access to this procedure. The state is obliged to provide health care services in such a way that the conscientious objection institution respecting the freedom of conscience of doctors does not prevent patients from using the benefits they are entitled to, especially in cases where continuation of pregnancy is a threat to the woman's life and health.

In the meantime, according to media reports, in the Podkarpackie Voivodeship there are no entities that would terminate a pregnancy in the cases permitted by law, so that women who wish to undergo the surgery must travel to medical institutions located in other voivodeships. In the Commissioner's opinion, this situation may constitute a restriction of the statutory right to a free pregnancy termination in a public health care facility. Therefore, the Commissioner requested[97] the Commissioner for Patients' Rights for information on the steps taken to ensure access to legal abortion. In addition, the Commissioner sent and intervention letter[98] to the National Health Fund President asking whether, according to the National Health Fund's knowledge, the problem of access to abortion actually existed in the Podkarpacie Region or in other voivodeships, and also requesting information about the actions the Fund was undertaking to ensure female patients' access to the pregnancy termination procedure as regulated at the statutory level.

In response, the PRA explained[99] that she was proceeding to verify media reports concerning the availability of legal abortion in the Podkarpacie region. In addition, the PRA admitted a problem had been identified that the above mentioned benefits were actually hindered through, inter alia, refusal to issue a referral to a specialist or refusal to conduct a prenatal examination and preserve continuity of the benefits when all the doctors in the given institution referred to the "conscience clause".

L) Access of patients in labour to pharmacological anaesthesia

The Commissioner was receiving complaints about a limited access of women in labour to epidural anaesthetics. Statistical data provided to the Commissioner by the regional branches of the National Health Fund show that there is considerable disproportion between the hospitals providing this benefit to patients. Failure to administer legally guaranteed pain-relieving drugs to a woman in labour is a violation of the patient's rights to respect her dignity and intimacy and the right to health

[96] The Act of 7 January 1993 (Dz.U. No. 17, item 78, as am.).
[97] VII.7010.1.2016 of 11 July 2016.
[98] VII.7010.1.2016 of 10 January 2017.
[99] Letter of 11 August 2016.

services that meet the requirements of state-of-the-art medical knowledge. Forcing a pregnant woman to give birth to a child without anaesthesia when there are no contraindications may be considered a manifestation of inhuman and degrading treatment, in particular in the light of Article 3 of the Convention for Protection of Human Rights and Fundamental Freedoms. The Commissioner used to point out that pregnant women and women in labour are particularly vulnerable to oppressive treatment and human rights abuses. The Commissioner requested[100] the Minister of Health for information on what action would be taken on the issue.

The Minister presented[101] the Commissioner with a series of measures aimed to improve the availability of epidural anaesthesia services to ensure patients' right to a painless, suitable, natural labour. Since July 2015, the National Health Fund has increased the value of health care related to birth, which resulted in an increase in the number of the anaesthesia procedures performed. Moreover, in order to compensate for the shortage of medical staff, the Minister of Health has decided that anaesthesia and intensive therapy will be a priority field of knowledge. Doctors are allowed to supervise more than one childbirth if this does not create hazard for the mother and child. In addition, anaesthesia procedures can now be executed by doctors who are being trained in anaesthesia and have completed the second year of study provided they are under the supervision of a specialist. The minister also reported on activities intended to increase the female patients' awareness of their rights during childbirth. The rights of women in labour had also been worked on by the team for monitoring and developing solutions to improve perinatal care.

Ł) Obtaining consent from pregnant women and women in labour to carry out procedures during childbirth

The cases investigated by the Commissioner have revealed the problem of respecting the rights of pregnant women and women in labour regarding the forms and circumstances of their consent to the procedures taking place during childbirth. The complaints revealed that women giving birth were urged to consent to a procedure even during the labour while struggling with pain and fatigue and were unable to make a conscious decision.

The Act on the Professions of Doctor and Dentist[102] and the Act on Patients' Rights and the Commissioner for Patients' Rights[103] stipulate that a doctor may perform a medical examination or provide a medical service upon the patient's consent. The consent must be expressed consciously, i.e. the patient has to understand what the procedure is and what the consequences will be. The so-called "general consent" – a joint consent for several procedures, which is collected from i.a. a pregnant pa-

[100] V.7010.70.2016 of 26 September 2016.
[101] Letter of 13 October 2016.
[102] The Act of 5 December 1996 (Dz.U. of 2015 , item 464, as am.).
[103] The Act of 6 November 2008 (Dz.U. of 2016 , item 186, as am.).

tient during her registration at the hospital before admission to the ward – does not meet the above rule. Such a consent to surgery may be a violation of the patient's rights because the doctor or midwife have not informed the pregnant woman about the possible effects of the procedure. Focused on the childbirth and the instructions of medical staff, the woman in labour has a difficult time to freely and knowingly make a decision about the need for a particular procedure. In addition, it should be assumed that the pregnant woman who is urged to consent to another procedure in the course of the ongoing one was not previously well informed about it. Such practices constitute a violation of the rights of women in labour and pregnant ones. The Commissioner[104] requested the Minister of Health and the President of the Chief Medical Council to take a stance on the case and indicate what actions the professional body of doctors and the Ministry of Health would take to ensure that the rights of pregnant women and those in labour are respected.

The Minister of Health indicated[105] the legal basis for granting patients the right to express an informed consent to health services and regulating the conduct of staff in receiving an each-time consent for individual tests and medical treatment from a woman in labour. It has been acknowledged that the rules for observing patient rights are not properly respected. This can be attributed to the habitual behaviour of the staff. To change this state of affairs long-term training is required that will shape the right attitude of the personnel. Raising the standards of care is also possible through increasing public awareness and knowledge of the rights, which is the objective pursued by the Ministry of Health.

M) Reconciling family and professional roles

The Commissioner's special focus of attention includes the issue of equal rights for women and men in family and professional lives. In his intervention to the Minister of Family, Labour and Social Policy, the Commissioner drew attention[106] to the conclusions and recommendations contained in his report entitled "Reconciling family and professional roles. Equal treatment of parents in the labour market"[107]. It is essential to ensure equal access to the solutions that allow to reconcile family and professional roles irrespective of gender. It is still predominantly women who are responsible for caring for children and unpaid home-based work, which leads to unequal treatment in the employment field. Women are more likely to engage in low paid jobs, work part-time, and statistically earn less than men. The consequence of this is also the unequal treatment of men in the area of family life. Employers often make it impossible for men to exercise their parental rights. A solution that

[104] V.7013.60.2016 of 28 September 2016.
[105] Letter of 26 October 2016.
[106] XI.420.1.2016 of 30 March 2016.
[107] See https://www.rpo.gov.pl/sites/default/files/BIULETYN_RZECZNIKA_PRAW_OBYWATELSKICH_2015_No._7.pdf

encourages fathers to take parental leave is to allocate a certain period of leave to fathers only. However, the legal solutions adopted in Poland are not sufficient to ensure a balanced distribution of care responsibilities between parents. It is worth to consider such parental leave structure that part of it will be reserved for each parent without a possibility to surrender it to the other, except when one parent can not take care of the child personally. The system of parental benefits is regulated in the Labour Code in such a way that the father's access to parental benefits depends on whether they accrue to the mother. This situation is an example of discrimination on the grounds of gender because women mothers in an employment relationship or covered by a state social security scheme acquire full benefits related to parenting irrespective of the occupational status of the father. In addition, the use of flexible forms of employment is also one of the solutions to reconcile work and employment. It is also necessary to support employers in the creation of workplace crèches and children's clubs. In the Commissioner's opinion, the employer should have a legal obligation to inform parents about parental benefits.

In response, the Commissioner was informed[108] that the requirement to disseminate the Labour Code provisions related to parenting among all employees at the company appears to be an unnecessary burden for the employer. According to the Ministry, it is up to the parents to decide how they will use their benefits. Any further change of the provisions related to the parenting employee benefits may take place only after the current regulations have been in force for a certain period of time, which will allow an analysis of the manner and extent of their use by parents. Notwithstanding the above, the Ministry is continuing to analyse how the case law of the Court of Justice of the European Union is to be complied with in the legal solutions related to employee childcare benefits.

In connection with the seminar titled: "Reconciling family and professional roles. Equal treatment of parents in the labour market" held in the Commissioner's Office on 6th October 2016, the Commissioner has forwarded[109] further recommendations to the Minister. He pointed out, among other things, that it is important to popularize and deformalize the possibility of using other forms of childcare, the wide range of which is enshrined in the act on childcare up to the age of 3[110]. It is also necessary to comprehensively develop public services for the care of dependents – not only minors but also elderly persons and persons with disabilities. The abolition of the pay gap in Poland is one of the most important factors in balancing the responsibilities of parents and reconciling the family life and professional life. The ratification of the revised European Social Charter as well as the ILO Convention No. 158 on the termination of employment at the initiative of the employer would contribute to that.

[108] Letter of 28 April 2016.
[109] XI.420.1.2016 of 31 October 2016.
[110] The Act of 4 February 2011 (Dz.U. of 2016 item 157).

N) The problem of evasion of child maintenance obligations

The Commissioner for Human Rights together with the Commissioner for Children's Rights have set up a Team of Child maintenance Experts[111] to develop systemic mechanisms to improve the child maintenance situation. Since the overwhelming majority of child maintenance payers are men (about 96%), the consequences of failure to meet the child maintenance obligations are primarily borne by women. The Team members agreed that the evasion of child maintenance primarily affects the well-being of the child and is a manifestation of economic violence against it but also against its caring mother. In view of the scale of the problem, a number of corrective actions need to be taken immediately[112].

The current effectiveness of prosecution of child maintenance non-payment offenses remains relatively low. What contributes to that is the current structure of Article 209 of the Penal Code on the offense of child maintenance failure, which significantly limits the possibility of prosecuting the perpetrators of such offenses. The Commissioner requested[113] the Minister of Justice, the Attorney General and the Director of the Institute of Justice to provide their stance on this matter and the data on the prosecution and punishment of such offenses as well as to analyse the effectiveness of law enforcement authorities' actions and court judgements enforcement.

The Minister of Justice stated[114] that the need to improve the efficiency and effectiveness of enforcement, rationalize the enforcement fees charged by bailiffs and enhance control over their actions was still relevant.

The Director of the Institute of Justice pointed to[115] the problem of barriers to the effective implementation of child maintenance benefits. Information was provided about studies on the enforcement of child maintenance payments to be conducted at the Institute of Justice in 2016. Their purpose would be to analyse the reasons for the low efficiency of enforcement of child maintenance payments and to review the legal instruments used in this area in selected European countries.

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[111] The Team's composition: Iwona Janeczek, Katarzyna Stadnik, Elżbieta Korolczuk Ph.D, Robert Damski, Judge Ewa Trybulska-Skoczelas, Prof. Jacek Kosonoga, Ph.D, Att. Katarzyna Gajowniczek-Pruszyńska, Att. Grzegorz Wrona, Grzegorz Baczewski Ph.D, Gen. Paweł Nasiłowski, Roman Pomianowski, Małgorzata Druciarek, Monika Kaczmarek-Śliwińska Ph.D, Martyna Cichocka-Michalak, Katarzyna Thielmann, Judge Agnieszka Rękas, Katarzyna Czaj-Czcińska, Att Zuzanna Rudzińska-Bluszcz, Ewa Dawidziuk Ph.D, Marta Kolendowska-Matejczuk (temporarily replaced by Marcin Mrowicki), Magdalena Kuruś, PhD Anna Nowicka-Skóra Ph.D, Joanna Troszczyńska-Reyman, Jolanta Florek, Michał Kubalski.

[112] Full information on these activities taken up by the Commissioner for Human Rights and the Commissioner for Children's Rights, supported by the Team of Experts on Child maintenance is available at: https://www.rpo.gov.pl/pl/sprawa/sprawy-alimentow.

[113] II.519.1524.2015 of 5 January 2016.

[114] Letter of 1 February 2016.

[115] Letter of 9 February 2016.

The Attorney General[116] presented statistical data on the criminal prosecutions of child maintenance non-payment offenses in 2010-2015. At the same time, he pointed out that a significant number of decisions to refuse to initiate criminal proceedings or to discontinue them in preparatory phase did not indicate that the procedural steps taken in such cases were ineffective. Rather, it was the result of the discrepancy between the social perception of the nature of the child maintenance non-payment and the regulation resulting from the Penal Code. The offense of child maintenance non-payment is not tantamount to the failure to pay the maintenance by a person obliged to do so. The conditions for penalization also take into account additional circumstances that characterize the conduct of the perpetrator and determine its outcome.

In his next intervention addressed to the Minister of Justice, the Commissioner requested[117] to consider adopting the practice of family courts in Germany which use child maintenance charts, simplify the proceedings and refer cases to court referendaries. The child maintenance charts in their German version contain the amount of the net income earned by the child maintenance debtor with the proposed amount of the maintenance changing according to the child's age. The charts are guidelines and proposals which the courts can use but they can also be modified depending on the circumstances of the case.

The Commissioner also pointed out that for many years the group of people entitled to receive benefits from the Maintenance Fund had been very small in relation to the actual needs for safeguarding children's rights to decent social conditions and sustainable growth. The cause of this state of affairs is to be found in the income criterion unchanged for years, on which the granting of the entitlement to this benefit depends.

In their intervention to the Minister of Family, Labour and Social Policy, the Commissioner and the Commissioner for Children's Rights have forwarded[118] the conclusions drawn from the analysis of the problem of restrictions on access to maintenance benefits. Under the act on assistance to persons entitled to maintenance[119], these benefits are payable if the family income per person does not exceed PLN 725. Since the entry into force of the law, i.e. since October 1, 2008, the amount indicated therein remains unchanged. In the Commissioners' opinion, it is essential that factors such as the increase in the cost of living, the decline in the value of money or the increase in the minimum remuneration should be taken into account when the eligibility for benefits from the maintenance fund is being assessed. A good solution would be to introduce the "zloty for a zloty" subsidy scheme, currently used to assess the entitlement to family benefits, into the law on the assistance to persons entitled to child maintenance. Such a solution would allow for

[116] Letter of 22 February 2016.
[117] IV.7022.20.2016 of 11 July 2016.
[118] III.7064.175.2015 of 31 October 2016.
[119] The Act of 7 September 2007 (Dz.U. of 2016 item 169, as am.).

granting benefits to the families whose income slightly exceeds the criterion, but in a reduced amount. However, the complete abolition of the income threshold would be the optimum solution.

The Minister advised[120] that a social campaign had been launched in October 2016 under the slogan "A Responsible Parent Pays," aimed at raising awareness of the problems relating to child maintenance non-payment and to encourage maintenance payments. At the same time, in cooperation with the Ministry of Justice, the possibility of initiating inter-ministerial actions is being discussed, aimed to develop new solutions on the issue of non-payment along with improving the effectiveness of maintenance enforcement. It has also been reported that the ministry is not working on raising or abolishing the income criterion for entitlement to benefits from the Maintenance Fund.

In their interventions to the Minister of Justice[121], The Commissioner, together with the Commissioner for Children's Rights, also called for such amendments to Article 209 P.C. as would enable the widest possible use of the electronic surveillance system in case of persons sentenced to imprisonment for the maintenance non-payment offense. Under the present law, a sentence can be exercised in an electronic surveillance system only if it does not exceed 1 year of imprisonment. Works are ongoing to amend Article 209 P.C.[122] The Commissioner will monitor the practice of applying the revised rules.

O) Increasing the participation of women in public life

The share of women in public life is still small. Too few women sit in the Sejm and in the Senate. Women make up only 1/4 of all the councillors. For years there has been a small percentage of women among municipality administrators, mayors and city presidents. In order to counteract the phenomenon of under-representation of women in public life, it is necessary to take action to disseminate information on the basic principles of the electoral system as well as changes in the electoral law to enable realization of the gender equality principle. At present, in proportional elections (to the Sejm of the Republic of Poland, the European Parliament, county councils, voivodeship assemblies), not less than 35% of the representatives of each sex must be placed on each voting roll submitted by the voting committee. However, the introduced quota mechanism has a limited effectiveness as there is no obligation to alternately place women and men candidates (the so-called "zip") on the election lists. Introducing this solution would be particularly important in Poland because voters often vote for candidates who are first on the list. It would also be necessary to identify ways of removing barriers to women's candidacy in the

[120] Letter of 29 November 2016.
[121] IX.517.1048.2016 of 7 April 2016 and of 10 August 2016.
[122] The Sejm paper No. 1193.

Senate elections held in a majority voting system. The Commissioner requested[123] the Government Plenipotentiary for Civil Society and Equal Treatment for information on planned actions to increase the participation of women in public life.

The Plenipotentiary stated[124] that introducing the so-called zip on the voting list could raise serious doubts about compliance with the constitutional principle of equality. At the same time, he stressed that the quota system in place since 2011 had contributed to a significant increase in the proportion of female candidates, but at the same time only marginally increased the number of women in the Sejm. The lower representation rate of women compared to men is not a result of unequal opportunities and discrimination but may be due to cultural determinants. Therefore, it is necessary to change the mentality of the society. The Plenipotentiary supported the Commissioner's request for educational measures on the voting system.

The Commissioner did not consider that reply satisfactory; therefore in his next intervention he again pointed to[125] the lack of educational and promotional measures for potential candidates and the lack of in-depth analysis of the barriers to women's candidacy, in particular the very low participation of women in the Senate elections.

The Plenipotentiary upheld[126] their previous position and ensured that the activities that were subject of the Commissioner's interest would become a major priority of the new National Action Program for Equal Treatment and of the Plenipotentiary.

P) The pay gap

The difference in wages between men and women is a consequence of the inequalities that women face during their entire working life. This phenomenon is confirmed by numerous national and international statistics. The disproportions stem mainly from a lower hourly wage, fewer hours worked on paid positions, and lower employment rates. The pay gap is also related to stereotypical opinions about the predisposition of women to under-paid professions in the care services sector and their lack of aptitude for technical professions or managerial positions. The pay gap problem is particularly important also because of the later consequences, i.e. the difference in the pensions of women and men. Effective remedial measures against the pay gap are also important from the point of view of the state's pro-family policy. Increasing efforts to effectively implement the principle of equal pay for the same work or work of the same value is essential for parents to make informed decisions about childcare, determined not only by their financial situation.

[123] VII.602.20.2015 of 17 March 2016.
[124] Letter of 13 May 2016.
[125] Letter of 21 June 2016.
[126] Letter of 11 July 2016.

The means to achieve such goals can be the introduction of payroll transparency into the labour law.

The Commissioner requested[127] the Minister of Family, Labour and Social Policy to present the results of work on the pay gap assessment methodology in enterprises and the results of the analysis of international law and good practices in monitoring and counteracting the pay gap, which were mentioned by the Minister in her earlier correspondence.

According to the response,[128] the government is constantly striving to equalize the opportunities of women and men in the labour market, i.a. by counteracting the pay gap and by working towards wage transparency. The Ministry has started work on the *equal pacE* web tool that allows employers to monitor and analyse the pay structure. A pay gap assessment methodology has also been developed and a friendly tool for measuring the pay gap has been created in the form of an internet application for enterprises and the public administration sector.

In a subsequent intervention[129] on the occasion of the Polish Pay Gap Day on 8 December, the Commissioner again requested the Minister to report on the results of the analysis of the international law and good practice as regards monitoring and remedial action against the pay gap. He also requested information on the implementation of measures promoting the pay gap measuring tool, that had been scheduled for 2016.

3. Counteracting discrimination on the grounds of sexual orientation and gender identity

A) Refusal to transcribe a foreign birth certificate and refusal to confirm Polish nationality of children from same-sex relationships

The Commissioner received numerous complaints about the unequal treatment of children based on their birth census and the legal status of parents as well as the violation of child's rights due to refusal to transcribe a foreign birth certificate or refusal to issue a decision confirming Polish citizenship. In the first case, it is the Polish citizens' children whose foreign certificates of birth indicate two mothers as

[127] XI.816.9.2016 of 19 March 2016.
[128] Letter of 8 April 2016.
[129] Letter of 8 December 2016.

the parents. On the other hand, the refusal to issue a decision confirming Polish citizenship concerns children whose foreign certificates of birth indicate two fathers.

Children from same-sex relationships – similar to those from different sexes – acquire Polish citizenship in accordance with the law if at least one of the parents is a Polish citizen. The documents confirming Polish citizenship and identity are passports and identity cards; the right to receive them is granted to every citizen of the Republic of Poland. A person who does not have any of them is regarded as a stateless person and can not exercise the rights resulting from the possession of Polish and the European Union citizenships. The condition for issuing an identity document is to submit a Polish birth certificate to the appropriate administration authority. The Act on Civil Status Records[130] introduces an obligation to transcribe foreign civil status records inter alia in situations when a citizen is applying for a passport, ID card or PESEL number. In the case of birth certificates in which the parents are two mothers, the administration authorities and administrative courts do not question the possession of Polish citizenship by the children, but refuse transcription citing the public policy clause and the Family and Guardians Code, which makes the issuance of a Polish identity document impossible.

In cases where an application was submitted for confirmation of the Polish citizenship of a child of men entered as the fathers in their child's birth certificate, the Chief Administrative Court pointed out that "parents" in the Polish legal system meant only father and mother. Since it is the basic principles of the Polish family law concerning the way of determining a child's parentage that are decisive for the acquisition of citizenship, it is not possible to derive legal effects from a foreign birth certificate in which two fathers are indicated as parents.

In the Commissioner's opinion, the interpretation of the existing laws should take into account the principle of child's interest. The administration body is obliged to take into consideration not only the provisions of the Family and Guardianship Code but, first and foremost, the children's rights guaranteed by the Constitution, the Convention on the Rights of the Child and the Convention for the Protection of Human Rights and Fundamental Freedoms. According to the Convention on the Rights of the Child, the states cannot make a child stateless due to lack of regulation. The Convention on the Rights of the Child also prohibits any discrimination on the grounds of the child's status – including birth in wedlock or out of wedlock – or on the status of its parents or carers. Absence of an identity card and the PESEL number is associated with limiting further rights: the right to education, health, freedom and personal security. In the Commissioner's opinion, the simplest solution for issuing an identity document certifying the nationality of a child of same-sex parents would be to renounce the obligatory transcription of the birth certificate and issue identification documents on the basis of foreign birth certificates which show that one of the parents is a Polish citizen. The Commissioner requested[131] the Minister

[130] The Act of 28 November 2014 (Dz.U. item 1741, as am.).
[131] XI.534.4.2016 of 24 August 2016.

of Internal Affairs and Administration to analyse the legal basis on which children from same-sex partnerships, born abroad and being Polish citizens by operation of the law, could apply for a Polish identity card and if it is impossible – to prepare a change of regulations.

In response, the Minister stated[132] that the rules for determining the parentage of a child are defined by the Family and Guardianship Code which provides that a mother is always a woman and a father is always a man. According to the established case law of the administrative courts, a foreign birth certificate in which two persons of the same sex are indicated as parents can not be the basis for drawing up a Polish birth certificate since the transcription would be contrary to the basic principles of the Polish legal system. In the opinion of the Ministry, the proposal to use a foreign document directly when applying for a Polish ID or passport seems unacceptable. The cases of refusal to transcribe the birth record or refusal to confirm the possession of Polish citizenship, described in the Commissioner's intervention, were subjected to judicial review as a result of which the decisions of the public administration bodies were considered valid. Taking up polemic with the Supreme Administrative Court's reasoning seems to be pointless.

B) Refusal by the Minister of Internal Affairs to issue a permit to purchase real estate in Poland by a person who has entered into a civil partnership with a Polish citizen abroad

The Commissioner filed a cassation complaint against a verdict of the Voivodeship Administrative Court in Warsaw concerning a Chilean citizen who applied to the Minister of Internal Affairs for a permit to purchase real estate in the Republic of Poland[133]. The man argued that entering into a partnership with a Polish citizen proves his relationship with Poland thereby authorizing him, as a foreigner, to acquire real estate in Poland. However, the Minister did not grant the permit on the grounds of the different legal nature of partnership and marriage, which, in the light of Article 18th of the Constitution of the Republic of Poland is a union between a woman and a man, not a union of two men. In its ruling[134], the Supreme Administrative Court emphasized that the catalogue of circumstances pointing to the relationship with Poland is exemplary and open, and there is no reason to restrict it to marriage and to ignore other family relationships that result in the establishment of ties with Poland. Such a relationship, according to the SAC, can also be created by a heterosexual common-law marriage – as previously confirmed by administrative courts in their case law – or a partnership of the same sex. In every case it is neces-

[132] Letter of 15 September 2016.
[133] IV.816.2.2014 of 24 March 2014.
[134] Judgement of 14 September 2016 , file ref. no. II OSK 2982/14.

sary to examine whether such a relationship with Poland has been established. Yet, in the case in question, the Minister of Internal Affairs did not establish any such facts, which was lost on the SAC. The lower administrative court concentrated on the fact that Polish law did not foresee the existence of partnerships and ignored the need to determine the actual relations of the Chilean with Poland. The SAC pointed out that in such case it would be appropriate to hear the persons concerned in order to investigate whether the foreigner had actually created such a relationship.

C) Protection of non-heterosexual patients' rights in healthcare

The Commissioner receives information about the problem of discrimination on the grounds of sexual orientation in the area of health care. A social research ordered by the Commissioner yielded a report entitled "Equal treatment of patients; non-heterosexuals in health care"[135]. The most important problem revealed by the research is the lower standard of care provided to non-heterosexual patients due to the stereotypes about LGB communities (lesbian, gay, bisexual) widespread among medical staff. An important issue is also the breach of professional secrecy by disclosing the patient's sexual orientation that the doctor has learnt about during a medical interview. The practice of limiting, without justification, the presence of the patient's partner as well as limiting access to medical records and information about the patient's health status when the partner is of the same sex raises concern. Moreover, an analysis of training programs for health professionals and national health policies has led to the conclusion that the problems of non-heterosexual people are not properly reflected therein. Non-heterosexual people, even if they choose to take appropriate legal action when their rights of equal treatment in health care are infringed, have limited access to redress under applicable law because the Act implementing certain European Union regulations on equal treatment [136] does not prohibit discrimination on grounds of sexual orientation in access to healthcare. The provisions of the Act on Patients' Rights and the Commissioner for Patients' Rights also remain imperfect[137]. The key findings on the special situation of non-heterosexual patients in health care were presented[138] by the Commissioner to the President of the Chief Medical Council, the President of the General Council of Nurses and Midwives, the Commissioner for Patients' Rights and the Minister of Health.

The President of the Chief Medical Council assured[139] that doctors and dentists have wide knowledge of the contact, diagnosis and treatment of LGB persons

[135] See https://www.rpo.gov.pl/sites/default/files/BIULETYN_RZECZNIKA_PRAW_OBYWATELSKICH_2014_No._7.pdf
[136] The Act of 3 December 2010 (Dz.U. of 2010 No. 254, item 1700, as am.).
[137] The Act of 6 November 2008 (Dz.U. of 2016 item 186, as am.).
[138] XI.411.2.2016 of 24 March 2016.
[139] Letter of 29 July 2016.

including the knowledge about the actual impact of sexual orientation, or lack of impact, on the treatment and preventive medicine of LGB people. Moreover, the question of the patient's sexual orientation is not mentioned during medical visits unless it is directly related to the patient's state of health. An analysis of the cases being considered by the Supreme Medical Court or the Supreme Screener for Professional Liability did not reveal any discrimination by this professional group on the grounds of sexual orientation. In addition, it was assured that the principle of equal treatment of patients was reflected in the training programs implemented by the association of medical practitioners.

In response to the Commissioner's intervention, the Minister of Health stated[140] that the pre-doctoral and post-doctoral programs included contents related to individual patient approach and correct communication with the patient. In addition, physicians in specialized training are required to form and develop an ethical attitude and to improve their professional skills. Having become acquainted with the disturbing results of the Commissioner's research, the Minister of Health, in March 2015, called on the President of the General Medical Council for mutual commitment to raising the legal awareness of doctors and to promote among them the highest standards concerning patients' rights.

D) Commissioner's report "Equal treatment in employment irrespective of gender identity"

The report titled "Equal treatment in employment irrespective of gender identity"[141] presents the results of studies ordered by the Commissioner as well as conclusions and recommendations in this field. The survey conducted on a representative sample of Polish men and women shows that the vast majority of the population (92%) had had no contact with a transgender person. 40% of the respondents could work with a transgender person in a team although the vast majority would not accept a transgender as their child's guardian or teacher (65% and 64%, respectively). 52% of all Poles and 53% of the working population believe that employers in Poland would not be willing to employ a transgender person even if all formal requirements were met. The results of the qualitative research (17 individual interviews, 88 online surveys) reflect the actual situation of transgender people in the labour market. The most important conclusion of the report is that the lack of regulation allowing to resolve the birth certificate gender in Poland restricts the right of transgender people to pursue freely chosen work. The repeated recommendation of the Commissioner is to introduce regulations to enable gender resolution in a fast, transparent and accessible procedure and to provide a temporary

[140] Letter of 25 April 2016.

[141] "Equal treatment in employment irrespective of gender identity. An analysis and recommendations." The equal treatment principle. The law and the practice. No. 18, Commissioner for Human Rights Office 2016.

document to be used in the intermediate period. The scale of discrimination against transgender people in employment is difficult to estimate while the knowledge of transgenderity is not widespread in Poland. The provisions for gender reconciliation would undoubtedly enhance the visibility of transgender people and, consequently, their equal treatment, also on the labour market.

4. Counteracting discrimination on grounds of age

A) Long-term policy on senior citizens

In his intervention addressed to the Minister of Family, Labour and Social Policy, the Commissioner pointed to[142] the specific problems of respecting the rights of the elderly and the implementation of the principle of equal treatment regardless of age. He emphasized that it was necessary to shift the emphasis from the realization of social rights of this group to the development of a comprehensive state policy on senior citizens, involving all institutions at the central and local level. It is also extremely important to increase public awareness of age discrimination and to take systemic measures to counteract this disturbing phenomenon.

The demographic forecasts of the Central Statistical Office and Eurostat regarding Poland indicate that the number of elderly people is steadily increasing. According to data on the health of the elderly, every second person aged 60 and over in Poland experiences limitations in their daily activities. The Commissioner was interested in the implementation status of the Guidelines for Poland's Long-Term Policy on Senior Citizens for 2014-2020. The government programs: Social Activities of the Elderly and Senior-Vigour deal with very important but only partial issues related to the implementation of seniority policy. In addition, the funds from these programs are mainly applied for by active circles and municipalities. Others just carry out the basic obligatory tasks provided for by law, within limited financial resources. This does not prevent the marginalization of a large proportion of older people who are not aware of the possibilities of support from local governments. The most difficult situation is that of people with much reduced independence and their informal carers. This is combined with restrictions of access to geriatrists and geriatric beds as well as other health services. Some hope is raised by the seniors councils which are being created at local governments but their competence and activity are very different across the country. In addition, the statutory tasks of municipalities in the field of social assistance are not directly dedicated to the elderly

[142] XI.503.2.2016 of 31 March 2016.

so they do not take into account the specific age-related conditions. Analyses of the cases reported to the Commissioner and the conducted research indicate direct and indirect discrimination found, inter alia, in the inadequate elderly support system. As regards international activities, the Commissioner took an interest in Poland's position regarding the development of the Convention on the Rights of Older Persons and Poland's reply regarding the state of implementation of the Madrid Plan, prepared for the UN Independent Expert on the human rights of older persons.

In response, the Minister presented[143] a description of the activities and principles contained in the Long-term Policy on Seniors for the years 2014-2020 and the objectives of government projects and programs being implemented by the ministry: "Strategy for development of long-term care services for older persons" and the programs "Senior-VIGOR" and ASOS. According to the Ministry, the development and adoption of the UN Convention on the Rights of Older Persons is pointless. The existing international law protects fundamental human rights in a comprehensive way and age alone may not be a direct condition for creating special protection. It has been assured that all activities undertaken by the ministry since 2012 within the seniority policy are in line with the Madrid Plan.

B) The Commissioner's Report entitled "Availability of community support for the elderly from the point of view of representatives of municipalities of the Dolnośląskie province"

The Commissioner's report entitled " *Availability of community support for the elderly from the point of view of representatives of municipalities of the Dolnośląskie province*"[144] presents the results of a social survey whose goal, inter alia, was to increase knowledge about the practical implementation of principles stemming from the international documents relating to the dignity and equal treatment of older people in need of support in their place of residence[145]. The results of the study indicate that local decision-makers are implementing many of these principles. The

[143] Letter of 5 May 2016.

[144] See https://www.rpo.gov.pl/pl/content/dostepnosc-wsparcia-srodowiskowego-dla-osob-starszych

[145] Based on international standards, in particular those in UN Resolution 46/91 and in the Madrid Plan, the following principles have been developed: 1. To provide self-reliance and the right to decide their own lives to old persons with limited functional capacities. 2. Create conditions for activity to suit the varied capabilities of the elderly. 3. Build a support system that takes into account the different levels of dependence of the elderly and the progress in their individual dependency as they age. 4. Consult support services solutions with senior citizens. 5. Multisectoralism consisting of involving public, market, civic and informal sectors. 6. Incorporating initiatives that contribute to senior support services into all activities undertaken on the local level (mainstreaming ageing). 7. Assessing measures – at the stage of their design and implementation – from the point of view of the threat of discriminatory practices. 8. Subsidiarity manifested in supporting basic communities (mainly families) in which older people live – supporting informal carers of dependents. 9. A holistic approach to the needs of the elderly and coordination of the support provided to them. 10.Professionalisation of social support by entrusting it to competent and well-qualified people.

majority, however, do not see the need for coordination of support measures and few organize consultations with the elderly regarding their needs. In the surveyed municipalities, general projects are rarely checked for their accessibility to seniors. Few respondents are aware that barriers to access to the support are a type of indirect discrimination. One of the observations is also the lack of support offer planning in light of the increasing number of older people, which can make it difficult for them to access the needed services in the near and far future[146].

C) Providing health care and support to the elderly

The health care and support system for the elderly is still poor and unprepared for the rapid demographic changes and the increasing number of the oldest people. Systemic changes are necessary. According to the information of the Supreme Audit Office entitled "Medical care for the elderly"[147], there is no geriatric medical care system in Poland. Geriatrics is still a niche specialization, although it has been included in the priority branches of medicine. The number of professionals in the field of geriatrics is far from sufficient. Primary care physicians, who are the first contact of the elderly, lack knowledge of geriatric care. An important barrier to the development of geriatric hospital units is the current system of settlement of geriatric services by the National Health Fund, which is not adapted to the multiple morbidities of older people. Elderly care implemented in accordance with the principles of medical art does not bring financial benefits to hospitals and therefore maintenance of beds for geriatric patients is only possible in other hospital departments. The consequence of the inadequate number of doctors, beds and hospital departments is the largely different degree of access to geriatric services and even the lack of geriatric clinics in some provinces. Despite the increase in outlays on health care services for the elderly, the number of those waiting and the time of waiting for service has increased. The Commissioner addressed[148] the Minister of Health about this issue.

The Minister[149] assured that the Ministry of Health was conducting a series of systemic actions aimed at creating a model of geriatric care. Efforts are being made to improve the availability and quality of care for the elderly. In March 2016, a Government act amending the Act on Healthcare Services Financed from Public Funds, as well as Certain Other Acts[150] was enacted which increases access to reimbursed products for recipients aged 75 or over.

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[146] See also the Commissioner's report titled „System of support for the elderly in their community – situation overview, model proposal", https://www.rpo.gov.pl/sites/default/files/System%20wsparcia%20os%C3%B3b%20starszych.pdf

[147] The audit was made from 19 May 2014 to 3 November 2014 , ref. no. 2/2015/P/14/062/KZD.

[148] V.7010.19.2016 of 24 March 2016.

[149] Letter of 10 May 2016.

[150] The Act of 18 March 2016 (Dz.U. item 652).

D) Cases of inhuman treatment of people in nursing homes

Alarming signs reached the Commissioner about the intensification of inhuman treatment of people residing in facilities that carry on business activity consisting in the care of seniors, persons with disabilities or chronically ill persons. In the Commissioner's opinion, it is necessary first and foremost to prevent such activity from being carried on without permission. However, irregularities also occur in nursing homes that have obtained such a permit. The Commissioner's objections concern in particular the low standard of service, lack of qualification requirements for the personnel employed in private nursing homes and the limitation of the rights of persons in their care. The Commissioner pointed to the difficulty in controlling 24-hour care facilities. In the Commissioner's opinion, the regulations included in the Act on Social Assistance[151] do not give the heads of voivodeship administration sufficient grounds for taking effective action. The existing system of financial penalties fails. The Commissioner also drew attention to the low standard of social welfare services and the problems with respecting the rights of people in nursing homes. Persons placed in such facilities do not always agree to this. The contract is often entered into by the family, even if the person placed in the facility is not incapacitated. The contracts often include provisions limiting the rights of people in nursing homes, such as the prohibition to leave the facility. Particularly difficult to control are cases of medication, including psychotropic drugs, without supervision of a doctor and the use of direct coercion. The Commissioner[152] requested the Minister of Family, Labour and Social Policy to present his views on the issues raised.

The minister[153] advised that he had requested heads of voivodeship administration for information regarding the inspections carried out in the social assistance organizations and 24-hour care facilities. The Ministry is also working on defining what legal solutions would be necessary. This includes, among others, introducing an indicator and qualification requirements for the carers employed in private nursing homes. The social policy departments of voivodeship offices keep reporting their problems with the supervision of 24-hour care facilities. Such reports often result in law changes which streamline the work of the voivodeship inspection services. The Act on Social Assistance introduced provisions obliging the Police to provide support in order to eliminate the cases of obstructing or preventing the inspections.

The Ministry of the Family, Labour and Social Policy has undertaken work[154] to identify the most frequent misconceptions concerning the rights of persons staying in some 24-hour care facilities. Currently, consultations with voivodeship offices are underway along with an analysis of the solutions proposed by these offices. Both

[151] The Act of 12 March 2004 (Dz.U. of 2016 item 930, as am.).
[152] III.7065.64.2016 of 29 April 2016.
[153] Letter of 23 May 2016.
[154] Letter of 7 December 2016.

the Minister of Health and the Minister of Family, Labour and Social Policy are fully aware that proper cooperation between health and social workers and the development of coherent mechanisms for the flow of information about patients who leave health care institutions (including verification of the options providing them with adequate care) are crucial for the safety of these persons.

E) Limiting the rights of scientific and academic staff because of their age

Under the Act on Academic Degrees and Academic Titles and the Degrees and Titles in Arts[155], candidates for members of the Central Committee for Academic Degrees and Titles may not be persons over the age of 70. According to the Ministry of Science and Higher Education, the adopted age restriction is not discriminatory. This solution is intended to promote generational exchange in the scientific community and to improve the functioning and transparency of the organizations which represent Polish science. The Commissioner, however, believes that total exclusion from the Central Committee for Academic Degrees and Titles may be discriminatory. Similar objections concern the age restrictions for members of the Main Board of Science and Higher Education and the Polish Accreditation Commission, as well as the restrictions on the voting right during the elections to university bodies. The main task of the Central Committee for Academic Degrees and Titles is to ensure a harmonious development of academic careers. The Central Committee has an impact on the shape of the appropriate legislation, but above all on the formation of highly qualified academic staff and raising standards of science in Poland. The Commissioner pointed out that the complete exclusion of prominent specialists from the group, motivated by the necessity of making a generation change in Polish science, may be discriminatory. In the Commissioner's view, the characteristics to be taken into consideration during the election to the said bodies should be solely the candidate's knowledge and experience. The age criterion used does not take into account the specific nature of the activities of bodies operating in the field of higher education. The Commissioner requested[156] the Minister of Science and Higher Education to consider the purposefulness and validity of the age restriction on membership of the above mentioned bodies.

F) Discrimination in education on the grounds of age

In connection with the complaints filed with the Commissioner, the problem of the upper age restriction for applicants for the status of students of the National School of Public Administration has emerged. According to the Act on the National

[155] The Act of 14 March 2003 (Dz.U. of 2014 , item 1852, as am.).
[156] VII.7034.1.2016 of 25 January 2016 and 18 May 2016

School of Public Administration named after the President of the Republic of Poland, Lech Kaczyński[157], the School's students are selected in a recruitment process from among persons who are under the age of 32. In the Commissioner's opinion, the adopted age restriction for candidates applying for the status of the School's students may constitute a breach of the equal treatment and non-discrimination principle. In accordance with the provisions of the Act implementing certain European Union regulations on equal treatment, the unequal treatment of individuals on the basis of their age in undertaking vocational training, including further training and professional development, is forbidden. The above problem has been addressed in the National Action Program for Equal Treatment for the years 2013-2016, in charge of the Government Plenipotentiary for Equal Treatment. The Commissioner requested[158] the Head of Civil Service to take a position on the issue and to provide a justification for the upper limit of 32 years for the School's candidates.

The Head of Civil Service upheld[159] his position on maintaining the age limit for admission to the National School of Public Administration but given the Commissioner's arguments, he considered that the subject matter should be analysed together with other proposals for changes in the functioning of the School.

G) Age restrictions for the officers of the Government Protection Bureau

The solution adopted in the Act on the Government Protection Bureau[160] may lead to discrimination against the Bureau officers on the grounds of age. The nature of the officers' tasks requires special physical fitness but reaching a certain age is an independent reason for terminating the service relationship with an officer. Moreover, such termination is obligatory. In the Commissioner's opinion, serviceability should not only be assessed by age. From the point of view of the Bureau's tasks, the assessment should also take into account other circumstances, such as the officer's health status, physical and mental capacity or the option of using the officer's experience in the training department. It seems that, in the present legal situation, the proportion between the interest of the service and the interest of the individual has been disrupted. Regulations concerning officers differ from each other – for some officers the age limit has been set at 55, 58 and 60 years while for others it has not been established. The regulation scope does not include the professional privates' corps. Officers are also differentiated within one corp. The Commissioner pointed out that the Act on the Government Protection Bureau makes it possible to dismiss an officer from the service due to the acquisition of a 30-year retirement pension. The pension is available to a dismissed officer who is 55 years old at the time of

[157] The Act of 14 June 1991 (Dz.U. of 2015 , item 248, as am.).
[158] XI.800.6.2015 of 6 July 2016.
[159] Letter of 9 August 2016.
[160] The Act of 16 March 2001 (Dz.U. of 2014 , item 170, as am.).

dismissal and has served at least 25 years in the Government Protection Bureau. It is therefore possible that an officer will not acquire the entitlement to a pension at all if he is employed in the Bureau after the age of 30 or will be released before acquiring entitlement to a full pension. It is difficult to find justification for such an arrangement. The Commissioner intervened[161] with the Minister of Internal Affairs and Administration to make appropriate changes to the regulations.

The Minister agreed[162] with the Commissioner's stance on the discrimination of the Bureau officers on the grounds of age. A comparative analysis of the rules regulating the functioning of police officers, the State Fire Service, the Border Guard and the Bureau of Government Protection showed that the conditions for obligatory dismissal from the service linked to reaching a given age were established only in relation to the Bureau officers. The Minister assured that the legislative changes postulated by the Commissioner would be taken into account in the forthcoming amendment to the Act on the Government Protection Bureau relating to the area covered by the issue in question.

5. Counteracting Discrimination – General Issues

A) Protecting the rights of people particularly exposed to violence motivated by prejudice

The Commissioner received many signs of a large scale bias-induced violence. The category of hate crimes defined in the Penal Code includes currently offenses committed on the basis of nationality, race, ethnicity, religion or irreligiousness. The Commissioner postulated a change in the existing regulations by extending the obligation to disclose the perpetrator's motives and stricter punishment for crimes committed on grounds of disability, age, sexual orientation and gender identity[163]. Violence against persons with disabilities, the elderly as well as non-heterosexual and transgender people is special because it is motivated by the perpetrator's prejudice. For this reason, such cases require increased efforts to detect, prosecute and punish. A strong state reaction to this type of violence will enable implementation of international standards for the protection of the rights and freedoms of hate

[161] WZF.7060.19.2016 of 11 May 2016.
[162] Letter of 8 June 2016.
[163] The concern that the Penal Code does not address these grounds as the basis for hate crimes was also expressed by the United Nations Human Rights Committee in 2016 („Concluding remarks relating to the 7th Periodic Report of the Republic of Poland", section 15).

crime victims. The Commissioner requested[164] the Minister of Justice for information on the current actions taken by the Ministry of Justice to strengthen the legal-penal protection of discrimination crime victims.

The Minister said[165] that no work was underway to change the criminal law. In the Ministry's assessment, one of the basic problems is the victims' failure to report the crimes committed against them. The cause of this is not the lack of appropriate legal regulations or the lack of penalisation of certain acts because the perpetrators' actions do show the features of prohibited acts known to Polish law. Therefore, an improvement of the situation of individuals and groups at risk of discrimination or the crimes motivated by it can be achieved by non-legislative action, primarily by building trust in the professionalism of law enforcement and justice.

The Commissioner also addressed the Government Plenipotentiary for Equal Treatment[166] regarding the necessary appropriate changes to the Penal Code. The Plenipotentiary informed[167] the Commissioner that they would not take action that would result in the amendment of the Penal Code because that competence belongs to the Minister of Justice who clearly presented the government's policy on this issue in his response to the Commissioner.

B) Fighting hate speech on the Internet

Both the scale of hate speech on the Internet and the specificity of this phenomenon make standard legal tools often ineffective. The anonymity of the perpetrator is usually the primary problem which hampers the legal protection of victims. Given the current legal status, in a lawsuit for the protection of personal interests infringed by an entry made on the Internet we must indicate the parties to the proceedings (name of person, residence address). In order to determine such data, the interested party may use the procedure provided for in the Personal Data Protection Act[168], but such proceedings are often lengthy. Therefore, many individuals make use of criminal proceedings in order to obtain the personal data of the perpetrator of a personal interests infringement. Upon receiving the necessary data, the aggrieved person often loses interest in criminal proceedings and uses the data in civil proceedings for the infringement of personal interests. In the Commissioner's opinion, such practice is not appropriate because criminal law institutions should not be treated as a tool for determining personal data. The Commissioner pointed to the so-called "John Doe lawsuit" used in the American law for many years. The introduction of a similar solution – taking into account the specificity of the Polish civil procedure – could be part of the systemic fight against hate speech. It is about

[164] XI.816.10.2015 of 11 February 2016.
[165] Letter of 27 April 2016.
[166] Letter of 3 June 2016
[167] Letter of 4 August 2016
[168] The Act of 29 August 1997 (Dz.U. of 2015 item 2135, as am.).

the possibility of filing a civil suit without specifying even such basic data as the defendant's name while the defendant's identity and other personal data needed to conduct the trial would be found by the court. The Commissioner also emphasized that a sovereign and independent court would best ensure the balance of two competing values: the need to protect personal rights and freedom of speech. The Commissioner requested[169] the Minister of Justice to take a stance on the case.

The Minister announced[170] that the introduction of the so-called John Doe lawsuit constitutes a serious departure from the general principle of the civil process, according to which a claim must be filed against an individual indicated by the injured party. Introducing an exception to this rule is likely to have serious consequences as there are no specific rules of procedure in cases where the court erroneously identifies the defendant. In addition, transferring the obligation to identify the subject against whom the lawsuit is addressed will increase the length of the court proceedings.

C) An application to the Constitutional Tribunal on the Equal Treatment Act

The Commissioner submitted to the Constitutional Tribunal a motion[171] challenging the provisions of the Act implementing certain European Union regulations on equal treatment, insofar as those provisions limit the scope of the Act by setting out a closed catalogue of discriminatory criteria. The Act fails to cover certain social groups which experience discrimination in numerous areas of their lives. Their omission in the legislation results in the fact that in court proceedings, different persons discriminated against find themselves in different situations versus the law. The challenged provisions of the Act are, in the Commissioner's opinion, non-compliant with the constitutional principle of equality and the right to court, and with the provisions of the Convention on the Rights of Persons with Disabilities.

The catalogue of grounds for the prohibition of unequal treatment, provided for in the Act, is closed because of the closed catalogue of unequal treatment grounds in EU directives which the Act was supposed to implement. However, Article 32 of the Constitution suggests a prohibition of discrimination on any grounds. In the Commissioner's opinion, the Polish legislators implementing EU law should take into consideration the necessity of ensuring the compliance of the national law with the Constitution. Persons experiencing discrimination which does not fall within the scope of the Equal Treatment Act, can take advantage of the legal protection measures provided for in the Civil Code. However, their procedural situation is far

[169] IV.510.70.2016 of 17 May 2016.
[170] Letter of 29 July 2016.
[171] XI.510.2.2016 of 31 March 2016 , file ref. no. K 17/16.

less favourable compared to people who experience discrimination falling within the scope of the Equal Treatment Act. Claiming compensation for damages caused by a breach of the equal treatment principle under the Equal Treatment Act is much simpler compared to the general provisions of the Civil Code. As the Commissioner pointed out in the explanatory memorandum, the only criterion for differentiating the procedural situation of discrimination victims is the grounds on which they have experienced discrimination. In the Commissioner's opinion, there is no justification for such a differentiation of procedural situation of persons against whom the principle of equal treatment has been violated.

D) The Equal Treatment Act

The Commissioner provided[172] the Government Plenipotentiary for Civil Society and Equal Treatment with an assessment of the effectiveness of the provisions contained in the Act implementing certain European Union regulations on equal treatment. The actual application of those provisions is negligible, which proves their ineffectiveness. The number of court cases relating to the violation of the principle of equal treatment does not at all reflect the real scale of discrimination in Poland. A study ordered by the Commissioner has revealed that 85% of those who experienced discrimination in 2015 did not report this to any public institution. Moreover, many Poles are unaware that discrimination is prohibited in areas such as employment and the labour market or access to goods and services. There are many reasons for this such as low legal awareness, no understanding of discrimination, lack of confidence in public authorities and institutions, fear of retaliation caused by the reporting of discrimination, unwillingness to disclose information about one's private life and the lack of confidence in the effectiveness of the intervention. The main complaint about the Act is the differentiation of the legal situation of victims of unequal treatment on the grounds of their personal characteristics, which is also a ground for discrimination. The Equal Treatment Act provides the fullest protection for people treated unequally on the basis of race, ethnic origin or nationality while the victims of discrimination on the grounds of religion, belief, worldview, age, disability and sexual orientation are the least protected. In addition, the scope of the Act is limited to situations of breach of the equal treatment principle based on a closed catalogue of discriminatory grounds. As a consequence, guarantees for uniform and effective protection against discrimination have not been sufficiently assured in Poland. The Commissioner also pointed to the acts of international law that could significantly enhance protection against discrimination in Poland. It seems important to ratify Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which formulates a general prohibition of discrimination, and also to ratify the Optional Protocol to the

[172] XI.816.17.2016 of 29 April 2016.

Convention on the Rights of Persons with Disabilities providing for an individual complaint mechanism in the cases of breach of the Convention's provisions.

The Commissioner replied[173] that he had no competence to take steps to sign and ratify international agreements on counteracting discrimination and on implementation of the principle of equal treatment. In the Plenipotentiary's opinion, the question of constitutionality of the provisions of the Act implementing certain European Union regulations on equal treatment should be settled by the Constitutional Tribunal whose ruling will allow for possible further discussion and concrete actions resulting in the amendment of the Act.

E) National Action Program for Equal Treatment

The Commissioner requested[174] the Government Plenipotentiary for Civil Society and Equal Treatment to evaluate the National Action Program for Equal Treatment 2013-2016, which is an important instrument for shaping government policies in the field of anti-discrimination. He also pointed to the need to start working urgently on task programming for subsequent years after public consultation.

The Plenipotentiary announced[175] that the National Program implementation would be analysed and evaluated to see if its continuation in the following years was purposeful. In the next edition of the National Program, emphasis would be placed on cooperation with the social partners. In further correspondence, the Plenipotentiary informed[176] the Commissioner of their intention to continue the National Program after 2016 and of the progress of work on its evaluation. No deadline for completing the work has been indicated.

[173] Letter of 25 July 2016.
[174] XI.816.17.2016 of 29 April 2016.
[175] Letters of 4 and 25 July 2016.
[176] Letter of 14 November 2016.

II. Activities of the Commissioner for Human Rights to promote, protect and monitor implementation of the Convention on the Rights of Persons with Disabilities and to combat discrimination on grounds of disability

1. Availability (Article 9 of the Convention)

A) Bill on television and license fees

Representatives of the Polish Association of the Deaf approached the Commissioner in connection with the parliamentary bill on television and radio license fees[177]. Under the Convention on the Rights of Persons with Disabilities, Poland is committed to ensure the participation of persons with disabilities, on the basis of equality with others, in cultural life, and to allow them access to television, film, theatre and other cultural activities in forms accessible to them. Given the low percentage of television programs tailored to the needs of deaf persons and blind persons, it is worth noting that persons with disabilities are not able to benefit from the programs offered by television broadcasters to the same extent as people with no visual or auditory dysfunction. It is therefore unreasonable to oblige this group of people to pay the full amounts of the television and radio license fees. The Commissioner requested[178] the Chair of the Committee on Culture and Media to consider the arguments in support of exempting the deaf and the blind from television and radio license fees, when drafting the Act on television and radio license fees.

B) Creating an alarm line for deaf people

The Convention on the Rights of Persons with Disabilities obliges states parties to take all the necessary measures to ensure the protection and safety of persons with disabilities in emergency situations. Meanwhile, the information obtained by the Commissioner's Office shows that no uniform nationwide system has been introduced in Poland for reporting emergencies via short text messages (SMS) or otherwise accessible to deaf people. The possibility of making emergency calls via text messages exists only in several voivodeships. Moreover, these systems are neither inter-linked nor uniform and they function in a limited way. The Commissioner requested[179] the Minister of Internal Affairs and Administration for information about the progress of work on the implementation of the system enabling to handle emergency calls via SMS.

In response, the Ministry pointed out[180] that the legal regulations concerning the possibility to send SMS messages to the emergency number 112 had been introduced for the first time into the Polish legal order in 2012 as a result of the implementation of EU directives. It has been assured that the Ministry is making every effort to implement emergency alerting via text messages as soon as possible. The

[177] Paper No. 443.
[178] XI.815.25.2016 of 29 July 2016.
[179] XI.7010.1.2016 of 23 December 2016.
[180] Letter of 16 January 2017.

ongoing work on the modernization of the system is planned to be completed in 2017. The Ministry also announced that it had started cooperation with the Polish Deaf Association to find the most suitable solutions to meet the needs of people with hearing disabilities.

2. Access to justice (Article 13 of the Convention on the Rights of Persons with Disabilities)

A) The Commissioner's for Human Rights report entitled "Access to Justice for Persons with disabilities "

The Commissioner published a report entitled "Access to Justice for Persons with disabilities"[181]. Its purpose is to assess the availability of Polish justice system for persons with disabilities in terms of the implementation of the principle of equal treatment and non-discrimination and the standards established by the Convention on the Rights of Persons with Disabilities. The report is a summary of a quantitative research on the availability of justice infrastructure as well as a qualitative research among judges, prosecutors and persons with disabilities who have had contacts with the justice system. The study's conclusions indicate that the accessibility, understood as adapting the infrastructure of courts and prosecutors' offices to the needs of people with various disabilities, has a significant impact on the exercise of the right to a trial for this group of persons. The second important element limiting the access of persons with disabilities to justice is the regulations on procedural capacity. In addition, persons with disabilities have no real capacity to perform key functions in the justice system, such as a judge, a prosecutor, a lay judge or a professional attorney.

B) Respect for the rights of mentally ill persons involved in criminal proceedings

Results of the proceedings conducted at the Office of the Commissioner for Human Rights concerning cases of persons with disabilities revealed that the authorities under whose jurisdiction the suspect (the defendant, the accused, the sentenced) is located do not make sufficient efforts to gather data on their personal

[181] See:https://www.rpo.gov.pl/pl/content/dostep-osob-of-niepelnosprawnosciami-do-wymiaru-sprawiedliwosci

characteristics and conditions. Consequently, people are imprisoned whose mental disorders or intellectual disabilities make it impossible to achieve the objectives of punishment or exclude penitentiary isolation as this could result in worsening of the prisoner's health and seriously endanger their lives.

Community interviews conducted by court-appointed guardians in preparatory, judicial and executive proceedings, providing an irreplaceable source of knowledge about the person concerned, are of great importance. A thorough gathering of such information and handing it over to qualified authorities will increase the chances of preventing many irregularities and shortcomings. A court-appointed guardian, in pursuit of their duties, has the freedom to choose methods and means of interaction consistent with the current state of the art of pedagogy, psychology as well as social reintegration and work. The Commissioner recognizes the need to broaden the scope of education of the guardians to include persons with disabilities. The knowledge of symptoms of intellectual disability and mental disorders will allow them to properly evaluate the behaviour of the persons cared for, to build a relationship to get to know their problems and understand the difference caused by their disease or physiology. This message the Commissioner addressed to the Police and the Prison Service officers. Both the Services agreed that there was a need to strengthen the rights of all suspects, defendants or convicted persons, who are unable to understand criminal case proceedings or social rehabilitation due to their mental or psychological state, and have expressed their willingness to work out best practices in this area. That is why the Commissioner has sent a request[182] to the President of the National Council of Court-Appointed Guardians to make a statement on this matter.

C) Provision of procedural guarantees to persons in need of special treatment in criminal proceedings

In the ranking of the problems that pose the greatest threat to human and civil rights in our country, the Commissioner pointed out among others: the lack of systemic solutions regarding how to deal with people having mental or intellectual disabilities who are participants in criminal proceedings. Poland is committed to develop best practices in this area by the European Commission Recommendation of 27 November 2013 on the procedural safeguards for vulnerable persons suspected or accused in criminal proceedings. The Commissioner emphasized the need to create an appropriate system that would allow for an efficient flow of information about the difficulties experienced by persons with dysfunctions between those responsible for supporting those persons. The implementation of such a procedure will increase the chances of the proper response of these authorities and thus will prevent many irregularities and shortcomings. According to the Commissioner, the

[182] IX.517.2.2015 of 19 October 2016.

procedure carried out by a police officer after bringing the detainee to the Police's organizational unit should include an obligation to note whether the detainee belongs to a group of persons requiring special treatment and for what reason. The custody report is the proper place to document these observations. In addition, it should be the Police's duty to inform the parent, custodian or court-appointed guardian about the detention of an incapacitated person and advise these people about the scope of possible actions for the detainee. The Commissioner requested[183] the Prime Ministers to consider undertaking an appropriate legislative initiative.

In response, the Minister of Internal Affairs and Administration advised[184] that the detention report was a document based on the detention actions and it would not be appropriate for an officer to make "personal" observations regarding the physical or mental health of the detainee. Despite having knowledge about the symptoms of mental and physical disability and illness, a police officer is not competent to carry out such assessments and determine whether a detainee is a person requiring special treatment. In cases where the detainee's state of health or behaviour causes difficulty in carrying out the detention actions and preparing the necessary documentation, it is possible to make an appropriate note in the person's detention record in the box designated for the police officer's statements. Moreover, in a situation where a detainee shows signs of a possible mental, physical or other impairment, which makes contact with them and the procedure difficult, the officer may note such a fact in a memo of the detention actions.

D) Appointing a professional attorney for a person who is a party to the procedure of placement in a psychiatric hospital without consent

The constant concern of the Commissioner is the problem of appointing a professional attorney for a person who is a party to the procedure of placement in a psychiatric hospital without consent. The previous ministers of health shared the Commissioner's position and ensured that measures were taken to refine the provisions of the Mental Health Act[185]. Unfortunately, this problem has not been solved. The current legislation does give the court the possibility of appointing an attorney but according to the Commissioner, the appointment of an attorney should be mandatory regardless of the subjective judgment of the court. The right to a fair trial, guaranteed in the Constitution and in the Convention for the Protection of Human Rights and Fundamental Freedoms, requires that proceedings be conducted in such a way as to enable each participant to exercise their rights effectively. Part of the fair trial right is also the opportunity to provide legal assistance to anyone who is not

[183] IX.517.2.2015 of 22 July 2016.
[184] Letter of 19 September 2016.
[185] The Act of 19 August 1994 (Dz.U. of 2011 , item 1375, as am.).

able to use the said rights. The Commissioner requested[186] the Minister of Health to consider proposing amendments to the Mental Health Act and to present a position on the matter.

The Minister advised[187] that the Health Ministry was working on a bill amending the Mental Health Act, the Act on Education in Sobriety and Counteracting Alcoholism, the Personal Data Protection Act and the Act on Counteracting Drug Addiction, which took into account the suggestions contained in the Commissioner's intervention. The project includes provisions which secure the appointment of a solicitor or legal aid, even without a request, for a person directly involved in proceedings if the person is unable to file a request due to mental health claim and the court decides that the solicitor's participation is needed.

3. Freedom and personal security (Article 14 of Convention on the Rights of Persons with Disabilities)

A) People with mental disabilities in penitentiaries / detention centres and the use of direct coercion

The Commissioner for Human Rights Office examined the situation of people with mental disabilities in penitentiaries and detention centres. These actions have shown that there are quite a large number of convicts and detainees in the penitentiary units who have been diagnosed with various types of psychiatric disorders. During the research, special attention was paid to the application of direct coercion towards those people. Unfortunately, a number of irregularities of different scale have been identified, from less significant ones such as shortcomings in documentation to the extent that there was a degrading and inhumane treatment of patients in hospitals or psychiatric wards of the penitentiary units inspected. In many cases, doubts were raised about the reasons for the use of direct coercion as well as the grounds for issuing a decision on its further extension. According to the Commissioner, many of the identified irregularities could have been disclosed earlier and responded to appropriately if the real control of the use of direct coercion, both by hospital directors and other authorized parties, had actually been exercised. According to the findings of the employees of the Commissioner for Human Rights Office, patients in the psychiatric hospitals of penitentiary units were not aware

[186] V.5150.1.2014 of 22 June 2016.
[187] Letter of 9 August 2016.

that they were entitled to obtain help from the psychiatric hospitals' commissioners for patients' rights because neither the commissioners themselves, nor the prisoner health service were informing the patients about the commissioners' scope of activities. The Commissioner for Human Rights requested the Commissioner for Patients' Rights[188] to take appropriate steps to ensure that hospital commissioners for patients' rights, from psychiatric hospitals on whose territory penitentiary units with psychiatric wards are located, include their patients into their scope of activities.

The incumbent Commissioner for Patients' Rights did not agree[189] with the allegation that hospital commissioners for patients' rights from psychiatric hospitals were not active in psychiatric wards / hospitals of detention centres or penitentiaries. In the process of recruitment to the positions of hospital commissioner for patients' rights, the health units in which the potential hospital commissioner will work are specified and the applicants agree to the conditions. The Commissioner for Patients' Rights explained that the limited access to the psychiatric hospital's commissioners for patients' rights resulted, inter alia, from financial issues and advised about the planned inspections of 5 psychiatric wards/hospitals at penitentiary units in 2017.

B) Protection of the rights of persons with intellectual or mental disability detained by the Police and admitted to penitentiary units

The Commissioner has long been monitoring the state of compliance with the rights of persons with disabilities in penitentiary isolation. The standards of treatment for persons with disabilities in force in our country are far from expected. In the Commissioner's assessment, systemic solutions are required for dealing with doubts concerning intellectual or mental disability of a detained person. Police officers who are the first to contact the detainee should have knowledge of the symptoms of intellectual disability and mental disorders, be able to recognize them and know how to deal with such people in order to give them an opportunity to communicate and obtain information in an accessible form. Doubts regarding the mental or intellectual state of the detainee should be documented and forwarded to the next authorities that exercise control over the detainee (Prison Service, court). Implementing such a procedure would increase the chances of the appropriate response of these authorities. This would prevent the situations of imprisonment of people whose mental disorders or intellectual disabilities make it impossible to achieve the objectives of punishment or exclude penitentiary isolation. The Com-

[188] IX.517.3524.2016 of 2 December 2016.
[189] Letter of 11 January 2017.

missioner submitted[190] a motion to the Commander-In-Chief of the Police to develop guidelines on documenting and transmitting information and observations on the mental or intellectual condition of persons detained by the Police.

The Commander[191] expressed his willingness to cooperate and declared the participation of the Plenipotentiary for the Protection of Human Rights and the police officers who are human rights protection experts in a meeting with representatives of the Commissioner for Human Rights Office, the justice system, Prosecutor's Office and the Ministry of Health in order to coordinate the actions. At the same time, he pointed out that the issue of police intervention involving people with intellectual or mental disability is addressed at police training sessions.

In his intervention addressed to the Director General of the Prison Service, the Commissioner appealed[192] for a change in the manner of conducting preliminary interviews with persons admitted to the penitentiary unit. A properly conducted interview will enable gathering the information needed to determine whether a person should be in prison at all. Despite the declared knowledge of the need to inform the penitentiary courts of their doubts, the staff and management of the penitentiary units do not make practical use of this possibility for fear that their intervention will be considered a violation of the judicial independence. Another suggestion is to develop and implement a special reintegration offer for people in custody suffering intellectual or mental disabilities. It is also necessary to shape the right attitude of people in custody towards their fellow inmates with intellectual or mental disability. The implementation of these postulates is not possible without properly preparing prison staff to work with prisoners with dysfunctions. According to the Commissioner, all the prison and detention centres staff that have direct contact with prisoners, including medical personnel, should undergo training on dealing with people with personality disorders and people with intellectual disabilities. First and foremost the training should provide practical skills. Meanwhile, it is mainly theoretical knowledge that is being taught.

In response, the Director stressed[193] that officers have direct daily contact with the intellectually or mentally impaired. A great deal of skill is required to individualize the execution of custodial sentence for this group of prisoners. He also provided information on the professional training program for Prison Service officers. Disability issues are discussed during training sessions in psychological workshops. In the case of penitentiary specialization training for officers, this subject is taught as an autonomous one during the "Elements of Psychopathology" classes. Referring to the issue of reacting to the cases of people with intellectual disabilities or mental illnesses staying in penitentiary units, the Director pointed out that the staff had been informed on numerous occasions that such situations had to be reported to the

[190] IX.517.2.2015 of 11 January 2016.
[191] Letter of 12 February 2016
[192] IX.517.2.2015 of 19 February 2016
[193] Letter of 6 April 2016.

penitentiary judge. This instruction is still valid and will be reminded during inspections, training and briefings. In reply, it was also emphasized that the staff's actions towards people with intellectual or motor disability must focus on both ensuring their security and trying to tackle the problem of their deficits. These interactions are based on individual and group educational methods as well as psychological methods.

C) Amendment to the ordinance on the protection of persons in custody with intellectual or mental disability

The results of the Commissioner's study have shown that mentally ill persons do stay in penitentiaries and detention centres and that, in many cases, the Prison Service is struggling to provide adequate medical care matching their needs. The demand for treatment facilities is definitely higher than the base possessed by the Prison Service. The penitentiary health service is unable to provide immediate hospitalization to a person in an absolute need for psychiatric treatment.

In this situation, the content of Article 1(35) of the Minister's for Justice Ordinance of 23 June 2015 on administrative actions related to the implementation of detention under remand and the penalties and coercive measures resulting in custody and the documenting of these activities[194] is particularly disturbing. It states that any person detained under remand or convicted, even if in immediate danger to life, must be admitted to a penitentiary unit, only to be able to receive appropriate medical care later. Also, the provisions of the ordinance do not provide for a situation that would preclude the imprisonment of even the most mentally ill person or a women in the 28th week of pregnancy. The above-mentioned provision applies from 1 July 2015. The earlier ordinance of the Minister of Justice of 2 October 2012[195] unequivocally stipulated that a person who required hospital treatment due to acute psychosis and a person in need of immediate hospitalization because of immediate danger to life could not be admitted to a penitentiary unit. For incomprehensible reasons, the above mentioned regulation was withdrawn. In the Commissioner's opinion, it must be considered whether the situation of the prison health service, especially as regards the provision of psychiatric services, and the real danger that a person admitted to a penitentiary will not be covered by adequate medical care, justified the change in the legislation in that scope. The Commissioner requested[196] the Minister of Justice to specify the conditions governing the amendment of the Regulation of the Minister of Justice of 2 October 2012 and to take a position on the subject matter.

[194] Dz.U. of 2015 , item 927.
[195] Dz.U. of 2012 , item 1153.
[196] IX.517.2.2015 of 29 July 2016.

The Minister advised[197] that having recognized the Commissioner's arguments on the issue of admitting people to detention, the Ministry of Justice was ready to undertake analytical-conceptual work that might result in changes to the relevant statutory regulations or the bylaws which govern that issue, if such proposals are made by the Commissioner.

In response to the Commissioner's intervention[198] addressed to the Justice Minister-Attorney General and the Director General of the Prison Service, the Deputy Director General of the Prison Service noted[199] that during the legislative work on the draft of the current regulation on administrative actions related to the execution of detention on remand and the penalties and coercive measures resulting in custody and the documenting of these activities[200], the Prison Service proposed to maintain in its current wording the regulation which provided for non-admittance to a detention centre of a person requiring hospital treatment due to acute psychosis. In the opinion of the Prison Service it seems justified to amend the regulation on the list of medical establishments, including psychiatric ones, designated for detention under remand and the security conditions for these establishments[201] by extending this list to include selected medical units subordinate to the Minister of Health. This change could help to improve the situation of people with intellectual or mental disabilities.

In turn, the Justice Minister – General Prosecutor advised[202] that an analysis of the data sent by the Central Prison Service Board had been made every six months since 2013 regarding persons with moderate and severe intellectual disability and mentally ill persons staying in penitentiary units. The Ministry requests the District Courts' Presidents to investigate in their subordinate penitentiary units, under penitentiary supervision, the legality and regularity of the imprisonment of such persons. As has been emphasized, an indication of giving proper importance to the protection of the rights of people with intellectual disabilities was the establishing of internal administrative supervision in general directions, exercised by the Appellate Courts' Presidents over the enforcement of the judgments for 2015 and 2016 concerning recommendations to respect the rights of prisoners with intellectual disabilities and mental disorders, with particular emphasis on the state of medical and psychological care and the living conditions of those persons. An example of the understanding of the Commissioner's problems is the establishment of a Team, as an auxiliary body of the Minister of Justice, dedicated to developing solutions reforming the Prison Service. The Team's task is to review and evaluate the function-

[197] Letter of 30 September 2016.
[198] IX.517.570.2016 of 29 December 2016.
[199] Letter of 12 January 2017.
[200] Regulation by the Minister of Justice of 23 June 2015 (Dz.U. of 2012 item 927).
[201] Regulation by the Minister of Justice of 16 June 2015 (Dz.U. of 2015 item 918).
[202] Letter of 1 February 2017.

ing of the provisions of the Prison Service Act[203] and the Penal Enforcement Code[204] and to develop solutions to reform the Prison Service.

4. Independent living and integration into society (Article 19 of the Convention on the Rights of Persons with Disabilities)

A) Principles for placing people mentally ill and fully incapacitated in social welfare homes

The Commissioner attaches particular importance to the execution of the judgments of the European Court of Human Rights (ECtHR) in cases where the Court has found a violation by Poland of the provisions of the European Convention on Human Rights. One of the unenforced judgments is the ECtHR's ruling in the case of Kędzior v. Poland[205] concerning the principles of placing mentally ill persons in social welfare homes. In the aforementioned judgment, the Court held that Poland had infringed Article 5(1) of the Convention with respect to a mentally ill person, who – by the decision of his legal guardian – had been placed in a social welfare home against his will.

According to the Mental Health Act[206], a mentally ill person or a person with intellectual disability who does not require hospital treatment but needs constant care and nursing may be admitted to a social welfare home with their own consent or that of their statutory representative. The applications addressed to the Commissioner pointed out, however, that this form of care did not allow to meet individual needs of persons with disabilities or provide them with the support required to be fully integrated into society. According to the Commissioner, the Mental Health Act should provide guarantees of judicial review of the appropriateness of placing people in nursing homes for mentally ill persons, transferring them from one nursing home to another and periodical control of the legitimacy of extending their stay in a social welfare home. The legislation should also provide for the access of completely incapacitated persons to legal remedies of a judicial nature that would challenge the purposefulness of forced stay in a social welfare home. In 2015, the Commissioner appealed[207] some of the provisions of the Mental Health Act to the

[203] The Act of 9 April 2010 (Dz.U. of 2014 item 1415, as am.).
[204] The Act of 6 June 1997 (Dz.U. No. 90, item 557, as am.).
[205] Judgement of 16 October 2012, complaint No. 45026/07.
[206] The Act of 19 August 1994 (Dz.U. of 2011 No. 231, item 1375, as am.).
[207] Commissioner's for Human Rights Report for 2015, p. 145.

Constitutional Tribunal. Unconstitutional, according to the Commissioner, are the provisions that, firstly, do not provide for inclusion of a fully incapacitated person into court proceedings for obtaining the court's permission by the carer to submit a request that the person be placed in a social welfare home and, secondly, exclude that person from the group of entities entitled to apply to the court to change the decision on admission to a social welfare home.

The Constitutional Tribunal looked into the Commissioner's application and ruled[208] as unconstitutional the provisions that do not give an incapacitated person a chance to verify if they are justifiably committed to a social welfare home. The court's option to authorize a carer to place a completely incapacitated person in a social welfare home with complete disregard for their will (assuming the person retains the ability to communicate their needs and decisions) is an example of statutory depersonalization and violates their dignity. In addition, admitting a fully incapacitated person to a social welfare home interferes with their personal freedom – changing their place of residence and having to comply with the rules of stay in a social welfare home violates the constitutional guarantees of personal liberty.

B) Reform of the legal incapacitation institution

The Commissioner continued[209] his correspondence with the Ministry of Justice on legislative work to change the support system for persons to whom the legal incapacitation provision is applicable under current law. In response to a further query[210] on the progress of legislative work in this area, the Minister of Justice informed[211] the Commissioner that in 2015 work was started on a *bill amending the Civil Code, the Family and Guardianship Code, the Code of Civil Procedure and some other acts of law,* that would implement the assumptions adopted by the Council of Ministers on March 10, 2015, and replace the existing incapacitation institution, and the subsequent care and guardianship adjudicated as a consequence, with a system of flexible protective measures adjudicated in a single guardianship proceeding. Work on the project has been temporarily suspended due to the need for in-depth analyses, suggested by the unit of the Ministry in charge of international human rights procedures. Possible repeal of the incapacitation institution and replacing it with new forms of care requires a thorough examination of the effects of new regulations both from the point of view of the ratified international agreements and the national law. Analytical work in this area is ongoing. The case will therefore be monitored by the Commissioner.

[208] Judgement of 28 June 2016, file ref. no. K 31/15.
[209] Commissioner's for Human Rights Report for 2014, p. 90.
[210] IV. 7217.2.2016 of 1 June 2016
[211] IV. 7217.2.2016 of 1 June 2016

5. Mobility (Article 20 of the Convention on the Rights of Persons with Disabilities)

A) Provision, to persons with disabilities, of a vehicle for the practical driving test during the national driving license examination

The Constitutional Tribunal, in its ruling[212] of 8 June 2016, after examining the Commissioner's application, decided that the provisions of the Motor Vehicle Drivers Act[213], to the extent they do not provide for effective assistance, by public authority, to a person with a disability requiring a vehicle adapted to the type of illness for the practical driving test during the category B driving license examination, are non-compliant with the Constitution and the Convention on the Rights of Persons with Disabilities. As the Court pointed out in the justification of the judgment, both the Constitution and the Convention impose on the legislator the obligation to provide at least the minimum, but also an effective level of, assistance to persons with disabilities to enable them to live active life. The Commissioner requested[214] the Minister of Infrastructure and Construction to promptly initiate legislative work to implement the Court's recommendations on the need to assist persons with disabilities in obtaining driving licenses and to execute the court's judgment.

The minister replied[215] that there was no need for legislative work to implement the recommendations of the Constitutional Tribunal in this regard. The current regulatory framework makes it easier for persons with disabilities to obtain a driving license. Under the Vehicle Drivers Act, applicants with a disability certificate can take courses and a driving license test using a vehicle tailored to their type of disability. The vehicle may be their property or belong to a driver training centre. The existing solutions provide persons with disabilities with the proper conditions to obtain a driving license, and improve the safety of the driving course and then the exam. The Directive of the European Parliament and of the Council indicates many types of vehicle adaptation adjusted to a particular disability but for technical reasons the training centres are not able to guarantee individual approach to each student. However, the Minister pointed out that the purchase and adaptation of a vehicle to the needs of persons with disabilities is funded from the State Fund for the Rehabilitation of Persons with Disabilities. In addition, the institution will partially cover the cost of the driving license and the expenses involved in obtaining it including the hire of a vehicle suitably adapted for the driving test. The Regulation

[212] File ref. no. K 37/13.
[213] The Act of 5 January 2011 (Dz.U. of 2012 , item 1169).
[214] V.511.141.2014 of 29 July 2016.
[215] Letter of 9 September 2016.

of the Minister of Transport, Construction and Maritime Economy of 16 January 2013 includes additional facilitation which grants persons with disabilities a discount on the practical part of the state driving license examination.

The Commissioner disagreed with the position presented by the Minister. The support, according to the CT decision, does not have to consist of providing drivers with tailored cars at all centres but may be limited to the creation of a database listing the Voivodeship Traffic Authorities that offer such vehicles. As for the financial assistance provided to driving license candidates with disabilities, the Tribunal considered it to be illusive. In addition to a larger discount in the examination fee, persons with disabilities may be reimbursed for the costs of renting the driver training centre's vehicles for the driving test. In this connection, the Commissioner once again requested[216] the Minister of Infrastructure and Construction to undertake legislative work to help persons with disabilities obtain a driving license and at the same tie to implement the recommendations of the Constitutional Tribunal in this respect.

B) Reimbursement of the costs of commuting to schools to students with disabilities

The Commissioner has joined a constitutional appeal[217] concerning the compatibility of Article 14a(4) and Article 17(3a)(3) of the Act on the System of Education of 7 September 1991 with Article 70(4) in conjunction with Article 70(1)(1) and Article 32(1) of the Constitution of the Republic of Poland[218]. Both above-mentioned regulations contain rules of implementing the obligation imposed on municipalities to finance the transport of children with disabilities and of their carers to kindergartens, schools and specialist centres. The challenged regulations of the Act indicate two forms of fulfilment of the obligation: by providing free transport and child care during transport, or by reimbursing the costs of the child's and carer's travel, on the terms and conditions set forth in a contract between the municipality administrator (mayor, city president) and the parents, if the commuting is provided by the parents. The right to choose is limited to the parents only while the municipality has specific obligations which the authority must not evade by transferring them to the people concerned: to provide transport and child care or reimburse the costs. The legislators intended to construct a subjective right for carers of children with disabilities in order to compensate for their legal situation. However, the rationale for the implementation of this subjective right is structured in a somewhat indefinite way. The regulations do not indicate the basic elements of the contract, in particular the prerequisites for the contracting parties to set the rates. The legislator's lack of

[216] V.511.141.2014 of 18 October 2016.
[217] VII.7037.136.2016 of 21 December 2016.
[218] File ref. no. SK 28/16.

precision allows the municipality administrators to adopt any distance (in practice – from a one-way route between the place of residence and the school, up to four times that route). This causes differences in the positions of e students using the transport organized by carers in different municipalities. Due to the wide discretion in setting the reimbursement rates, a situation arises where in one municipality the carers can be reimbursed for the actual travel costs while in a neighbouring municipality only a small part of the costs actually paid by the carers is reimbursed. As a consequence, access to education for both the groups of students with disabilities is not equal, which contravenes the Constitution. The challenged provisions do not provide minimum standards for the protection of the weaker party to the contract while judicial review does not ensure the effective exercise of the right to reimbursement of the costs of transport to an educational institution.

6. Freedom of expression and access to information (Article 20 of the Convention on the Rights of Persons with Disabilities)

Problems of the deaf and the deafblind in relations with public administration

The Commissioner's interest continues regarding the problem of the realization of the right of the deaf and the deafblind to communicate in official matters by freely chosen means of communication. According to the Government Plenipotentiary for Persons with Disabilities[219], the functioning of the Act on Sign Language and Other Methods of Communication[220] is constantly monitored. One area that needs discussion is the certification of sign language translators. In Poland, in the current legal situation, there is no state certification system for sign language translators. Since it is not possible to verify the skills of sign language translators, it seems unreasonable to impose the obligation to employ them on subsequent entities. The Government Plenipotentiary for Persons with Disabilities emphasized that, in the current legal situation, deaf people can receive support in accessing sign language interpreter services, also when seeing a doctor, through the subsidization of these services from the State Fund for the Rehabilitation of Persons with Disabilities. The

[219] Letter of 27 January 2016.
[220] The Act of 19 August 2011 (Dz.U. of 2011 No. 209, item 1243, as am.).

Plenipotentiary has requested the Minister of Health to consider introducing training courses on how to serve persons with disabilities into the obligatory curriculum of doctors' in-service training programs and to promote the use of modern technologies and improvements in communication with the deaf through the use of the online sign language translator. The problem is also being discussed by the Polish Sign Language Council which has set up a problem-solving team for the accessibility of health services to the deaf.

The Commissioner requested[221] the Chairperson of the Parliamentary Committee on the Deaf to analyse the submitted recommendations and to inform the Commissioner about the current actions undertaken by the Committee to ensure full availability of public administration offices to the deaf.

7. Respecting privacy (Article 22 of the Convention on the Rights of Persons with Disabilities)

A) Placing the symbol of disability and the specialization of doctors in disability certificates

The Commissioner has been receiving complaints regarding the need to place the disability symbol and the specialization of doctors in disability certificates. The applicants pointed out that such a regulation interferes, in an unreasonable and excessive way, with the right to privacy of persons with disabilities. According to the Commissioner, mandatory provision of information to the employer about a specific illness suffered by a worker can raise concerns about the constitutional right to privacy, the protection of personal data, the patient's right to confidentiality of information and, consequently, the discrimination against persons with disabilities on the labour market. This type of legal regulation is a hindrance to finding a job, especially for people suffering from hidden conditions such as mental illness, intellectual disability or epilepsy. Such employees often do not need special adaptation of the workplace or working conditions while the still common stereotypes about their disability make the employers reluctant to employ them. In the Commissioner's view, it is important to develop, for persons with disabilities, a supportive system that will allow the granting of special powers to employers without the need for them to disclose the reason for the disability certificates. Instead of the illness or chronic disease symbol, the disability certificate should indicate the adaptations

[221] XI.501.1.2015 of 31 October 2016.

and facilities needed by the person with disabilities in the workplace and the work process. An amendment of the law, which would take into account the need to protect sensitive data of employees with disabilities, would positively affect their functioning in the labour market. The Commissioner requested[222] the Government Plenipotentiary for Persons with Disabilities to consider whether it was necessary to disclose the cause of disability to employer for the purpose of employing a person with disability. He also requested the Plenipotentiary to present his position on the case and to inform about any relevant action taken or planned.

The Plenipotentiary explained[223] that the inclusion of disability data and the doctors' specializations in disability certificates was necessary to provide adequate support for the specific needs of persons with disabilities in the employment process. It is also necessary to implement a suitable instrument to motivate employers to employ a specific group of people who are particularly vulnerable to exclusion from the labour market. At the same time, within the framework of the Knowledge Education Development Operational Program "2014-2020", a project is to be implemented to develop a system of disability-related decisions that will allow a precise identification of persons to whom support instruments should be addressed in a way that ensures implementation of the Convention on the Rights of Persons with Disabilities taking into account their individual needs and potential.

B) Principles of video surveillance in social welfare homes

The Commissioner requested[224] the Minister of Family, Labour and Social Policy to start work on a legislative provision regulating the use of video surveillance in social welfare homes as soon as possible. The installation of CCTV monitoring in social welfare homes – without a statutory basis – may violate the provisions of the Constitution as well as the provisions of international law that guarantee the right to privacy. This also applies to the lack of regulation regarding the transmission, playback and recording of images or sound from the monitoring system, the monitored persons rights' and the rules for the use of such data. Any justified action that interferes with the right to privacy should be regulated by law. The installation of a monitoring system in the living quarters of nursing homes, especially for mentally ill persons and people with intellectual disabilities, should only take place where it is absolutely necessary because of the risk to their life or health.

In response, the Minister pointed out[225] that the use of monitoring in social assistance homes, in particular in the residents' rooms, is part of the broader issue of regulating the surveillance of public facilities. The need to prepare a general regulation was recognized a few years ago, but the relevant provisions have not yet been

[222] XI.520.1.2016 of 29 September 2016.
[223] Letter of 22 December 2016.
[224] III.7065.3.2016 of 8 April 2016.
[225] Letter of 6 May 2016.

enacted. The Ministry will review the need for specific standards, get acquainted with the existing practices and arguments of people managing social welfare homes and agree with the Inspector General for Personal Data Protection on the contents of possible regulations. In addition, the Commissioner was assured that until the relevant legislation was enacted the Ministry would remind heads of voivodeship administration about the need to respect the rights of social welfare homes residents. In particular, heads of voivodeship administration must not allow the facility directors to install cameras in bedrooms.

C) Use of video surveillance in psychiatric hospitals

An analysis by the National Preventive Mechanism shows that existing regulations on the use of video surveillance in psychiatric hospitals raise serious concerns about compliance with the Constitution, the European Convention on Human Rights, and the International Covenant on Civil and Political Rights. In the Commissioner's view, the contested provisions limit the constitutional right to privacy, so they should be part of a law act, not an ordinance. In addition, the ordinances of the Minister of Health regulating the issues of video surveillance in psychiatric hospitals go beyond the scope of the authorizations contained in the Mental Health Act, the Act on Medical Practice and the Penal Enforcement Code. The issues of the transmission, playback and recording of images or sound from the monitoring system, the rights of the monitored persons and the rules for the use of such data also require detailed regulation. The particular care about the situation of patients in psychiatric hospitals results primarily from the greater risk of social exclusion of these persons. That is why the Commissioner requested[226] the Minister of Health to initiate appropriate legislative work.

The Minister shared[227] the arguments put forward by the Commissioner. The Ministry of Health has been working on amendments to the Mental Health Act. The Act will regulate directly the basic issues of monitoring the premises where direct coercion is used in the form of isolation. The recorded image and sound will be protected under the provisions of the Personal Data Protection Act. At the same time, those provisions of the Regulation of the Minister of Health which do not raise doubts regarding the protection of fundamental rights and compliance with the principles of the legislative procedure will continue in force to the extent necessary.

[226] KMP.574.8.2015 of 5 January 2016.
[227] Letter of 5 February 2016.

8. Respect for home and family (Article 23 of the Convention on the Rights of Persons with Disabilities)

A) Provisions which deprive people with health disorders of the right to get married and start a family

The Constitutional Tribunal heard the Commissioner's application[228] concerning the provisions of law which deprive people with health disorders of the right to marry and start a family. By the ruling[229] of the Constitutional Tribunal, the regulations contested by the Commissioner have been declared compliant with the Constitution. In the Constitutional Tribunal's opinion, the catalogue of marriage prohibitions is not accidental. The marital impediments listed were considered necessary by the legislator to ensure that a family in wedlock provided the optimal opportunity for implementing the procreation, care and socialization functions.

B) Contacts with family members and other relatives of adults with disabilities under the care of other persons

In his intervention addressed to the Minister of Justice, the Commissioner presented[230] repeatedly the problem of contacts of persons with disabilities and legally incapacitated persons with those close to them. It is often the case that people who care for persons with disabilities restrict such (adult) persons' contacts with others. The Commissioner suggested in the past that the Family and Guardianship Code provisions relating to contacts with children be extended to include such cases. Since the legislative work on the abolition of the institution of incapacitation had been temporarily suspended, the Commissioner requested to consider the need for legislative work to regulate the contacts of adults with disabilities, especially those who are incapacitated, with their relatives.

[228] Commissioner's for Human Rights Report for 2015 , p. 146-147
[229] Judgement of 22 November 2016 , file ref. no. K 13/15
[230] IV.7021.204.2014 of 12 January 2017

9. Education (Article 24 of the Convention on the Rights of Persons with Disabilities)

A) Availability of academic education to persons with disabilities

The Commissioner has been receiving indications of exclusion of persons with disabilities from the group of potential students at some higher education institutions. It should be the role of the individual ministers exercising control over universities to counteract such practices which conflict not only with the laws and the Constitution but also with the Convention on the Rights of Persons with Disabilities. The Commissioner emphasized that under the Act implementing certain European Union regulations on equal treatment, in particular cases a person with a disability may not be admitted to a specific university but only if physical fitness in a particular area is a necessary condition for graduation and pursuing a future career. The constitutional right to education of persons with disabilities is, in fact, subject to numerous limitations. Students with disabilities meet not only architectural and transport barriers but also those stemming from mentality. The most important problem is the exclusion of persons with disabilities from the group of potential students at some higher education institutions. This conclusion is also apparent in the Commissioner's report titled "Availability of academic education for persons with disabilities"[231]. The phenomenon of exclusion of persons with disabilities occurs most often in higher education institutions or specialized courses of narrow educational profile such as arts, medical, military or maritime universities. In the Commissioner's view, possible restrictions on access to academic education should be based on objective and rational premises and be applied to individuals and not to groups of persons with disabilities. The Commissioner requested[232] the Minister of Culture and National Heritage, the Minister of Health, the Minister of National Defence and the Minister of Maritime Economy and Inland Shipping to take action to fully implement the right to education of persons with disabilities.

The Minister of Maritime Economy and Inland Navigation pointed out[233] that there were few persons with disabilities among students of the Maritime Academy. A specialized organizational unit for students with disabilities – the Rector's Representative for Persons with Disabilities – has been set up at the Gdynia Maritime Academy. The university infrastructure has been partially adapted to the needs of

[231] See: https://www.rpo.gov.pl/sites/default/files/BIULETYN_RZECZNIKA_PRAW_OBYWATELSKICH_2015_No._5.pdf

[232] XI.7033.2.2015 of 21 May 2016.

[233] Letter of 30 June 2016

students and doctoral students with disabilities. At the Maritime Academy in Szczecin, a part of the teaching and administrative staff has been trained in the basics of sign language and the principles of communicating with the deaf and hard of hearing students. As part of the assistance to the deaf and hard-of-hearing students, the school employs a sign language interpreter. Architectural barriers are also being eliminated. Modern facilities and laboratory centres have been adapted to the needs of students with disabilities. There are no premises within the academy that formally limit the enrolment of persons with disabilities.

In its response, the Ministry of National Defence explained[234] that in military academies physical fitness was a prerequisite for the completion of education and the discharge of duties by a professional soldier. As regards civilian education, it was agreed that schools should give persons with disabilities the possibility to participate fully in the study process. The Ministry of National Defence did not receive any signals of practices that would exclude persons with disabilities from the group of civilian students of military schools.

The Minister of Culture and National Heritage reported[235] that there were no laws discriminating against persons with disabilities in the internal legal regulations of art schools. Universities provide the right conditions for full participation of persons with disabilities in the education process and no complaints on barring such persons from studies have been received by the Ministry over the last few years.

B) Special scholarship for students with disabilities

The Commissioner has for a long time been striving to change the regulations that prevent students with disabilities from receiving a special scholarship in the second field of study. The percentage of persons with disabilities who complete higher education remains much lower compared to persons without disabilities. Poland is obliged by the Convention on the Rights of Persons with Disabilities to provide persons with disabilities with access to universal higher education without discrimination, whilst ensuring equal opportunities. According to the Constitution, public authorities shall create and support individualized assistance systems for students, designed to bridge the gap in access to education. Such is the role of, inter alia, the special scholarship for persons with disabilities, provided for in the Higher Education Act[236]. Unfortunately, a student with a disability who continues education in the second field of study after completing the first one is not entitled to any financial assistance including a special scholarship for persons with disabilities. This restriction applies to all students, even if the disability occurred during studies or after graduation. It happens that students or graduates in such situations are not able to practice their acquired profession so they must acquire further quali-

[234] Letter of 20 July 2016
[235] Letter of 6 July 2016
[236] The Act of 27 July 2005 (Dz.U. No. 164, item 1365, as am.).

fications. The Commissioner asked[237] the Minister of Science and Higher Education whether any suitable changes were being planned. A special scholarship would make it easier for students with disabilities to acquire additional qualifications and, consequently, it would foster equal opportunities in the labour market.

The Minister of Science and Higher Education announced[238] that he would consider the Commissioner's postulates at the next change of the Higher Education Act. However, at the moment, no relevant amendment was being worked on.

C) Education of people with severe intellectual impairment

The complaints investigated by the Commissioner revealed a problem of possible discrimination against people with severe intellectual disabilities regarding access to education. By ratifying the Convention on the Rights of Persons with Disabilities, Poland undertook to counteract the exclusion of persons with disabilities from the universal education system. According to Article 70 of the Republic of Poland Constitution, everyone has the right to education while public authorities provide universal and equal access to it for citizens. However, some legislative solutions may hinder the effective implementation of this right. There is no obligation to develop a core curriculum or a curriculum framework for the particular years of study for children and young people with severe intellectual disabilities. The lack of the conditions and methods for evaluation, promotion and classification is also a serious problem. The lack of division into the various stages of education is also symptomatic. In addition, regulations on the education of persons with severe intellectual disabilities make it possible for people of very different ages (3 to 25 years) to be in the same class.

The Commissioner requested[239] the Minister of Education to conduct an analysis of the current legislation on the education of persons with this type and degree of disability. In response, the Ministry assured[240] that the provisions of the Education System Act[241] enabled the organization of education and upbringing of children and young people in a variety of forms to ensure the mandatory one year pre-school preparation, school attendance and schooling duty. Current legal solutions do not discriminate against children and young people with severe intellectual disabilities as far as access to education is concerned. It was indicated that the very different levels of functioning of children and young people with such disabilities significantly hamper the creation of uniform requirements in the core curricula for the knowledge and skills that should be acquired in subsequent years of learning. The rehabilitation and counselling classes aimed primarily at comprehensive and multiprofile support

[237] XI.7036.24.2015 of 24 May 2016
[238] Letter of 23 June 2016
[239] XI.7036.19.2016 of 29 April 2016.
[240] Letter of 21 October 2016.
[241] The Act of 7 September 1991 (Dz.U. of 2016 , item 1943).

of the development of children and young people with severe intellectual disabilities are considered to be educational. In the Ministry's opinion, the constitutional right of this group of children to learn is currently being implemented. At the same time, the Commissioner was assured that the educational issues of children and young people with severe intellectual disabilities would be closely scrutinized while developing a new model of diagnosis and support with the use of the International Classification of Functioning, Disability and Health (ICF-CY).

10. Health (Article 25 of the Convention on the Rights of Persons with Disabilities)

Medical examination of persons with mental disorders, detained by the Police

During inspections of the premises for persons detained or brought to sober up, the representatives of the National Preventive Mechanism met with the wrong practice of examination of detainees with mental disorders by a physician having no specialized psychiatry training. The medical examination is made to determine whether there are contraindications for the stay of such a person on the Police premises intended for people detained or brought to sober up. In the case of an incorrect diagnosis made by a doctor of a specialty other than psychiatry, there may be a risk to the health or even the life of the detainee. The Commissioner requested[242] the Commander-In-Chief of the Police to take appropriate action to eliminate such practices.

In response, the Commander assured[243] that the applicable regulations were sufficient and warranted the examination of a person detained or brought to sober up. The unspecified specialty of the examining doctor does not deprive a person of proper medical care as the general practitioner has extensive medical knowledge and may, on that basis, arrange for specialist consultations, such as psychiatric ones, to verify whether a person should be subjected to clinical observation or can stay in the detainee room. Any new solutions introducing examination by a specialist doctor might raise doubts concerning the party which should decide about the examination. The detaining police officers are not competent to make such a decision.

[242] KMP.570.25.2015 of 7 January 2016
[243] Letter of 9 February 2016

11. Rehabilitation (Article 26 of the Convention on the Rights of Persons with Disabilities)

No possibility to lodge a complaint in the case of refusal to subsidize the rehabilitation program from the State Fund for the Rehabilitation of Persons with Disabilities

The cases investigated by the Commissioner, revealed a problem regarding the legal form of processing an application for subsidizing rehabilitation expenses from the National Fund for Rehabilitation of Persons with Disabilities. According to the ordinance of the Minister of Labour and Social Policy on Rehabilitative Stays[244], the family support centre shall notify the applicant in writing within seven days from the processing date of a grant application of how it was processed. Although the provisions of the ordinance do not expressly state this, in the Commissioner's opinion such a decision is an administrative one and should be appealable to the administrative court. The Commissioner's position, also corroborated in the case-law of the Supreme Administrative Court, is justified by the individual's right to trial and procedural justice stemming from the constitutional principle of the democratic rule of law. The Commissioner therefore requested[245] the Minister of Family, Labour and Social Policy to eliminate the practice which violates constitutional standards by refusing to subsidize a rehabilitation program without issuing the decision while simultaneously rejecting the possibility of filing complaints against such settlement.

In response, the Minister explained[246] that according to the provisions governing the allocation of funds from the National Fund for Rehabilitation of Persons with Disabilities, the applicant is notified in writing of how the application was processed both in the case of positive and negative result. He emphasized that it was substantive law that was decisive as to whether a case was eligible for an administrative decision. In order to issue an administrative decision, there must be a clear legal basis which stems from the law without doubt and is not derived by way of interpretation. In the Minister's opinion, the provisions of the Act on professional and social rehabilitation and the employment of persons with disabilities do not indicate this possibility. Qualification of the character of an act undertaken in the case of subsidizing the costs of stay in a rehabilitation facility is an issue considered by court and administrative case law. The position of administrative courts in this regard is not unanimous. Some of the rulings present a position that there is no legal

[244] Regulation of 15 November 2007 (Dz.U. No. 230, item 1694, as am.).
[245] III.511.1.2016 of 14 June 2016 and 25 August 2016.
[246] Letter of 10 November 2016.

act that provides for written decisions in such cases[247]. However, he acknowledged that in recent years the case law line has been expressing the opinion that an act undertaken in the case of subsidizing the costs of stay in a rehabilitation facility is an administrative decision[248]. The Minister stated that for the sake of clarity of the decisions related to the processing of the applications in question he would examine the possibility of regulating the pertinent procedures in the relevant legislation.

12. Suitable living conditions and social protection (Article 28 of the Convention on the Rights of Persons with Disabilities)

A) Restrictions on the provision of care by the carers of persons with disabilities

The Commissioner again raised the issue of limited access to care benefits (attendance allowance and special carer's allowance) for people actually providing care to family members with disabilities. In the Commissioner's opinion, this situation requires an intervention of the legislator. The Family Benefits Act[249] makes access to care benefits dependent on the existence of the maintenance obligation on the side of the carer of a given person with a disability. A relative who provides care to a person with a disability but is not bound by the maintenance obligation does not receive a care benefit. Administrative courts uniformly accept that the lack of the maintenance obligation precludes the entitlement to care benefits. The fact of providing care, and the lack of other people in the family who are capable of is provision, is irrelevant. According to the Commissioner, the situation in which a single relative takes care of a family member with a disability and voluntarily fulfils his/her moral obligations towards that person deserves support from the state.

It is also unacceptable to exclude from the support system a parent with a disability who provides care to a child with a disability. The problem concerns the

[247] Cf. Judgement by the Voivodeship Administrative Court in Olsztyn of 2 August 2011 , file ref. no. II SA/Ol 410/11; Judgement by the Voivodeship Administrative Court in Kielce of 11 September 2008 , file ref. no. II SA/Ke 399/08

[248] Cf. Judgement by the Voivodeship Administrative Court in Poznań of 22 January 2015, file ref. no. IV SA/Po 1014/14; Judgement by the Voivodeship Administrative Court in Bydgoszcz of 3 December 2013, file ref. no. II SA/Bd 643/13.

[249] The Act of 28 November 2003 (Dz.U. of 2016 item 1518, as am.).

entitlement to the attendance allowance for a parent providing care to a child with a disability, where the carer is a person with a high degree of disability including incapacity for work. The provisions of the Act on Family Benefits regulating such situations have been interpreted favourably for carers by the ministry responsible for social policy. However, the Supreme Administrative Court[250] has stated that the incapacity to work, arising from a severe disability confirmed by a severe disability certificate, makes it impossible for a carer of a person with a disability to be entitled to an attendance allowance. This is caused by the requirement to give up employment in order to be entitled to an attendance allowance. A parent who is unable to work does not meet this requirement according to the court. The Commissioner requested[251] the Minister of Family, Labour and Social Policy to present their position on the matter.

In reply, the Commissioner was advised[252] that that the Ministry was analysing possible changes to the support system for persons with disabilities, their families and carers. All the postulates and proposals of solutions are analysed in the course of the work including proposals for granting attendance benefits to other persons not belonging to the circle of persons obliged to maintenance. The Ministry's representatives will also take part in the work of the inter-ministerial team on persons with disabilities, appointed by the Prime Minister, which also includes representatives of the Ministry of Health and the Ministry of Education. The aim of the team is to develop comprehensive solutions for the support of persons with disabilities. In addition, the ministry is working on statutory changes to make it possible for former caregivers of persons with disabilities to acquire the entitlement to unemployment benefit if they lose their entitlement to attendance allowance, special care allowance or carer's allowance due to the death of the person cared for, or cancellation of the disability certificate or disability degree certificate of the person cared for.

B) Differentiation of the entitlement to parents' rehabilitation allowance depending on the form in which their maintenance obligations are fulfilled

The Commissioner declared[253] his participation in the proceedings on the constitutional appeal concerning the dependence of the entitlement of a parent maintaining a child with a disability to deduct rehabilitation expenses from their income, on the form in which the maintenance obligations are fulfilled.

[250] Judgement NSA of 29 October 2015 , file ref. no. I OSK 1363/15.
[251] III.7064.40.2016 of 29 March 2016.
[252] Letter of 10 May 2016.
[253] V.511.288.2016 of 29 July 2016, file ref. no. SK 13/16.

The Commissioner stated[254] that the distinction has no justification in constitutional values, in particular it contradicts the obligation to protect families in difficult financial and social situation, is incompatible with the principle of equality and the principle of social justice. In the Commissioner's opinion, the applicable provisions of the Personal Income Tax Act[255] introduce a difference between the situation of those parents of children with disabilities, who voluntarily fulfil their maintenance obligations, and the situation of parents who fulfil such obligations pursuant to a court's decision. Taxpayers whose children receive maintenance awarded by a court – in excess of the threshold amount indicated by the legislator – may not benefit from the rehabilitation allowance. On the other hand, the amount of maintenance payments does not affect the entitlement to rehabilitation allowance of the parents who fulfil their maintenance obligation voluntarily. As a consequence, the entitlement of a parent maintaining a child with disability to deduct rehabilitation expenses depends on whether maintenance payments are made by the parent voluntarily, or based on a court's decision. The consequence of the contested provisions is that the state does not fulfil its obligation to provide special assistance to families in difficult financial and social situations, and fails to respect the principle of proportionality in the limitation of civil liberties.

C) Access for persons with disabilities to council flats

The bill of 8 November 2016, prepared by the Ministry for Infrastructure and Construction, amending the Act on the Protection of Tenants' Rights, the Municipality Housing Fund and the Amendment of the Civil Code, the Code of Civil Procedure and the Act on Financial Support to Social Housing, Sheltered Accommodation, Hostels and Houses for the Homeless included a postulate that the Commissioner raised in his earlier interventions[256]. The Commissioner pointed out that the Act on the Protection of Tenants' Rights, the Municipality Housing Fund and the Amendment of the Civil Code[257] lacks a regulation that would oblige municipalities to take into account applicants' disability in the resolutions defining the rules for renting council flats. A provision has been proposed in the a/m bill that requires municipalities to specify in the resolution on the rules of renting council flats also the conditions that must be meet by the premises intended for persons with disabilities taking into account the needs of these people. The bill is in the assessment phase and has not yet been submitted to the Sejm.

[254] Letter of 24 August 2016.
[255] The Act of 26 July 1991 (Dz.U. of 1997 No. 78, item 483, as am.).
[256] The Commissioner's for Human Rights Report for 2015, p. 174.
[257] The Act of 21 June 2001 (Dz.U. of 2014 item 150, as am.).

13. Participation in political and public life (Article 29 of the Convention on the Rights of Persons with Disabilities)

A) Adaptation of polling stations to the needs of voters with disabilities

The issue of removing barriers to the participation of persons with disabilities in public life is one of Commissioner's priorities. The results of social research conducted by the Centre for Public Opinion Research and the Commissioner's Office indicate that the vast majority of Polish voters, including persons with disabilities and older people, prefer to vote in person at the polling station. Only a small proportion of voters with disabilities or senior voters want to use alternative voting procedures, either by mail or by proxy. At present, the vast majority of the inspected premises do not meet the technical criteria specified in the ordinance[258] of the Minister of Infrastructure. Ultimately half of the polling stations in each municipality should be fully adapted to the needs of voters with disabilities. The Commissioner requested[259] the Government Plenipotentiary for Civil Society and Equal Treatment and the Government Plenipotentiary for Persons with disabilities to take effective action to ensure safeguarding the voting rights of voters with disabilities.

The Government Plenipotentiary for Equal Treatment has ensured[260] that they would take all steps to ensure that the guaranteed rights of persons with disabilities are reflected not only in the law but also in the realization of the right to vote and the right to stand for election. At the same time, they expressed their willingness to cooperate with the Commissioner on safeguarding the voting rights of persons with disabilities and the proper adaptation of polling stations to their needs.

A research conducted by the Commissioner indicates that even the polling stations meeting all the criteria set out in the legislation are often difficult to access for voters with disabilities. Very often there are obstacles such as: uneven pavement which makes it impossible to use the ramps for people with mobility impairment, bumpy sidewalks, high or uneven curbs. There is also shortage of parking spaces for persons with disabilities. The regulation of the Minister of Infrastructure on the premises of polling stations adapted to the needs of voters with disabilities does not regulate the survey and removal of possible barriers in the area surrounding the polling station. The Commissioner appealed[261] to the Chairperson of the Pol-

[258] The Regulation of 29 July 2011 on the polling stations adapted for voters with disabilities (Dz.U. No. 158, item 938).
[259] VII.602.6.2014 of 20 January 2016.
[260] Letter of 3 February 2016.
[261] VII.602.6.2014 of 2 March 2016.

ish Sejm's Standing Subcommittee on Amendments to the Electoral Code and the Code of Administrative Procedure to amend the Electoral Code so that technical conditions can be specified in the said regulation not only for polling stations but also for their immediate neighbourhood.

B) The voting rights of incapacitated persons

In his intervention addressed to the President of the Republic of Poland, the Commissioner requested[262] for the consideration of an appropriate legislative initiative concerning the voting rights of incapacitated persons in Poland including the possibility to amend the Constitution. In the current legal situation, it is assumed that an incapacitated person does not have even a minimum degree of discernment and awareness as regards the significance of the act of voting. The purpose of the institution of incapacitation is first of all to protect the interests of a person who is unable to manage their own affairs fully. Meanwhile, the deprivation of possibility to vote can be perceived as a form of sanction for this group of people. The problem of the improper protection of incapacitated persons has also been pointed to by the Constitutional Tribunal. The issue of depriving incapacitated people of their voting rights raises doubts among representatives of social organizations and was also brought up in the latest OSCE report on the elections in Poland[263]. It is essential, in the Commissioner's view, to change the excessively restrictive provisions in the context of the judgment of the European Court of Human Rights in the case of Alajos Kiss v. Hungary[264]. The Court found the procedure which automatically deprives the incapacitated of their voting right to be inconsistent with the European Convention on Human Rights. Such actions constitute discrimination according to the Court.

C) The right to stand for election

In its indicative decision of February 11, 2014, the Constitutional Tribunal pointed out that the Election Code does not in principle provide for the possibility of launching a termination procedure of the mandate of a municipality administrator (mayor, city president) due to their incapability to hold office, other than at the request of the person concerned. In the Tribunal's view, the removal of this gap in the law is necessary to ensure the coherence of the legal system. The existing way of initiating the expiry procedure of a municipality administrator's mandate is not sufficient from the point of view of the need to protect the interests of the local

[262] VII.602.14.2014 of 18 February 2016.
[263] See: Republic of Poland Parliamentary Elections, 25 October 2015, OSCE/ODIHR Election Assessment Mission Report, http://www.osce.org/odihr/elections/poland/217961?download=true
[264] Judgement of ETPCZ of 20 May 2010, complaint No. 38832/06.

community. The Commissioner addressed[265] an intervention to the Chairperson of the Parliamentary Committee for Local Government and Regional Policy regarding the implementation of the Tribunal's order concerning the expiry procedure of the mandate of the mayor due to their incapacity to hold office. The Commissioner emphasized that the provisions implementing the Tribunal's decision should take into account the standards of the Convention on the Rights of Persons with Disabilities. This implies, above all, that any restrictions on access to public functions must be based on an in-depth analysis of the facts. The assessment should show that a person is unable to perform a public function due to their disability. The Commissioner also noted that the method of adjudicating the inability to perform the function of municipality administrator may not be based on the work disability certification system but – as in the case of judges – on a separate mechanism. The Commissioner requested to consider a possibility to take the appropriate legislative initiative.

14. Optional Protocol to the Convention on the Rights of Persons with Disabilities

The Commissioner's appeal concerning ratification of the Optional Protocol to the Convention on the Rights of Persons with Disabilities

On 6 September 2012, Poland ratified the UN Convention on the Rights of Persons with Disabilities. However, the direct application by courts of its provisions encounters serious difficulties. Under the Convention, a state party is obliged only to report periodically on the fulfilment of its obligations under the Convention. On the other hand, the Optional Protocol provides for individual complaints by persons who claim to be victims of violation of the Convention's provisions by a state party. As a result, the Committee on the Rights of Persons with Disabilities may recommend proper corrective action or legislative changes to the authorities of the state. However, the right to file individual complaints is not available to Polish citizens or to other persons injured as a result of acting or neglect to act by Polish public institutions since to date Poland has not signed or ratified the Optional Protocol to the Convention on the Rights of Persons with Disabilities. Therefore the Commissioner requested[266] the Prime Minister to urge Poland to ratify the Optional Protocol to

[265] VII.602.6.2014 of 19 January 2016.
[266] XI.516.1.2015 of 21 January 2016.

the Convention on the Rights of Persons with Disabilities. In the Commissioner's opinion, the signature and ratification of the Protocol would significantly contribute to further improving the situation of persons with disabilities in Poland. The appeal has been supported by 170 organizations working for persons with disabilities, the protection of human rights, equal treatment and the development of civil society.

In response, the Minister of Family, Labour and Social Policy pointed[267] to numerous doubts of the Polish government in this regard. The government's main concerns are the ability to verify, by way of individual complaints, the compliance with the Convention's provisions on social rights (such as the right to education, the right to social protection, the right to health). The Minister also raised doubts about the procedure of monitoring the implementation of the decisions taken. The Committee is deemed to be abusing its powers in this regard by requiring the State to provide information on how the recommendations issued after hearing an individual case of a person with a disability are implemented.

The Commissioner will endeavour that the government's decision concerning the ratification of the Optional Protocol to the Convention be changed.

[267] Letter of 23 March 2016.

III. International activity of the Commissioner for Human Rights in the area of equal treatment

The principle of equal treatment and non-discrimination is an essential element of international human rights law. Both in the universal system and within the framework of the European human rights organizations, this principle is reflected in numerous legal acts, projects and initiatives. The Commissioner performs the functions of an independent body for equal treatment on the basis of the anti-discrimination directives of the European Union implemented into the Polish legal order. For all these reasons, the Commissioner conducts active international co-operation with foreign entities in the area of implementation of the equal treatment principle.

Among the Commissioner's main partners in this area is EQUINET, the European Network of Equality Bodies[268], of which the Commissioner has been a member since 2011. This organization is a professional platform for cooperation and mutual support on the issues of legal interpretation and practical implementation of European Union anti-discrimination directives. It unites 46 national equal treatment authorities from 34 European countries. Since 2013, the Commissioner's representative has been a member of the 9-member board of that organization. In 2016, the Commissioner's representatives took part in a number of training sessions, seminars and conferences, including i.a. *Accessibility and reasonable accommodation issues*[269]*, Gender Equality in Education*[270]*, Strengthening the effectiveness of Equal Treatment Legislation*[271]*, Inclusive and Equal: Innovating at the intersections of gender equality*[272]. The Commissioner's Office staff also took an active part in the activities of three EQUINET working groups analysing the practical application of anti-discrimination legislation in the member states (*Working Group on Equality Law*), equal treatment of men and women (*Working Group on Gender Equality)* and the anti-discrimination policy of the European Union (*Working Group on Policy Formation).*

In 2016, the Commissioner also launched a two-year project funded by the European Commission, called *Support to the Strengthening of the Ombudsman of the Republic of Azerbaijan*. One component of this project is dedicated to the protection of the rights of the elderly and persons with disabilities in Azerbaijan. Experts of the Commissioner's Office are involved i.a. in preparing an analysis of legal gaps and urgent needs in this field and developing strategies for action in these areas, together with the staff of the Ombudsman's Office in Azerbaijan.

[268] See http://www.equineteurope.org/
[269] 4 – 5 April 2016.
[270] 19 – 20 May 2016.
[271] 16 June 2016.
[272] 7 December 2016.

As a result of cooperation with the Office of Democratic Institutions and Human Rights (ODIHR), guidelines have been developed for a project devoted to a complex response to crimes motivated by prejudice *(Building a Comprehensive Criminal Justice Response to Hate Crime)*. As part of the project's activities, the Commissioner's Office is responsible for carrying out nationwide research on the so-called "dark number" of prejudice-related crimes, i.e. prohibited acts unreported to any law enforcement authorities. The project is funded by the European Commission and its launch is scheduled for February 2017.

IV. Conclusions and recommendations regarding actions to be taken to ensure that the principle of equal treatment is respected and the rights of persons with disabilities are protected

Special regulations to counter infringements of the principle of equal treatment have been in place in the Polish legal system for more than six years. This is a sufficient period to formulate an assessment of their effectiveness, i.e. the effectiveness of the anti-discrimination system. The basic complaint about the Equal Treatment Act is the differentiation of the legal situation of unequal treatment victims based on their personal characteristics, which is also a ground for discrimination. The Act provides the widest protection with respect to race, ethnic origin or nationality, while the victims of discrimination on the grounds of religion, belief, worldview, age, disability and sexual orientation are the least protected. In addition, the scope of the Act is limited to the situations of breach of the equal treatment principle within a closed catalogue of discriminatory grounds. As a consequence, **the guarantees of equal and effective protection against discrimination have not been sufficiently ensured in Poland** and therefore the Equal Treatment Act may infringe the standards laid down in Article 32 of the Constitution of the Republic of Poland.

Only last year, the need to strengthen the domestic anti-discrimination regulations in this scope was suggested to Poland by the Committee for Human Rights[273] and the Committee on Economic, Social and Cultural Rights[274].

Apart from the possible unconstitutionality of the Equal Treatment Act provisions, significant problems also arise in its application practice. According to EU directives, Member States should introduce effective, proportionate and dissuasive penalties applicable in the cases of non-fulfilment of the obligations arising from those directives. In view of the above, the compensation referred to in the Equal Treatment Act is to be understood not only as a means of legal protection intended to remedy material damage, but also as compensation for non-material damage. Nevertheless, the right of discrimination victims to claim compensation under the provisions of the Equal Treatment Act for the harm suffered is sometimes contested in Polish judicial practice.

As a result of such form of the legal regulations and due to the non-legal factors described below, the practical application of the Equal Treatment Act provisions is negligible. **The number of court cases relating to breach of the equal treatment principle is far disproportionate to the actual scale of discrimination in Poland**. According to a study[275] ordered by the Commissioner, 92% of people who experienced discrimination in the past year (2016) have not reported it to any public institution. Moreover, many Poles are unaware that discrimination is prohibited in areas such as employment and the labour market (67%) or access to goods and services (75%).

[273] Concluding remarks of the Human Rights Committee relating to the 7th Periodic Report of the Republic of Poland adopted on 31 October 2016 (CCPR/C/POL/7), cl. 14.

[274] Concluding remarks of the Committee for Economic, Social and Cultural Rights relating to the 7th Periodic Report of the Republic of Poland adopted on 7 October 2016 (E/C.12/POL/6), cl. 10.

[275] A research ordered by the Commissioner, made by Kantar Public „Legal Awareness in the Context of Equal Treatment" on an all-Poland representative sample of Poles, December 2016

The reasons for this are manifold and include low legal awareness, no understanding of discrimination, no trust in public authorities and institutions, fear of retaliation for reporting the discrimination case, reluctance to disclose intimate information about one's life and also lack of faith in the effectiveness of an intervention. **For these reasons, special sensitivity is required from the state authorities, especially some proactive measures**, to counter and combat discrimination even without the initiative of specific victims.

In 2016, Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures to facilitate the exercise of rights conferred on workers in the context of the free movement of workers[276] was also implemented into the Polish legal order. The directive is another legal instrument of the European Union adopted for protection against discrimination. However, the manner of this implementation raises reasonable doubts as the role of the independent authority promoting the equal treatment and support of Union workers and their family members was entrusted to the National Labour Inspectorate which has limited powers in certain areas governed by the Directive. Moreover, the task of conducting or commissioning independent surveys and analyses was entrusted to the Minister of Family, Labour and Social Policy, who is part of the government. Such a procedure does not guarantee the fulfilment of EU standards concerning the independence and objectivity of actions undertaken in this field.

2016 was also the last year of the implementation of National Action Program for Equal Treatment for the years 2013-2016. The obligation to develop a new program under the Equal Treatment Act rests with the Government Plenipotentiary for Equal Treatment. This work should be undertaken without delay after consultations with the community representing persons particularly vulnerable to discrimination, and should include a fair evaluation of the previous completed Program.

In order to strengthen the protection against discrimination, it is also useful to include the available instruments of international law. The Commissioner recommends **ratification of Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms**, which establishes a general prohibition of discrimination, and the **Optional Protocol to the Convention on the Rights of Persons with Disabilities**, which provides for an individual complaint mechanism for infringements of the provisions of the Convention. In the Commissioner's view, the signature and ratification of these protocols will significantly contribute to the improvement of the situation of discriminated persons while any recommendations made as a result of the recognized complaints may be a valuable indication for Poland in this field. The Commissioner also expressed his support for the ongoing work on the draft of the **Convention on the Rights of the Elderly** at the UN.

[276] Directive 2014/54/UE of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (OJ EU L 128 of 30.04.2014, p. 8).

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

The most serious problems in the area of discrimination on the grounds of race and national or ethnic origin are the repeated **acts of verbal and physical violence, the victims of which are foreigners living in Poland, especially those from Middle Eastern or African countries, and the followers of Islam**. What is significant here is an increase in crimes committed using physical violence or insulting the victim in direct contact. Such events are accompanied by public discussion, also taking place on Internet forums, where hateful behaviour is often met with acceptance or even support from Internet users. In the Commissioner's opinion, this problem is often underestimated by government administration representatives while the response of law enforcement authorities is not always adequate to the degree of social harm of this type of acts.

In order to counter the hate speech on the Internet, it is necessary to spread among electronic services providers the **Code of Conduct on Countering Illegal Hate Speech Online** which has been created as a result of cooperation between the European Commission and the IT industry. The Commissioner also pointed to the need of introducing legislative changes to enable **civil claims using the so-called "John Doe lawsuit"** which enables proceedings, in specific situations, against an anonymous person whose personal particulars can be found later during the proceedings.

As a result of the complaints, the Commissioner also pointed to the irregularities during the border checks of foreigners wishing to apply for international protection in Poland. An inspection confirmed the cases in which the Border Guard denied the right of entry to Poland to persons that either directly expressed their intention to apply for international protection or described the situation in their country of origin in a way which could indicate such intention. Thus, **the binding legislation on border checks as well as the procedures for the acceptance of protection applications at the border does not sufficiently safeguard the rights of foreigners** who seek such protection.

In the Commissioner's opinion, the so-called foreigner questioning procedures at the border crossing point must be harmonized. In particular, the information provided by foreigners on the declared purpose of stay in Poland should be properly documented and the foreigners themselves should have a real possibility to use the services of an interpreter or, if necessary, medical assistance.

The cases investigated by the Commissioner regarding the legalization of foreigners' stay and the recognition of foreigners as Polish citizens revealed also the problem of denying access to documents classified as "secret" or "top secret" to the parties. The refusal did not include any justification of the administrative deci-

sion issued by the authority, which **significantly limits the foreigners' right to an effective appeal procedure**. In this regard, the Commissioner recommends introducing an institution of special representative who would be entitled to access classified documents and could represent the foreigners in the appeal proceedings.

Restrictions on the judicial appeal procedure also apply to the visa procedures and the **lack of possibility to appeal to the administrative court a consul's decision to refuse visas to foreigners** who are not European Union citizens. In the Commissioner's opinion, it is necessary to take a legislative initiative that would grant foreigners the right for their visa application to be examined impartially in a judicial review process.

The problem of **living conditions and access to basic social rights of the Roma minority**, as well as insufficient involvement of local governments in improving this situation, has remain unresolved for many years. The Limanowa and Czchów towns are a disturbing example of conflict between the local government and the Roma minority (who are part of the self-governing community). In order to improve the living conditions of the Roma families, the Limanowa authorities purchased real estates for them outside the municipality (a/o in Czchów) and despite the withdrawal of the Roma's consent for moving there, the authorities are pursuing expulsion of the Roma by bailiffs. Meanwhile, the Mayor of Czchów issued, in violation of the law, an ordinance prohibiting the occupancy of the land intended for the Roma families. As a result, the Roma minority's housing conditions not only haven't improved but the Roma have also become a target of harassment and attacks by the local communities.

The Commissioner continues to monitor the **situation of foreigners – European Union citizens – who do not have financial means or health insurance, do not have a real chance of getting any employment** and encounter difficulties in registering their stay in Poland to obtain thereby the right to stay in our country for more than 3 months. Most often, it is Romanian citizens of Roma origin living in many Polish cities who face this situation. In the Commissioner's opinion, the facilitation of registration of EU citizens' stay in Poland is a current and urgent issue to enable them to access basic social rights.

In the area of protection of minority rights, the Commissioner also points to the difficulty in teaching the languages of national and ethnic minorities as well as their history, geography and culture. This situation is mainly due to the limited access to textbooks and educational materials adapted to the current curriculum for this group of students.

Due to the changes in municipalities' borders in the Opolskie Voivodeship, the German minority living there found themselves in a difficult situation. The Opole city boundaries were extended by parts of certain municipalities entered into the Minister of Internal Affairs' registers of municipalities in which additional names may be used in the minority language (German), and an auxiliary language (German). Polish citizens belonging to minorities could enjoy the rights provided for in

the Act on National and Ethnic Minorities and Regional Languages, and the change of the administrative boundaries deprived them of those rights. In the Commissioner's opinion, these actions may violate the provisions of the European Charter for Regional or Minority Languages.

2. Counteracting discrimination on the grounds of religion, belief or opinions

A particular case of discrimination on the grounds of religion or belief involves the repeated incidents of aggression and violence motivated by prejudice. As already mentioned, the last year saw a noticeable increase in this type of crimes against people from Middle Eastern or African countries and the followers of Islam. According to the data of the National Prosecutor's Office, **the number of cases in which Muslims[277] were the target of the perpetrator's conduct has increased threefold**. The number of anti-Semitic incidents also stays high. The disgraceful public gathering in the centre of Wroclaw during which an orthodox Jew was burned in effigy had a widespread echo in Poland and in the world.

Also, according to a study[278] ordered by the Commissioner, it is clear for Poles that **Muslims and Jews are the religious groups most discriminated against in Poland**. The language of public debate, characterized by a particular radicalization of attitudes towards the Muslim community, does not improve this situation. Especially in media reports, the boundaries between concepts are often blurry leading to the identification of Muslims, Arabs or refugees with terrorists and Islamic fundamentalists.

The Commissioner also continues to receive signs of difficulties in organizing ethics and religious minority classes within the school education system. In the Commissioner's opinion, **the adopted legal solutions, although they have improved the situation, do not adequately protect the individual religious and social groups** while access to minority religious education and ethics classes is not always guaranteed. It would be advisable to adopt regulations that impose on school headmasters the duty to honestly inform parents and students about the possibilities and principles of organizing ethics and minority religion classes and to authorize churches' representatives and religious associations to apply for organizing religion classes for religious minorities.

[277] Data by National Public Prosecutor's Office for the first half-year of 2016.
[278] A research ordered by the Commissioner, made by Kantar Public „Legal Awareness in the Context of Equal Treatment", December 2016.

3. Counteracting discrimination on the grounds of gender

The Commissioner dedicates much attention to the issue of domestic violence and gender-based violence which is a particular form of discrimination and violation of human rights. For these reasons, the Commissioner noted with concern the government's plans to waive the Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), or the public utterances of senior government officials calling for non-compliance with the terms of the Convention. The Commissioner points out that **the Istanbul Convention is a part of the national legal order** and takes precedence over the laws that cannot be reconciled with it, **and that its application is a constitutional obligation of the public authorities**.

One of the Convention's provisions unimplemented to date is the obligation **to provide legal remedies enabling competent authorities to order a perpetrator of domestic violence, in situations of immediate danger, to leave the victim's or the endangered person's place of residence** for an appropriate period of time and forbid the perpetrator to enter the premises occupied by the victim or the endangered person or to contact them.

The rights of victims of violence, who are forced to leave their current place of residence for fear of their lives or health, are insufficiently secured. The main problem is **the insufficient number of specialized facilities for violence victims**. The municipalities' housing stock is also insufficient, which directly translates into the availability and waiting time for renting communal apartments. In the Commissioner's opinion, **victims of domestic violence should be treated as a preferential group in the use of municipal housing assistance**.

Lastly, the government authorities' decisions refusing to finance non-governmental organizations offering assistance to violence victims for the sole reason that the support is mainly for women raise concern. It should be stressed that domestic violence affects women disproportionately and the support for NGOs is in many cases the only real help offer for the victims of gender-based violence.

Another remaining problem is access to medical services and health care. Special obstacles include the right to legal termination of pregnancy in a public health care facility. According to the decision of the Constitutional Tribunal on the conscientious objection clause, the provisions of the Act on the Professions of Doctor and Dentist are unconstitutional to the extent that they impose the obligation on a doctor refusing a health service incompatible with his conscience to indicate a realistic option of obtaining such a benefit from another doctor or other health care entity. Consequently, in some regions of the country there are no longer any entities providing legal pregnancy terminations. Meanwhile, **the admissibility of preg-**

nancy termination in the cases described in the Act implies the need to create a system that guarantees real and non-discriminatory access to this procedure. The Commissioner stresses the need for urgent action to establish a mechanism that will allow a patient to obtain information on where they can realistically obtain a health benefit that was denied due to the doctor invoking the conscientious objection clause.

In the area of reproductive rights, the Commissioner also points to the possible consequences of discontinuing the refund of the *in vitro* procedure, which in many cases is the only effective method of infertility treatment. In the Commissioner's opinion, this also means **practically frustrating the Infertility Treatment Act**. Legitimate concerns are also raised about the quality of perinatal care, particularly the limited access of women in labour to epidural anaesthesia. Statistical data show that there is a considerable disproportion between hospitals in providing this benefit to patients. Meanwhile, **not administering pain-relieving drugs to a woman, even though they are legally guaranteed, is a violation of the patient's rights to dignity and privacy**, and the right to health services that meet the requirements of current medical knowledge. Similar objections apply to certain forms and circumstances of female patients' consent to procedures that take place during childbirth.

The under-protection of pregnant women in the employment area remains a problem. The Commissioner recommends definite protection of appointed religious teachers and female soldiers.

The Commissioner has also analysed the conditions for balancing work with family responsibilities. Discrimination on the grounds of gender in the area of family life can be seen in the case when men are prevented from exercising their parental rights. On the other hand, burdening women with responsibility for child care and unpaid work at home leads to their discrimination in the labour market. In the Commissioner's opinion, it is fundamental to adopt legal arrangements allowing for equal distribution of parental care responsibilities, for example through such construction of the parental leave that part of it would be reserved for each of the parents, without the possibility of transferring it to the other, except when one parent can not take care of the child personally. It is also necessary for the state to increase support in the care of dependents, not only minors but also senior persons and persons with disabilities. Such activities will enhance equal treatment of women and men in different spheres of life.

A firm reaction of competent public authorities is required concerning the **problem of not fulfilling child maintenance obligations, the consequences of which impact women in particular**. In this regard, the Commissioner analysed the effectiveness of prosecuting the offense of maintenance non-payment, the restrictions on access to maintenance fund benefits and the ways to tackle income hiding by people obliged to pay maintenance.

The Commissioner has also been monitoring the issue of the low participation of women in public life. Despite the existence of a quota mechanism that ensures

that not less than 35% of each gender are represented in the electoral rolls submitted by the electoral committees in the elections to the Sejm of the Republic of Poland, the European Parliament, the county councils and the regional councils, the percentage of the women elected remains low. The introduction of the obligation to alternate female and male candidates in the electoral lists seems to be crucial.

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

The Commissioner has been receiving applications related to the violation of the right to respect of privacy and family life of homosexual and transgender persons.

The unregulated legal situation of children, Polish citizens born abroad, whose birth records indicate as parents two persons of the same sex remains a problem. They are not allowed to transcribe the birth certificate and thus obtain a PESEL number and an identity card confirming the acquisition of Polish citizenship. Taking into account the case law of this type, it seems reasonable to suggest that there is a need for appropriate legislative changes that would protect children's interest by eliminating this problem.

In the absence of legal regulations on same-sex partnerships, the Commissioner is presented with various problems that are the consequence of this. The Commissioner's protection was sought, inter alia, in the case of refusal for a spouse of the same sex (married abroad) to be covered with insurance or refusal by the registry office head to accept a same-sex marriage license. The case law of domestic courts providing legal protection to same-sex couples is noteworthy. In particular, the Supreme Court decided by resolution that the next of kin within the meaning of criminal law is also a partner of the same sex. In a judgment on the acquisition of real estate by a foreigner, the Supreme Administrative Court decided, in turn, that the foreigner's partnership with a Polish citizen was significant for resolving the case.

Still, no law has been passed that would enable to resolve birth certificate gender in a fast, transparent and accessible procedure respecting the dignity of transgender persons. The Commissioner has been receiving a growing number of applications for judicial proceeding regarding gender issues. The Commissioner joined one of the proceedings in which the court ordered the plaintiff to provide her children's names under the pain of suspension of the proceedings. That was because it is not enough at present to file a lawsuit against parents of transgender persons but it is also necessary to participate in the proceedings as the opposing parties of such

persons' children. The procedure developed in case law thus becomes even more burdensome for those interested in such a solution.

Discrimination on the grounds of sexual orientation in health care remains a problem. The Commissioner received two complaints which were subsequently closed by the Commissioner for Patients' Rights who issued commendable decisions that the patient's rights to dignity and privacy had been infringed.

The Commissioner also noted a number of issues relating to the presentation of homophobic views in public space calling for discrimination and marginalization of homosexual persons (leaflets, exhibitions, lectures). The Commissioner joined a lawsuit against a non-governmental LGBT rights organization who criticized the work of an American scholar propagating views in schools and universities, which offended the dignity of homosexual persons.

Finally, the Commissioner continues to receive many signals regarding the increasing scale of prejudice-induced violence against homosexual and transgender persons, also from police officers. Attacks on non-governmental organizations working for the rights of LGBT persons also raise concern.

5. Counteracting discrimination on grounds of age

The Commissioner appreciates the efforts of the public authorities to improve the situation of the elderly. However, those efforts remain insufficient to fully protect in particular the right to publicly-funded health care, the right to a decent standard of living and social security as well as community support at the local level. The implementation of these rights should be based on the **human rights of the elderly**, which requires a departure from focusing on social rights only and from the policy, well-established among various-level decisions makers, of paternalising older people. To achieve this, proper implementation is required of certain values and principles reconstructed by reference to international recommendations[279].

The Commissioner seeks to supplement the Long-Term Aging Policy Agenda for 2016-2020 by developing a strategy and action plan to ensure that social policy objectives are met in a systematic manner. Among detailed issues, educating the right number of geriatrics physicians and the availability of health benefits correlated with the age of elderly patients remains a key concern. Efforts should also be made to minimize abuse of older people in need of support in everyday life, both by

[279] See the Commissioner' Report titled "*Availability of community support for the elderly from the point of view of representatives of municipalities of the Dolnośląskie province. Analysis and recommendations*".

requiring private providers to hold a permit for 24-hour care of the elderly and by implementing coordinated and planned community care in their place of residence.

Challenges related to age discrimination in employment and access to vocational training are still remaining. According to the Commissioner, there are unjustified age limits for various professional groups including academic staff members – candidates for members of the Central Committee for Academic Degrees and Titles, officers of the Government Security Bureau or candidates for the National School of Public Administration.

In the Commissioner's opinion, **it is advisable to adopt a comprehensive instrument of international law strengthening the protection of the rights of the elderly**. The Commissioner therefore supports the idea for UN to develop a Convention on the Rights of the Elderly. Just taking up this task can be a motivating impulse to systematically implement solutions preventing the exclusion of older people and thus age discrimination. The fact that the public support system does not correspond to age-related conditions and does not take account of the demographic change rate to an extent adequate to the forecasts is definitely to be considered as that kind of discrimination.

6. Counteracting discrimination on grounds of disability and implementing the provisions of the Convention on the Rights of Persons with Disabilities

A particularly important problem is **the institution of incapacitation maintained in the Polish legal system,** which allows for the legal capacity of persons with intellectual or mental disabilities to be limited or even taken away. Meanwhile, according to the Convention on the Rights of Persons with Disabilities, such persons should be supported in the exercise of their legal capacity as far as possible. In the Commissioner's opinion, **the current model should be replaced by a decision-support system**, which requires legislative work.

The Commissioner also identifies significant issues regarding the access of persons with disabilities to justice. First and foremost, incapacitated persons are deprived of the capacity to act in court proceedings, which the Constitutional Tribunal has referred to as "statutory depersonification and dehumanization.[280]" Moreover, many buildings and procedures are not adapted to the needs of people

[280] Judgement by Constitutional Tribunal of 28 June 2016 , file ref. no. K 31/15.

with various disabilities. Problems even occur when persons with disabilities try to communicate with judicial authorities. There is no regulation that would guarantee the use of communication form accessible to a given person with a disability (sign language, Braille system, Augmentative and Alternative Communication – AAC).

The Commissioner has analysed, in particular, **the issue of the treatment of persons with intellectual or mental disabilities, who have been deprived of liberty**. It is of utmost importance to widen the scope of education of the representatives of bodies involved in criminal proceedings, i.e. judges, prosecutors, police officers, probation officers and Prison Service officials regarding the various types of disability. Failure to recognize an intellectual or mental disability in detained persons (suspects, defendants, convicts) in the early stage of criminal proceedings results in incarceration of mentally ill people for whom the stay in a penitentiary is a risk to their health and life and persons whose dysfunctions make it impossible to achieve the objectives of the penalty (people with intellectual disabilities).

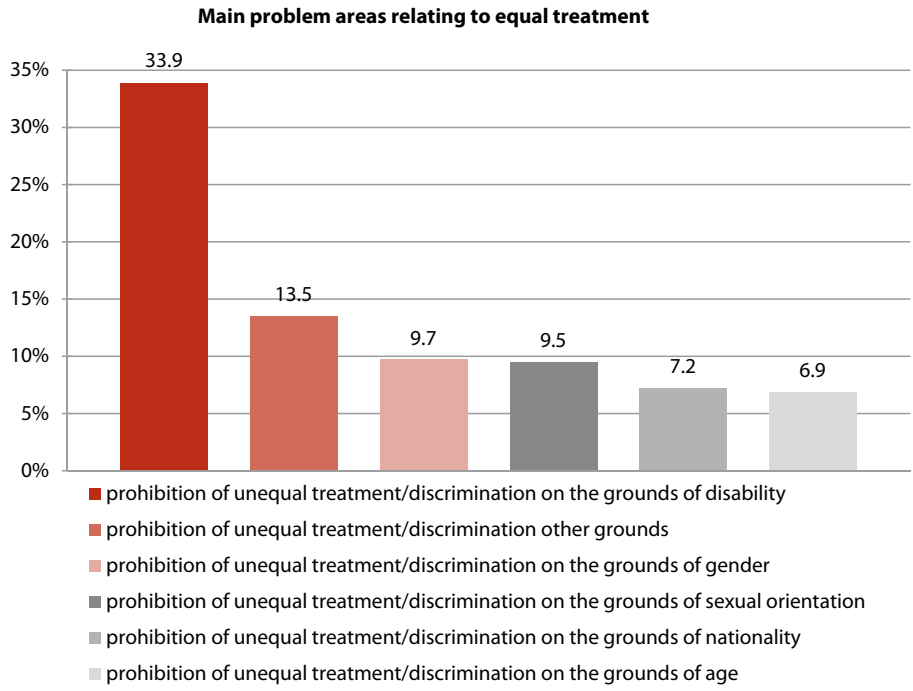
Another very important issue is the **poor progress of deinstitutionalisation process**, i.e. transition from institutional care to local community support. Although there are legal solutions for the creation of sheltered accommodations, in practice their numbers are still very low. The Commissioner notes the need for systemic solutions in this area – a national deinstitutionalization plan – with the simultaneous adoption of instruments obliging local governments to take effective action in this area.

It is extremely important to ensure to persons with disabilities the possibility to function fully in the society, by offering them the services of a personal assistant of person with disability. So far, such services have been provided only within the framework of projects temporarily implemented under the State Fund for the Rehabilitation of Persons with Disabilities or implemented by local governments. There is a need for systemic solutions in this area at the statutory level.

V. Statistical data and other information regarding implementation of the equal treatment principle

1. Received applications concerning equal treatment and prohibition of discrimination

In 2016, the Commissioner received **622** complaints in cases concerning equal treatment.



2. New cases (complaints) addressed to the Commissioner with regard to equal treatment and non-discrimination (by discrimination type)

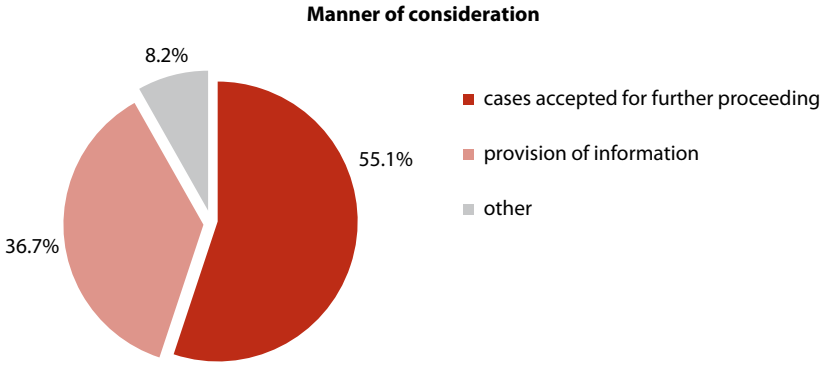
It.	Type of discrimination		Number of cases	% share
1.	4	Principle of equality before the law	15	2,4
2.	4.1	Prohibition of unequal treatment/discrimination	27	4,3
3.	4.1.3	Prohibition of unequal treatment/discrimination on the grounds of gender	60	9,7
4.	4.1.4	Prohibition of unequal treatment/discrimination on the grounds of religion or belief	28	4,5
5.	4.1.5	Prohibition of unequal treatment/discrimination on the grounds of sexual orientation	59	9,5
6.	4.1.6	Prohibition of unequal treatment/discrimination on the grounds of age	43	6,9
7.	4.1.7	Prohibition of unequal treatment/discrimination on the grounds of nationality or race	45	7,2
8.	4.1.8	Prohibition of unequal treatment/discrimination on the grounds of disability	211	33,9
9.	4.1.9	Prohibition of unequal treatment/discrimination of social and professional groups	3	0,5
10.	4.1.10	Prohibition of unequal treatment/discrimination in the area of taxes	3	0,5
11.	4.1.11	Prohibition of unequal treatment/discrimination of persons with no registered address	3	0,5
12.	4.1.13	Prohibition of unequal treatment/discrimination on the grounds of race or ethnic origin	18	2,9
13.	4.1.14	Prohibition of unequal treatment/discrimination on the grounds of worldview (including lack of religious non-belief)	2	0,3
14.	4.1.15	Prohibition of unequal treatment/discrimination on the grounds of political views	1	0,2
15.	4.1.16	Prohibition of unequal treatment/discrimination on the grounds of gender identity	9	1,5
16.	4.1.17	Prohibition of unequal treatment/discrimination on the grounds of material and legal status	4	0,6
17.	4.1.18	Prohibition of unequal treatment/discrimination on the grounds of education or profession	7	1,1
18.	4.1.20	Prohibition of unequal treatment/discrimination on the grounds of other grounds	84	13,5
Total			**622**	**100**

3. The Commissioner for Human Rights submitted

	2016
problem interventions	55
applications to the Constitutional Tribunal for adjudicating legal regulations' non-compliance with higher-level legislation	1
cassation complaints to the Supreme Administrative Court	1
joined court proceedings	6
Total	**65**

4. Cases examined (and initiated in 2016)

	Manner of consideration		Number of cases	% share
1	**2**		**3**	**4**
cases accepted for further proceeding	1	**Total (2+3)**	**344**	**55,1**
	2	cases accepted for further proceeding	311	49,8
	3	within CHR's general intervention	33	5,3
provision of information, indication of measures the complainant may take	4	**Total (5)**	**229**	**36,7**
	5	provision of information, indication of measures the complainant may take	229	36,7
Other	6	Total **(7+9)**	**51**	**8,2**
	7	complaint referred to a competent authority	15	2,4
	8	complaint returned to the complainant for addition of necessary information	13	2,1
	9	not accepted for further proceeding **	23	3,7
Total			**624**	**100**



5. Completion of case proceedings

Result		Manner of completion	Number of cases	% share
1		**2**	**3**	**4**
Outcome expected by the applicant achieved	1	**Total (2+3)**	**113**	**32,7**
	2	Applicant's claim confirmed	69	19,9
	3	CHR's general intervention successful	44	12,7
Proceedings discontinued	4	**Total (5+6)**	**45**	**13,0**
	5	Proceedings pending (ongoing procedure)	8	2,3
	6	CHR's discontinuation of proceedings (due to objective reasons)	37	10,7
Outcome expected by the applicant not achieved	7	**Total (8+9+10)**	**188**	**54,3**
	8	Applicant's claim not confirmed	145	41,9
	9	CHR's general intervention not successful	41	11,9
	10	Measures available to the CHR exhausted	2	0,6
Total			**346**	**100**