

Annexes to 22nd, 23rd and 24th Report
of the Republic of Poland

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Annex 1

Statutory mandate of the Commissioner for Human Rights for fighting racial discrimination in the public and private sphere

The question of Commissioner's for Human Rights mandate to act on the so-called horizontal cases (with regard to relations between private parties) was already considered during legislative work on the Act on *implementation of certain provisions of the European Union in the field of equal treatment*. At that time, it was concluded that the Commissioner's broad mandate – even though it is actualised primarily in the context of vertical relations – fulfils the requirement of helping the victims of discrimination of the equality directives of the European Union.

Furthermore, the Act of 15 July 1987 *on the Commissioner for Human Rights* (i.e. Polish Journal of Laws 2017 item 958) was extended by the provision according to which the Commissioner may take measures of indicating the procedures available for the applicants in the context of implementing the equal treatment principle between private parties. It should also be pointed out that it is possible for the Commissioner to act indirectly, i.e. by causing the action of other competent authorities with respect to the case (e.g. Chief Labour Inspectorate, Office of Competition and Consumer Protection, law enforcement). It should be noted that the Commissioner has broad mandate in respect of participating in proceedings, including civil cases, in which both parties are a part of the private sector. It is crucial given that in the cases relating to the infringement of the equal treatment principle, claims for compensation or protection of personal goods are of critical importance.

It is worth noting that the Commissioner's competences in the context of the cases concerning the relations between private parties were the subject of the complaint brought against the European Commission (EU PILOT No. 3276/2012/JUST). The Commission, after examining the case, decided

that the *Act on the Commissioner for Human Rights* – in relation to the CHR's competences as an independent authority for equal treatment – does not breach the minimum standards contained in the equality directives of the European Union. The position was transmitted by the Commission in writing dated on 13 September 2013. (Ref. Ares(2013)3D42546).

The way of fulfilling the Commissioner's mandate as an independent authority for equal treatment remains –within the limits of the law – a sovereign decision of the Commissioner. The extensive published reports on the CHR's realisation of the tasks relating to preventing discrimination and the implementation of the equal treatment principle present numerous actions undertaken in that context.

Annex 2

Procedure of the assessment of the consistency of the aims or activity of political parties with the Constitution

Article 188 of the *Constitution* reserves assessing the consistency of the aims or behaviour of political parties with the Basic Law as a competence of the Constitutional Tribunal (CT). The Constitution also regulates a catalogue of entities which may submit such a request (amongst others, the President, the Speaker of the Parliament or the Senate, the Prime Minister, 50 Members of Parliament, 30 Senators, the Human Rights Defender, the First President of the Supreme Court, the President of the Supreme Administrative Court, the Prosecutor General, the President of the Supreme Chamber of Control). The detailed procedure in that matter is regulated by the provisions of the *Act on the Constitutional Tribunal* (Polish Journal of Laws 2016 item 1157, as amended). The applications directed to the Tribunal regarding the compliance of the activities of the political parties with the Constitution are to be considered in accordance to the regulations of the Code of Criminal Procedure and it is the applicant who is to prove the incompatibility with the Constitution and to provide the evidence indicating such non-compliance. Such application should comprise the indication of activities carried out by the political party that are not compliant with the Constitution. The mechanism does not depend on prior criminal proceedings, however, the Constitutional Tribunal may request the Prosecutor General to conduct an investigation in the relevant matter in order to gather and record evidence. The respective provisions of the *Code of Criminal Procedure* are applied to the proceeding. Applications concerning the conformity to the *Constitution* of the purposes of a political party, which are specified in its statutes as well as its programme, shall be considered by the Tribunal in accordance with the rules and procedure for the consideration of applications concerning the conformity of normative acts to the *Constitution*. The result of the declaration of unconstitutionality of the purposes and activities of a political party is its immediate deletion from the register (Article 44(1) of the *Act on political parties*, (i.e. Polish Journal of Laws 2017, item 876, as amended). It should be indicated that, in the light of the Constitutional Tribunal case law, only the activities carried out by the authorities or lower structures a political party give ground for lodging an application requesting the declaration of the non-constitutionality of the activities of a political party. However, individual activities carried out by the party members beyond the scope of the programme of the political party cannot give ground for lodging such application.

In the Prosecution General, the Committee on Constitutional Affairs is responsible for the disputes on the constitutionality of the purposes and activities of political parties, which takes action on the

basis of the data received from the operational units of the Prosecution General monitoring particular kinds of crime, as well as on the basis of information received from external authorities.

Annex 3

Initiatives aimed at the proper examination of cases during the disciplinary proceedings and verifying the attitudes of the candidates undertaken in the Border Guard

In 2016, a group of border guards were selected to conduct explaining and disciplinary proceedings in human rights violations. The curriculum of the training course *Disciplinary procedure in the Border Guard in the context of violating human rights by the border guards* was prepared specifically for them.

In the same year also a new profile of psychological requirements for candidates was developed. It also includes the elements which refer to the attitude of a candidate to other people. The new profile is annexed to the Decision No. 144 of the Chief Commandant of the Border Guard of 9 July 2014 on *conducting psychological tests of candidates for service in the Border Guard* which entered into force on 1 January 2017.

Furthermore, it is worth noting that during the second stage of the admission process of the candidates applying to the Border Guard, the commission assesses their predispositions and motivations during an interview. Zero points are given for the interview in case the candidate is found to hold xenophobic, racist, discriminatory views or views which otherwise infringe human rights, or prejudices or stereotypes evidencing a lack of respect for the dignity of others, their cultural values, symbols, language, customs or traditions. Furthermore, during psycho-physiological examination of the candidates for the Border Guard, they are assessed by the examiners for discriminatory attitudes and propagating or promoting stereotypes, discrimination or hostility to cultural or racial differences.

In 2016, the human rights advisor to the commandants of Border Guard units and training centres were required to take part in preliminary interviews or to conduct training sessions for recruitment coordinators in order to eliminate the candidates who demonstrate adverse attitudes, including racism. From October 2015 until the end of 2017, as a part of central and local training in the Border Guard, 10 editions of training sessions for the preliminary interviewers will be conducted in total. The attenders of the training will be made aware of the issues related to analysing and evaluating the attitudes towards others demonstrated by the candidates for service in the Border Guard.

The selection of officers for the guarded centres for foreigners is a priority for the Border Guard. Special emphasis is placed on the officers' language skills and their understanding of cultural distinctiveness of particular nations. In the recruitment process, the candidates' attitudes towards foreigners are examined in order to choose the people with no prejudices based on race, religion, cultural customs and behaviours.

Annex 4

Regulations concerning the foreigner's commitment to return

The Act of 12 of December 2013 on *foreigners* reinforced the obligation related to informing the parties to the proceedings on committing to return about their rights and freedoms, including the reasons for expulsion. Under Article 7(1) of the Act on *foreigners*, an authority conducting the proceedings on obliging a foreigner to return or performing investigation activities with respect to a foreigner instructs the foreigner in writing in a language he understands about the rules and the procedure and his rights and obligations. Pursuant to Article 304 of the above-mentioned Act, the authority that conducts the proceedings on the issue of the decision imposing the return obligation on a foreigner shall provide a foreigner who does not have sufficient command of the Polish language with the assistance of an interpreter. The authority that issued the decision imposing the obligation to return on a foreigner shall provide oral or written translation of the grounds for the decision, the decision and the instruction on available appeal against the decision into a language understood by the foreigner. Furthermore, pursuant to Article 328 of the Act, the authority that conducts the proceedings on the issue of the decision on imposing the return obligation on a foreigner shall inform a foreigner about non-governmental organisations that provide assistance to foreigners, including legal assistance.

The Act also introduced amendments with respect to the use of detention measures towards foreigners (guarded centre for foreigners and pre-trial detention centre for foreigners), including the possibility for the competent authorities of the Border Guard to release foreigners from the guarded centres and pre-trial detention centres for foreigners at the request of a foreigner or ex officio, without the need to apply to the court, and the introduction of measures alternative to detention of a foreigner (the decisions in this regard issued by the authorities of the Border Guard and by district courts) in the form of an obligation to appear at specified intervals at the authority of the Border Guard, an obligation to pay a monetary deposit of a specified amount, not lower than double minimum remuneration specified in the provisions on minimum remuneration for work, and obligation to submit the travel document to deposit to a specific authority, an obligation to reside at a specific place until the decision imposing the return obligation on the foreigner is enforced.

Finally, the provisions of the said Act transposed the following into the national legal system: 15 EU directives, including Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 *on common standards and procedures in Member States for returning illegally staying third-country nationals*. The Directive abandons the previous institution of forced removal of foreigners and puts an emphasis on voluntary return of illegally staying third-country nationals to their countries of origin. Taking into account the solutions established at the level of the EU law, the new act stipulates that foreigners shall receive a single removal order, i.e. decision imposing the return obligation on a foreigner.

Since the Act on foreigners transferred the competences related to granting the so-called protection against removal to the exclusive competence of the Border Guard authorities, in April 2014 the coordinators for protection against removal of foreigners from the territory of the Republic of Poland were appointed in all branches of the Border Guard and in the Specialist Training Centre of the Border Guard in Lubań and the national coordinator for protection against removal was appointed at the National Headquarters of the Border Guard. The tasks of the coordinators include the extension of knowledge on application of the provisions of the *Convention for the Protection of Human Rights*

and Fundamental Freedoms and the case law of the Court in the extent necessary to conduct proceedings which may end with granting protection against removal to a foreigner. The coordinators also perform an advisory role in identifying the reasons for granting such protection to foreigners and conducting administrative proceedings in cases involving the granting of protection to foreigners, and also a supportive role in obtaining and verifying information about the countries of origin of foreigners, with a particular attention paid to the social and political situation and observance of human rights in the countries of origin of foreigners.

Furthermore, the *Rules of procedure followed by the Border Guard with respect to foreigners who are vulnerable persons* were implemented. The document was approved by the Deputy Commander-in-Chief of the Border Guard on 17 September 2015. The document has been drawn up, because the provisions of the Act of 12 December 2013 *on foreigners* do not include the definition of vulnerable persons, and do not specify the methods for their identification and the procedure to be followed with respect to such persons. The category of such persons is provided for in Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 *on common standards and procedures in Member States for returning illegally staying third-country nationals*. The document replaced the document entitled *Algorithm of conduct of the Border Guard with respect to foreigners who are vulnerable persons*, which had been in force since February 2015. In October 2017, a decision was made to include the so-called observation sheets in the procedure described above. The observation sheet are the outcome of cooperation with the Różnosfera Foundation under the project entitled *I see, I help – integration and development of actions and procedures of the Office for Foreigners and the Border Guard regarding comprehensive identification of vulnerable persons among persons seeking international protection within the territory of the Republic of Poland*. Observation sheets will be filled in by social carers as part of their monitoring/observation of vulnerable persons. The important aspect is that the sheets will include observations of not only the social carers, but also of other persons working at the centre and having contact with the foreigners.

Pursuant to Article 70(1) of the Act *on granting protection to foreigners within the territory of the Republic of Poland*, the Head of the Office for Foreigners may provide assistance in voluntary return. Pursuant to Article 75 of the abovementioned Act, assistance may be provided to the foreigner to whom a decision was issued on discontinuation of proceedings for granting of international protection in the case referred to in Article 40(1)(1), i.e. to a foreigner applying for international protection, who resigned from applying for international protection after submitting the application. Assistance in voluntary return may be provided once in 2 years and includes covering the costs of travel of the foreigner, covering the administrative fees related to obtaining a travel document and the required visas and permits, covering the costs of board during travel and covering the cost of medical care during travel.

Annex 5

Detailed information about educational initiatives in public institutions

The Order No 19/16 of 14 April 2016 of the General Director of the Prison Service *on detailed rules of performing and organising penitentiary work and the scopes of activities of officers and employees of penitentiary and therapeutic wards* introduced for the first time a provision on conducting activities aimed at shaping appropriate mutual relations between the inmates and officers in prisons, due to

the need to integrate and promote tolerance towards cultural and religious diversity. The part regulating penitentiary activities with respect to inmates who are foreigners and inmates with disabilities includes the following:

- counteracting social marginalisation of culturally diverse people and undertaking anti-discriminatory actions through active involvement in cultural, educational and sports activities, employment and vocational training which are available to all inmates;
- rehabilitation activities promoting tolerance and allowing to get to know other cultures and customs, addressed to inmates from various cultural circles;
- organisation of educational activities aimed at promoting knowledge on human rights and prohibition of any discrimination on the grounds of sex, age, disability, race, religion, nationality, political views, trade union membership, ethnic origin, religious convictions, sexual orientation.

Within the reporting period, penitentiary establishments regularly implemented programmes including the issues of intercultural integration, tolerance, human rights, international standards and counteracting racial discrimination, xenophobia and the related intolerance. Over 14,000 inmates in total took part in those programmes from January 2012 to the end of July 2017. The above programmes are targeted at specific groups of persons deprived of liberty and aimed at promoting tolerant attitudes, teaching convicts non-aggressive methods of solving conflicts and respecting other people's rights. Disciplinary measures are taken against inmates infringing social standards in this respect.

Anti-discriminatory content is also included in the programmes of trainings for officers, ensigns and junior officers of the Prison service. Psychologies also conduct situational workshops attended by all participants of vocational and specialist trainings. During the workshops, the officers learn how to act when confronted with diversity, how to understand and tolerate it, and practice interpersonal contacts in the spirit of tolerance and acceptance. The trainings for penitentiary personnel of penitentiary establishments disseminate knowledge on rights of inmates, prohibition of discrimination based on i.a. ethnic origin, religious beliefs, sex or sexual orientation. During the courses for the position of an educator or a senior educator, the problems of physical and psychological violence, including the behaviour and attitudes resulting from racial differences, are discussed in detail and presented during workshops.

In the years 2014-2016, the General Headquarters of the Border Guard and the Office for Foreigners jointly implemented the project entitled *Increase of competences and qualifications of public services in the scope of asylum and migration, with particular interest in the field of counteracting illegal migration* from the funds provided by the Norwegian Financial Mechanism 2009-2014. Under the project, the employees of the Office and an officer from the Border Guard took part in a series of trainings on social and cultural aspects of communication with foreigners from selected countries (5 editions for various regions of the world) and on shaping and developing intercultural competences. In the first quarter of 2017, intercultural competence trainings, co-financed from the Swiss funds, were organised for the employees of the Office.

The programme of basic training for newly employed Border Guard officers, as well as the programme of training from the scope of junior officer school, include (as part of *Professional ethics* and *Basics of social communication*) issues related to protection of human rights, shaping of anti-discriminatory attitudes and basics of intercultural communication. In addition the

Specialist Training Centre of the Border Guard in Lubań runs numerous trainings and workshops on multiculturalism, equal treatment, strategy of communication with foreigners, shaping and developing intercultural competences, as well as social and cultural aspects of communication with foreigners from selected regions of the world - countries where migrants come from. The trainings also cover such topics as international protection of foreigners, identification and procedure to be followed in contacts with persons from vulnerable groups (including unaccompanied minors, persons with physical or mental disabilities, elderly persons, pregnant women, single parents, victims of trafficking in human beings, chronically ill persons, persons subject to tortured, persons subject to mental and/or physical violence, including sexual violence, and victims of violence due to their sex, race, sexual orientation and/or gender), solving conflicts in relations between officers and foreigners, or team management in emergency situations related to foreigners.

The trainings which included the issues within the scope of counteracting racial discrimination, xenophobia and related intolerance were also attended by the Customs Service officers. The programme of the training, which is compulsory for each officer, includes the issues related to stereotypes and prejudice, as well as counteracting discrimination, racism, xenophobia and intolerance. In addition, in the second half of 2013, customs chambers began to implement the module entitled *Behaviour culture of an officer/employee as an element of the service/work at the Customs Service*, including classes on counteracting racial discrimination, xenophobia and intolerance. The trainings covered all officers in permanent service who have contacts with external customers.