



THE REPUBLIC OF POLAND  
OMBUDSMAN FOR CHILDREN

# REPORT OF THE OMBUDSMAN FOR CHILDREN ON THE ENFORCEMENT OF THE UN COMMITTEE ON THE RIGHTS OF THE CHILD RECOMMENDATIONS

of the 4th October 2002.

Warsaw, 20 July 2015



# TABLE OF CONTENTS

<b>Introduction .....</b>	<b>5</b>
<b>Implementation of recommendations (Art 4, 42 and 44 section 6 of the Convention) .....</b>	<b>7</b>
CRC/C/15Add.194 – par 10 .....	8
CRC/C/15Add.194 – par 12 .....	8
CRC/C/15Add.194 – par 16 .....	23
CRC/C/15Add.194 – par 18 .....	26
CRC/C/15Add.194 – par 20 .....	26
CRC/C/15Add.194 – par 24 .....	28
<b>Implementation of the rights of the child.....</b>	<b>29</b>
Right to life and health protection .....	30
Right to be brought up in family environment .....	37
Right to decent social standards .....	43
Right to education.....	48
Right to protection against violence, cruelty, exploitation, demoralisation, negligence and other maltreatment.....	56



# INTRODUCTION

The report contains information and assessment of the Ombudsman for Children on observing the provisions of the Convention on the Rights of the Child in Poland. The document refers directly to the Recommendations of the UN Committee on the Rights of the Child of the 4th of October 2002 and addresses the issues which, according to the assessment of the Ombudsman for Children, belong to the most significant, in terms of protection of child's welfare and his or her interests. The document – as an optional report – exceeds the reporting period and encompasses the implementation period of the Committee Recommendations, as well as the compliance of the Convention on the Rights of the Child in Poland, until June 2015.

By assessing the state of children rights compliance in Poland, the introduction of numerous instruments for improvement of children rights protection to the domestic legal order, must be taken into account. The most significant amendments were indicated in the report as “positive remark”. The recommendations, which have not yet been complied with by the Polish legislator, as well as provisions of Convention on the Rights of the Child – not fully implemented into Polish law, are included in the report as “Recommendations of the Ombudsman for Children”. In the descriptive section, each recommendation is accompanied with the short information about the essence of the mentioned issue.

The Ombudsman for Children has repeatedly requested to ratify the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse<sup>1</sup> and demanded specific amendments in legal provisions, with the aim to adjust Polish regulations of law to the Convention on the Rights of the Child. The proposals of the Ombudsman for Children were mostly considered by the Polish legislator.

Noting the state of children rights compliance in Poland, it must be highlighted that, in 2014, Poland was once again distinguished in the Report on Global Initiative to End All Corporal Punishment of Children.<sup>2</sup> The ennoblement of Poland referred to the introduction, in 2010, of the total prohibition of violence against children and permanent monitoring of social attitudes towards

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<sup>1</sup> The Council of Europe Convention (Lanzarote Convention) of the 25th October 2007.

<sup>2</sup> Ending legalized violence against children, Global report to December 2014, Global Initiative to End All Corporal Punishment of Children.

corporal punishment as a method of education. It has also been appreciated that the number of people supporting violent upbringing of children decreased.

# **IMPLEMENTATION OF RECOMMENDATIONS**

**(ART 4, 42 AND 44 SECTION 6 OF THE  
CONVENTION)**

## CRC/C/15Add.194 – par 10

*In light of the Vienna Declaration and Programme of Action (1993), the Committee encourages the State party to continue and complete the process of withdrawing all of its reservations to and declarations on the Convention.*

### Positive remark

- **The Republic of Poland withdrew all reservations to the Convention on the Rights of the Child**

The Ombudsman for Children has repeatedly requested the withdrawal of reservations on the Convention by the Republic of Poland. He suggested that they are irrelevant because Polish law provides for the high standards of the juvenile protection. He also highlighted that Poland, as an initiating State party and co–author of the Convention, is particularly obliged to restrain from questioning its provisions.

The Republic of Poland withdrew the reservations put forward to Art.7 and Art.38 of the Convention on the Rights of the Child. It must be noted that the provisions of Polish law did not justify upholding of the reservations, which were submitted to the Convention.

## CRC/C/15Add.194 – par 12

*The Committee encourages the State party to take all necessary measures to ensure that its domestic legislation conforms fully with the principles and provisions of the Convention, in particular in the area of juvenile justice, unaccompanied asylum seekers and sexual exploitation of children.*

### ■ EMPOWERMENT OF THE CHILD AS AN INDIVIDUAL

**Recommendation of the Ombudsman for Children:**

- 1) **The Republic of Poland shall, as a matter of urgency, ratify The Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure.**

Recognising the need to strengthen the control over compliance with children's rights, in March 2009 during the Human Rights Council Forum, the Ombudsman for Children submitted an



initiative to confer powers to the UN Committee on the Rights of the Child in the area of receiving and investigating claims against children rights violation. The UN General Assembly adopted The Third Optional Protocol to the Convention on the Rights of the Child on communications procedure, which increases the competences of the UN Committee on the Rights of the Child with the mechanisms of receiving and investigating the individual and international children rights violation notices. Poland signed The Third Optional Protocol on the 30th of September 2013. The Ombudsman for Children regularly monitors the ongoing works in order to ratify this document by Poland as soon as possible. The ratification will contribute to strengthening of the child status as an individual and improving of the domestic mechanisms function, which relate to children rights protection.

## ■ JUVENILE JUSTICE

### Positive remark

- The model of juvenile proceedings has been amended in such a manner that two phases of proceeding – preliminary investigation and fact-finding proceeding, as well as two phases of fact-finding proceeding – educational procedure and corrective procedure were abandoned.
- Proceedings to take evidence in the presence of minors, not being juveniles, are conducted in compliance with appropriate legal regulations of criminal procedure (specific hearing of minor victim/witness).
- In case it is necessary to combine psychical condition examination of the minor with the observation, family court is obliged to hear the minor and determine the place and the duration of the observation. The observation should not last more than 4 weeks. Upon the request of the health entity, the court may extend the duration for an indefinite time. The complete time of the observation in given case should not exceed 6 weeks. The legislator imposed on the court the obligation of the immediate consideration of the appeal against the decision on observation of the juvenile, as well as the decision to expand the observation time.
- The time of juvenile detention in the emergency youth centre has been defined on the statutory basis.
- Actions of court-appointed guardian in the enforcement proceeding of juveniles have been defined on the statutory basis.

### Recommendation of the Ombudsman for Children:

- 1) The period of detention in juvenile shelter should not exceed 3 months.

- 2) **The complete maximum period of detention in juvenile shelter should be defined by law.**
- 3) **Statutory procedural guarantees of the juvenile must be completed, in particular, the full extent of right to public defender, presumption of innocence principle, material truth principle or in dubio pro reo principle.**

Polish law does not define the maximum period of detention in juvenile shelter. As a rule, such term must not exceed 3 months before commencement of the proceeding . This period may be extended by 3 more months due to extraordinary circumstances of the case. As a rule, the complete period of detention in juvenile shelter, until entering decision by the Court of First Instance, must not exceed one year. Polish legislator provided exemption to this rule – in the event of duly justified cases, the complete yearly detention in juvenile shelter may be extended for further indefinite time.

Introducing the consistent model of conduct in cases of minors, Polish legislator provided procedural guarantees for minor, based on guarantees of juvenile and adult in criminal proceedings – above all right to defence, right to the assistance of defender, right to refuse to testify or answer to particular questions and moreover, the principle of obligatory defence. Procedural guarantees for minors do not exhaust the range of guarantees for juvenile and adult offenders in criminal proceedings. For example, the minor may apply for public defender and the chief judge grants it, if the presence of defender is deemed necessary.

## ■ CHILD REPRESENTATION IN CRIMINAL CASES

### Positive remark

- **In the criminal proceeding, in the executive order (regulation of the Minister) it was indicated, that in order to appoint solicitor and barrister as a court-appointed guardian of minor, the court may request, from appropriate legal authorities of professional self-governments, to appoint a guardian for the party, which has neither capacity to sue nor is a statutory representative.**
- **The Attorney General issued guidelines referring to the principles of conduct for prosecution organisational units in the scope of family violence prevention, including duty to request a court-appointed guardian in Family Court for a minor aggrieved during the course of criminal proceeding due to family violence, and the revealed circumstances of the proceedings show, that the statutory representatives may not duly exercise the rights of a minor in the criminal proceedings.**

### **Recommendations of the Ombudsman for Children:**

- 4) Issues referring to the proper representation of child in criminal proceeding must be regulated on the statutory level, including creation of procedural guarantees of minor subsidiary prosecutor/victim.**
- 5) Mechanisms of appropriate preparation and professional training of candidates for court-appointed guardians must be provided. The institution of “solicitor for child” must be introduced to Polish legal order**

Child does not possess the complete capacity to perform acts in law and for this reason she or he may not personally execute rights reserved for the victim in criminal proceeding. The Ombudsman for Children is concerned about depriving the aggrieved minor of the execution of rights belonging to subsidiary prosecutor/victim and of proper representation in the course of proceeding in front of the procedural authorities. In Polish criminal procedure there is no regulation obliging the authority, which conducts criminal proceeding, to issue an application to the Family Court for a court-appointed guardian of a child, and the regulation in force, at the executive act level, is fragmented and insufficient, according to the Ombudsman of Children. Issuing an application for a court-appointed guardian should follow the preparatory proceedings.

Lack of systemic solutions at the statutory level contributes to varied practice of procedural authorities as to appointing the guardian for the aggrieved minor. Practically, it is established in time that fails to enable sufficient protection of the child's rights. Appointment by the court of a guardian, according to the Ombudsman for Children, lasts too long.

There are also insufficient legal solutions which guarantee professional performance of duties by the guardian, involving the representation of minor in criminal proceeding.

The guidelines of Attorney General is not of the legislative act nature, which results in the opinion of the Ombudsman for Children that such solution is insufficient.

Lack of legal regulations in the discussed range and repeated improper practice of procedural authorities, as well as absence of professional guardians reduces and frequently prevents execution, by the aggrieved minor, of procedural rights which belong to each crime victim.

- HEARING OF JUVENILE
- INTERROGATION OF JUVENILE
- CONSIDERATION OF CHILD'S OPINION IN CASES SHE OR HE IS INVOLVED IN

### Positive remark

- In Polish court proceedings of civil cases, the provisions introduce duty to take, by the court, into consideration the opinion and the reasonable wish of a child, in accordance with the circumstances, mental development of a child, condition and degree of maturity. The court is obliged to hear a minor in cases he/she is involved in, provided the mental development of a child, condition and degree of maturity allow this. Such hearing takes places outside the courtroom.
- Substantial framework of children protection have been introduced into Polish criminal proceedings:
  - in cases involving violent crime or unlawful threat, or in the event of crimes against freedom, sexual freedom and customs, as well as crimes against family and care, the governing principle is one hearing of a victim as a witness, who is less than 15 years at the time of hearing, and only if her or his evidence may be of crucial importance for the decision of a matter. In exceptional cases, indicated in the act, the child may be heard for the second time.
  - conducting the hearing solely by the court (also in the course of proceeding by the prosecutor or the police) in the presence of expert psychologist;
  - during the trial, instead of child hearing, the prepared record of picture and sound of the minor's hearing is reconstructed and the report from hearing is read;
  - if the minor victim was at least 15 at the time of hearing, the principles described above are applied, if there is justified concern that the hearing in other circumstances could have negative impact on its psychical condition;
  - the hearing is conducted in specially adjusted rooms, in the seat of the court or outside of it. Law defines the method of minor hearing preparation, conditions of the rooms designed for such hearings, including their technical equipment, taking into account the necessity to ensure freedom of speech and sense of security of the minor to be heard;
  - hearing of the witness may be conducted by means of technical devices, allowing to conduct remote hearing with simultaneous transmission of picture and sound.

The above hearing principles are also applied to minor hearing, who witnessed violent crime or unlawful threat, or a crime against freedom, sexual freedom and customs, as well as crime against family and care, if her or his evidence may be of crucial importance for the decision of a case.

- In the Family and Guardianship Code the statutory duty for the parents was introduced to hear a child, prior to making a decision as to the person or property of a child, to show mutual respect by children and parents based on principles of reasonable partnership, if mental development, condition and degree of maturity of a child allows it, as well as to take into account her or his reasonable wishes, if appropriate.
- Ministry of Justice in collaboration with non-governmental organisation “Nobody’s Children Foundation” has drawn up the standards of hearing the minor witness.
- On the initiative of the Ombudsman for Children, the Ministry of Internal Affairs has drawn up the recommendations referring to proceedings for the child well-being, which were delivered in the form of poster to all police units in Poland (practical guidelines for police officers in case of undertaking actions in the presence of the child).
- The obligation has been introduced to hear a child, who is placed in foster care, by entities performing tasks under Act on support of the family and system of foster care, particularly, when these entities assess the child status and her/his capacity to be adopted, if her/his age and maturity allow for this, and according to the circumstance the entities take into consideration the child’s opinion.
- The right to individual talk with children placed in institutionalized foster care and children staying in daily support centres has been introduced, including hearing the child’s opinion according to her/his age, intellectual capabilities and maturity, by the voivode, in connection to the control proceeding.

#### Recommendations of the Ombudsman for Children:

- 1) The need to amend the provisions in force in a manner enabling the application of the specific hearing procedure for a minor victim/witness also to those proceedings, which involve other crimes.
- 2) The one hearing guarantee of the minor victim/ witness should be increased.
- 3) As a rule, the obligation must be introduced to conduct hearings of minor victim/witness by means of technical devices allowing to reconstruct the picture and sound of such hearings.
- 4) The principle must be introduced to hear each minor witness, which is considered in criminal, as well as in civil and administrative proceeding in the rooms specifically adjusted to this purpose, if the room is outside the seat of the court, and in case it is located in the seat of the court – there must be adopted separate, safe room for minor victims and witnesses with a direct entrance from the outside.

- 5) **The provisions of civil procedure must define the method of minor hearing preparation, conditions of the rooms designed for such hearings, including their technical equipment, taking into account the necessity to ensure freedom of speech and sense of security of the minor to be heard.**
- 6) **The judges should be trained as regards ability to conduct interrogation/hearing of a child and to advise of her or his rights and obligations, allowing to consider age, mental development and maturity of a child, in conditions which provide the child with sense of security and privacy.**
- 7) **The standards of interrogation/hearing of a child, by the authorities conducting the proceedings, must be drawn up and complied with.**
- 8) **Regulations, which guarantee safe and friendly hearing of a child in the administrative and disciplinary procedures, must be introduced.**

Recent years are characterised by the positive changes in Polish law, which involve exercising of child's right to express its view in the proceedings conducted by authority (judicial, prosecutorial), as well as interrogation procedure/minor hearing. According to the Ombudsman for Children these provisions shall be supplemented.

In civil court proceeding, the drawback of new regulations is their undue generosity. The practice shows that it is difficult for judges to properly interpret the grounds, indicated in the provision. With regard to this, the practise is directed to the interrogation of a child rather than hearing. Provisions do not define the manner to prepare the child for hearing, conditions of the rooms designed for hearings. Polish legislator used a negative definition as regards place of hearing – it should not be a courtroom. Practically, such hearing of a child usually takes place in a judge room located in a court building, which fails to guarantee the proper protection of a child in the course of a proceeding. According to the Ombudsman for Children, provisions in force, which refer to the criminal proceeding, constitute significant step towards strengthening the protection of a minor, who is a wronged/witness of violent crimes or unlawful threat, crimes against freedom, sexual freedom and customs, as well as crimes against family and care. Other crimes may also be a subject of criminal proceeding, where the child hearing is the procedural necessity and the indicated principles of minor hearing are not applicable.

The Ombudsman for Children considers reasonable to apply specific conditions of minor wronged/witness hearing also to the proceedings involving other crimes, in particular, if the minor knows the offender. Hearing of a child, without provision of friendly and safe conditions,

is destructive for its psyche, and the extending criminal proceeding, repeated interrogations may only increase the child's trauma.

Due to the importance of the principle of direct evidence examination by the judge, registering of a child hearing by means of picture and sound recording device, shall be a rule in legal regulation and in practice.

The Ombudsman for Children deems necessary to introduce, to Polish legal order, a guarantee of one hearing of a child in relation to all crimes. According to the Ombudsman for Children, the procedural guarantees of the defendant in Polish criminal procedure, which lead to the possibility of repeated minor hearing, are also too far-reaching, when considering the priority of child welfare.

In reference to the administrative and disciplinary proceedings, initiated due to teacher's misconduct, Polish law doesn't provide for possibility to hear a child in a safe and friendly procedure. Insufficient legal regulations of disciplinary proceeding can be found in executive act (the regulation of the minister). A child, protected in particular circumstances in the course of hearing in criminal proceeding, is at the same time at risk of being heard in a direct presence of the person, who is an offender.

The speech of Ombudsman for Children directed at The Minister of National Education and Polish Parliament, on necessary changes in the provisions of disciplinary proceedings for teachers, contributed to the excessive discussion in the subject, particularly among members of Parliament.

The Ombudsman for Children also notes that the method of interrogation or hearing of a child by a judge, advising of rights and obligations, including right of refusal to testify and right of refusal to answer question, is not adjusted for a minor to understand such legal formulas. Making an unsatisfactory attempt by a judge to explain to the child these issues results in failure to receive from a child statement, which are crucial for a decision. Hence, it is necessary to put emphasis on the proper professional preparation of judges and conducting the proceedings with children, as well as drawing up standards of interrogation/hearing of a child.

- **EXCESSIVE LENGTH OF PROCEEDINGS**
- **INEFFECTIVE ENFORCEMENT PROCEEDINGS**
- **GUARDIAN STATUS IN FAMILY PROCEEDINGS**

**Recommendations of the Ombudsman for Children:**

- 1) **Separate structure of family law must be created.**
- 2) **Guardian status in family proceedings must be defined on the statutory basis.**
- 3) **Executive procedures in family cases must be regulated by law.**

Excessive length of proceedings still gives rise to concern in Poland. Organisation of family proceedings doesn't foster effective and quick cognisance of family cases. It is a result of systematic drawbacks, which led to weakening of family proceedings. To solve the problem, there must be considerable debate held and extensive preventive measures taken.

Failure to regulate the executive proceeding in family and care cases, including statutory regulation of court appointed guardian's actions (his status, rights and obligations are not defined). This leads to reduced effectiveness of court decision implementation and incomplete protection of child's rights in this regard. Analysis of executive proceedings conducted in courts, with regard to family and care cases, indicates that guardian supervision lasts in many cases for even a few years while, simultaneously, there is no reaction of family court. Lack of appropriate orders by the court, despite of long-lasting guardian supervision, jeopardises child rights to harmonious development in a proper educational environment.

- **LOW AWARENESS ON THE HAGUE CONVENTION IMPLEMENTATION REFERRING TO CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION**
- **PHENOMENON OF SO CALLED PARENTAL CHILD ABDUCTION**
- **LOW EFFECTIVENESS OF THE ENFORCEMENT OF CHILD'S RIGHT TO CONTACT WITH PARENTS**

**Positive remark**

- **Separate provisions referring to contacts with a child has been introduced into Polish civil procedure**

**Recommendations of the Ombudsman for Children:**

- 1) **Educational activities as regards Hague Convention implementation referring to civil aspects of international child abduction must be introduced.**



- 2) **Legal solutions aiming to reduce parental child abduction must be introduced.**
- 3) **Legal solutions, which guarantee effective exercising of child right to contact with both parents, must be introduced.**

The phenomenon of taking child abroad is still to be observed in Poland. Parents lack appropriate knowledge as to the consequences of international child abduction, without the consent of the second parent. Lack of knowledge on the procedures in force contributes to their long duration, while these cases call for quick and effective action.

Phenomenon of so called parental child abduction becomes a growing problem in Poland and contributes to violation of child's right to be brought up by both parents. Parents treat them as a method of struggle to be granted a parental authority over a child. When both parents have full parental authority, and one of them changes child's place of residence without the consent of another, hinders contacts granted by the court or prevents them, holds a child against the court decision – such actions are not subject to any penalty. Phenomenon of parental abduction should be assessed as even more unacceptable, given low effectiveness of child's right enforcement to contact with both parents. The grounds for such situation are in particular: excessive length of proceedings, no priority treatment for such cases, small judgments from the parent failing to respect court decision.

Legal instrument introduced to Polish legal order as separate provisions referring to contacts with a child, according to the Ombudsman for Children, are insufficient and turned to be ineffective in practice. It is necessary to supplement these regulations

## ■ **MEDIATION IN FAMILY PROCEEDINGS**

### **Positive remark**

- **Polish civil proceeding provides the possibility to refer the parties of a dispute for mediation.**

### **Recommendations of the Ombudsman for Children:**

- 1) **Solutions should be drawn up and instruments created to encourage family courts and parties of family disputes to use mediation.**
- 2) **Activities to educate and promote mediation in the society should be performed.**

### **3) Issues of restorative justice and mediation should be incorporated in the educational programmes in all types of schools.**

Family courts are too reluctant to direct parties of family dispute for mediation, or it is done too late, on the further phase of the court proceeding. The parties of a dispute are also not willing to take advantage of the proposed alternative procedure. Compared to the number of cases examined by family courts, this institution is not very popular in practice of court decisions (0,23% of all cases to be examined in 2012). Effectiveness of mediation estimated as number of consents in mediation accounts for about 40–50%.

The possible solutions to solve this situation are: introduction of institutions, based on informative meetings regarding advantages and benefits of complex and amicable dispute resolution by means of mediation; numerous referrals of parties for mediation by the court, depending on the needs of parties and possibility of consent, as well as excessive use of pre- and outside litigation mediation. The Ombudsman for Children has for a long time proposed to exempt poor parties from expanses of mediation in favour of them being covered by the State Treasury. It is necessary to conduct permanent actions out of legislation, which promote mediation among society.

Growing phenomenon of violence at school, juvenile delinquency urge to pay attention to prevention of such behaviours. In school year 2011–2012, on the initiative of the Ombudsman for Children the pilot programme under the name: “Peer mediation in school as a method to prevent aggression and social maladjustment of children and youth” was carried out. The programme encompassed youth, teachers and tutors in 11 selected secondary schools in the area of District Court in Lublin.

The programme proved that peer and school mediation may be effective method of friendly and safe school creation. The programme is currently being carried out in more than 40 schools of The Lubelskie Voivodeship and the activities within the framework of the programme are still voluntary.

Programme implementation of this type demands systemic solutions and support of the state. The Ministry of National Education accepted the proposal of the Ombudsman for Children, related to the introduction of the peer mediation into the governmental programme of support in years 2015–2018 in provision of safe conditions of education, upbringing and care in school, called “Safe +”, for bodies responsible for school management.

- **MONITORING OF THE ACT IMPLEMENTATION ON SUPPORT OF THE FAMILY AND SYSTEM OF FOSTER CARE**
- **RESTRICTIONS ON CONTACT WITH BIOLOGICAL FAMILY FOR CHILDREN PLACED IN RESIDENTIAL INSTITUTIONS**
- **QUALIFICATION PROCEDURES FOR CANDIDATES FOR FOSTER CARERS**
- **ORGANISATION OF TRAININGS FOR CANDIDATES TO BE A FOSTER FAMILY, RUNNING A FAMILY–TYPE CHILDREN'S HOME AND PERSONNEL OF INSTITUTIONAL FOSTER CARE**

### Positive remark

- In the Republic of Poland the Act has been passed on support of the family and system of foster care. The Act emphasises the creation and placement of children in family-like foster care (foster family, family-type children's home). It enables to create foster families in a form of family shelter and in specialised professional foster families, as well as to create preadoption intervention centres, intended for infants under one year. It allows the possibility to create regional care and therapeutic centres, intended for children with special health needs, who are placed in foster care. The important solution are: protection of children in the age between 7 and 10 against placement in the institutionalised foster care centres with respecting at the same time the principle of non-separating the siblings; qualification procedures for future foster carers and personnel of institutionalised foster care, systems of their training, as well as introduction of the financing of a child's stay in care and health centres by the state.

### Recommendations of the Ombudsman for Children:

- 1) The necessity to regularly monitor the effects of the Act on support of the family and system of foster care, as well as to take measures in relation to problems with the Act implementation, which have been reported in practice.
- 2) Taking measures to improve knowledge on rights for foster families and family-type children's homes, in particular regarding services, surcharges and funding of holidays of children.
- 3) Increase of state funding for foster parents.
- 4) Increase of state support to facilitate independence of foster children, in particular as regards housing assistance.
- 5) Systemic activities must be carried out to acquire new candidates to run family-like foster care and persons to perform functions of specialised professional foster families.

- 6) . **New provisions, which protect children between 7 and 10 year old against institutionalised placement in foster care with the simultaneous respect for the principle of non–separation of siblings must be unconditionally complied with.**
- 7) **Framework for family–like foster care development must be drawn up and funds to realise them must be secured.**
- 8) **Permanent educational action must be carried out, about rights attributed to family–like foster care, which are guaranteed pursuant to the Act, and in particular, such actions should be performed by the organiser of foster care.**
- 9) **There are programmes to be developed and implemented – domestic programme to facilitate independence of children in foster care, in particular of children with disabilities, national programme of low income housing, and the budget must be secured to provide appropriate number of supervised/protected flats.**
- 10) **Family judges must be trained as regards issues referring to psychology of a child and the Act on support of the family and system of foster care.**

Short period of the Act on support the family and system of foster care being in effect imposes the necessity to regularly monitor the effects of the Act, as well as to take measures in relation to problems reported in practice.

As the initial information acquired by the Ombudsman for Children proved, the development of family–like foster care is too slow, almost one–quarter of all minors are placed in foster care institutions. State funding for foster parents are not sufficient. Assistance for children in foster care as regards independence, in particular provision of appropriate living conditions, is not performed in a proper way, which leads to returning to biological family by many children in foster care who seek independence after completion of education.

The additional problem is low legal awareness of people running family–like foster care, which may have negative impact on children placed in such care.

The Ombudsman for Children receives signals that foster care centres (institutions and families), impose restrictions on child contact with biological family and its relatives. Children are punished with deprivation of right to contact with family. Ensuring safety for children placed in foster care imposes the need to conduct thorough psychological research for foster parent candidates and personnel of foster care institutions. Opinions on candidates should be supported by an in–depth interview. It is necessary to introduce and incorporate compulsory professional classes, related to

child–victim, into training programme. It is significant to normalise training organisation by different entities.

## ■ DETENTION OF REFUGEE CHILDREN IN POLAND

### Positive remark

- Polish law introduced the definition of unaccompanied child in relation to safeguarding the protection for foreigners in the territory of the Republic of Poland.
- The prohibition was established to place foreign children under 15 years, without supervision in guarded foreigner centre.
- Stay of children in closed centres was shortened to the minimal length.
- Improvement of conditions in guarded foreigner centres.
- Separate family–like centres were established, where families with children and unaccompanied foreign children are placed.

### Recommendations of the Ombudsman for Children:

- 1) Introduction of a complete prohibition to place refugee children in guarded centres.
- 2) Establishing of guardian institution for unaccompanied foreign child with aim to safeguard child interests, with respect to its views, by means of children representation in all administrative proceedings.

An unaccompanied child means a foreign child, who arrives at the Republic of Poland territory or stays in this territory without a company of adults, who are responsible for this child, pursuant to the law of the Republic of Poland. Legal regulations as regards application of legal instruments towards foreign children, which result in deprivation of freedom by placing them in guarded refugee centre, changed for better in recent years. There is still insufficient attention of Polish legislator in the field of legal situation of unaccompanied foreign children in Poland.

Act on granting protection to foreigners within the Republic of Poland exempts placement of minor in guarded foreigner centre, applied solely to the unaccompanied minor foreigners, who apply for refugee status. . In the Act on foreigners, unaccompanied minors under 15 years of age are subject to exemption.

Despite of numerous measures taken i.a. by the Ombudsman for Children, Polish law still accepts detention of foreign minors. According to the Ombudsman for Children stay of children in the closed type of centre may adversely affect their physical and psychological development due to lack of contact with external world. Although the conditions in guarded centres have significantly improved, however, they still don't meet the needs of children (technical safety measures in the form of bars in windows, fence around centre). Similarly, ensuring children a right to participate in educational as well as sports and recreation classes cannot, according to the Ombudsman for Children, be deemed a compulsory education, as defined in the Act on the Education System.

The issue of due representation of foreign unaccompanied minors in Poland has not been solved yet. The Ombudsman for Children proposed to undertake legislative works, aiming at the introduction of regulation, which clearly empowers the court to establish a guardian for foreign unaccompanied minor.

- **MINOR VICTIMS OF HUMAN TRAFFICKING**
- **EXPLOITATION OF CHILDREN FOR BEGGING**

#### Positive remark

- **Statutory defined terms: human trafficking and slavery**
- **Human trafficking has been introduced as a new type of crime, as well as punishment for preparatory actions to the crime of human trafficking.**
- **Aggravated human trafficking has been introduced, if it refers to child victim.**
- **People used for begging may receive complex assistance, i.a. legal, medical and psychological, in the National Consulting and Intervention Centre for Polish and foreign Victims of Trafficking.**

#### Recommendations of the Ombudsman for Children:

- 1) **Broadening knowledge on human trafficking and special needs of child–victims, among people involved in detection, prosecution and punishment of human trafficking, as well as among family judges and persons dealing with foster care.**
- 2) **Introduction of systemic solutions with a view to combat exploitation of children for begging, including strict collaboration of the police with state administration and self–government institutions, as well as family courts and other entities, which aim to provide necessary protection against child exploitation for begging.**

### **3) Taking measures directed to improve social awareness as regards begging.**

Defining of terms: human trafficking and slavery added a statutory nature to these phenomena. Doubts in interpretation as regards understanding of those behaviours, which may fall into category of human trafficking and slavery have been clarified in this way.

Establishing of human trafficking issue in Polish law can be, in principle, assessed as satisfactory. Practical problems arising among people who deal with such behaviours (police, border guard, prosecutor, court) are mainly caused by not always proper interpretation of provisions, which results in failure to classify them as crime and to identify minor as a victim. People who contact with victim of human trafficking, in particular child victim, are not professionally trained.

It happens that family courts, while issuing the decision to place child victim in foster care, fail to clarify all aspects of the case, which results in deciding of child protection type, which is not suited for its welfare. Lack of procedures as to placement of child victims of human trafficking in institutionalised foster care centres is also observed, as well as lack of properly trained personnel of such centres.

Exploitation of children for begging is a human trafficking crime in case the behaviour of a person, being in charge of a minor demonstrates all statutory features of illegal act. Exploitation of children for begging, if they are in care of their parents does not demonstrate such features. So the phenomenon of exploitation of children for begging on the streets of Polish towns is mostly exempt from punishment. A child stays in a family which provides good treatment. Interference in family is in such a case reduced to the family court decision to restrict or to deprive of parental right and to place a minor in foster care. Exploitation of children for begging is, according to the Ombudsman for Children, a specific form of crime.

There are no systemic measures directed at children, who beg on streets. Children are deprived of access to school. Their welfare is frequently tough. There are no tools and mechanisms in Poland established to provide real assistance for these children.

## **CRC/C/15Add.194 – par 16**

*The Committee recommends that the State party:*

- a) strengthen the role of the Supreme Chamber of Control as an internal monitoring body for the evaluation of children's issues and establish a comprehensive system*

*for monitoring and self-evaluation of the implementation of the Convention both at the national and local level;*

*b) provide the Ombudsman for Children with sufficient resources to enable him to fulfil his responsibilities;*

*c) collaborate with non-governmental and civil society organizations in monitoring children's rights and policies both at the national and local level.*

### Positive remark

- Powers of the Ombudsman for Children have been significantly extended.
- The amount of financing the measures of the Ombudsman for Children under the Act has been significantly increased.

### Recommendation of the Ombudsman for Children:

- 1) System of monitoring as regards the implementation of the Convention on the rights of child at nationwide and regional level, must be developed and implemented.

The Ombudsman for Children is a constitutional body, which monitors the compliance of the Convention on the rights of a child provisions in the Republic of Poland. The competences of the Ombudsman for Children have been recently significantly extended. The Ombudsman for Children provides annual information on its actions and comments on child rights compliance in Poland, to the Sejm and the Senate.

The inflow of cases received and carried out by the Ombudsman for Children is as follows:

- I. Presentation of cases received by the Ombudsman for Children in years 2008–2014 divided into categories.

Year	2008	2009	2010	2011	2012	2013	2014
Right to life and health protection	226	409	549	585	623	3 149	4 816
Right to be brought up in family environment	2 811	5 848	7 320	17 481	15 060	24 698	23 716
Right to decent social standards	700	936	1 704	2 328	1 146	2886	1 980
Right to education	1 327	1 586	2 203	2 829	3 101	6 834	10 602



Right to the protection against violence	1 629	2 922	4 589	3 448	4 440	9 375	5 662
Others	3 885	2 732	3 300	2 585	585	1 638	2 042
Total	10 578	14 460	19 665	29 256	24 955	48 580	48 818

II. List of measures taken by the Ombudsman for Children in years 2009–2014 as divided into types of measures.

Year	2008	2009	2010	2011	2012	2013	2014
Participation in administrative and judicial cases with prosecutor's rights	(no right)	66	148	171	220	276	334
General statement	76	115	118	125	102	88	97
Investigation of cases in situ	No data present	79	110	197	267	171	194

III. Moreover, the Ombudsman for Children launched numerous social campaigns as a part of statutory duty to promote children rights and methods to protect them: “Right of a child to be respected”, “Violence against child is a teacher of solely bad things”, “I belong to my mum and dad”, “React to violence against children. You have a right”, “There are no children, there are people”, “Your hands are to protect, not punish”, “Beating is stupid” and the pilot programme “Bear friend”, referring to prevention of child trauma phenomenon, with the cooperation of Provincial Police Headquarters in Poznań.

State funds for taking statutory measures by the Ombudsman for Children has significantly increased. Comparing to the year 2008, the budget is twice bigger.

List of state funds for statutory measures of the Ombudsman for Children in years 2008–2015

Year	2008	2009	2010	2011	2012	2013	2014	2015
Budget amount	5 240 000	6 580 000	7 490 000	8 540 000	9 856 000	10 250 000	10 317 000	10 513 000
Increase in % year to year	100,00	125,57	113,83	114,02	115,41	104,00	100,65	101,90

The system of monitoring, as regards the implementation on the Convention on the rights of child at nationwide and regional level has not been so far implemented in Poland. The assessment of programmes carried out by particular ministries does not function as monitoring tool.

## **CRC/C/15Add.194 – par 18**

*While recognizing the difficult economic conditions, the Committee recommends that the State party pay particular attention to the full implementation of article 4 of the Convention by prioritizing budgetary allocations to ensure implementation of the economic, social and cultural rights of children “to the maximum extent of ... available resources” Noting the State party’s efforts at administrative reform and the decentralization of service provision, the Committee recommends that the State party strengthen, to the maximum extent of available resources, the capacity of local governments in rural and urban areas equally to implement the economic, social and cultural rights of children.*

**Recommendation of the Ombudsman for Children:**

- 1) **System to identify financial measures from state budget to the benefit of minors should be developed.**

There is no system, which enables to identify financial measures provided to the benefit of children by particular ministries. The exemption refers to financing programmes carried out to the benefit of children (eg. Governmental programme for years 2014–2016 “Safe and friendly school”).

As a result, there are no data allowing to estimate total state expenditures to the benefit of children, to assess reasonableness and effectiveness of the money spent and to take measures aiming at improvement of expenditure of public funds.

## **CRC/C/15Add.194 – par 20**

*The Committee recommends that the State party:*

- a) *Ensure that the current system of data collection and indicators are disaggregated by gender and, where appropriate, by minority and ethnic group, and urban and rural area. The current system of data collection should be expanded, with the assistance of relevant ministries and authorities, to include all areas covered by the Convention, including all aspects of the juvenile justice*

*system and assistance provided to child victims of sexual exploitation or abuse. The system should cover all children up to the age of 18 years, with specific emphasis on those who are particularly vulnerable, including child victims of abuse, neglect or ill-treatment, children with disabilities, children belonging to ethnic groups, refugee and asylum-seeking children, children in conflict with the law, working children, children living in the streets, children involved in commercial sexual exploitation and trafficking, and children in rural and economically depressed areas; and*

- b) Use these data and indicators for the formulation, monitoring and evaluation of policies, programmes and projects for the effective implementation of the Convention.*

#### **Recommendations of the Ombudsman for Children:**

- 1) Statistical data should be maintained and gathered and indicators should be worked out, taking into account the division of minors according to age, gender, rural or urban area.**
- 2) All data, concerning juvenile delinquents, child victims and child witnesses/heard in civil proceedings according to the recommendations of the Committee, should be held and gathered;**
- 3) The system should be developed to monitor children situation, in particular, those under 6 years old.**

In Poland statistical data and indicators worked out based on them, which are maintained and gathered by Central Statistical Office, Police and particular departments do not take into consideration the age, gender, place of child residence, be it rural or urban.

Ministry of Justice also fails to gather statistical data concerning gender and age of juvenile delinquents and child victims of crimes, including child victims in high-risk groups. There are no data being gathered which refer to minors interrogated/ heard in civil proceedings as well as child witnesses of criminal and minor proceeding.

Children above 6 years are subject to compulsory education which results in automatic state measures of diagnosis and assistance. Children under 5 years are subject to compulsory care of public institutions. Monitoring of the situation as regards children under 5 will contribute to introduction of child health certificate, system of monitoring the child from her or his birth (notification of the Primary Care Physician), annual health examination by paediatrician.

## CRC/C/15Add.194 – par 24

*The Committee recommends that the State party strengthen its awareness raising efforts and encourages the State party to undertake systematic education and training in the principles and provisions of the Convention, in particular for parliamentarians, law enforcement officials, civil servants, municipal workers, personnel working in institutions and places of detention for children, health personnel, including psychologists, social workers and religious leaders, as well as children and their parents.*

### **Recommendation of the Ombudsman for Children:**

- 1) Introduction of systemic solutions, concerning regular education on rights of a child and methods of their protection.**

According to the Ombudsman for Children, the awareness the rights of the child is little. There are no systemic solutions in the area of education and training as to the rights of the child, including provisions of the Convention directed at the society, particular professional groups involved in work with children and members of parliament. Trainings are carried out ad hoc.

The Ombudsman for Children promotes rights of the child and methods to protect them. He has carried out the social campaigns, i.a.: “Right of a child to be respected”, “Violence against child is a teacher of solely bad things”, “I belong to my mum and dad”, “React to the violence against a child”. “You have a right”, “There are no children – there people”, “Your hands should protect, not punish”, “Violence is stupid”.

# IMPLEMENTATION OF THE RIGHTS OF THE CHILD

## Right to life and health protection

*States Parties recognize that every child has the inherent right to life.*

(Article 6 of the Convention on the rights of the child)

*States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.*

(Article 24 of the Convention on the rights of the child)

### ■ PAEDIATRIC AND DENTAL SERVICES FOR CHILDREN

### ■ ANNUAL EXAMINATION OF EACH CHILD BY PAEDIATRICIAN

#### Recommendations of the Ombudsman for Children:

- 1) The actual costs of paediatric and dental services for children must be properly estimated and appropriate funds from the state budget must be allocated for this purpose.
- 2) The complex state policy must be introduced as regards improvement of dentition state, including effective preventive treatment and improvement of access to dental services.
- 3) The postulate of the Ombudsman for Children, concerning mobile dental surgery, must be brought into effect.
- 4) The postulate of the Ombudsman for Children, concerning the necessity of annual examination of each child by paediatrician, must be brought into effect.
- 5) The system of services in the framework of night and holiday medical assistance analysed in order to take appropriate measures for ensuring access of children to such medical assistance.

In Poland, for many years the calculation of medical services for children has been underestimated in relation to the actual costs. As a result of underestimation of paediatric procedures, the function of paediatric wards, in particular those highly specialised and the services of paediatricians are characterised by the limited access. Access of children to dental care in Poland is also limited. Lack of complex state policy as regards improvement of children dentition state contributes to the high percentage of children in Poland with dental caries and malocclusion (from 81% to 94%, depending on age). One of the possible solution, having been proposed for many years by the Ombudsman for Children, is to introduce mobile dental surgery, so called “dentobuses”, which may get to every child.

For a few years the Ombudsman for Children, has proposed the necessity to examine every child, including healthy one, by a paediatrician, at least once a year.

Effective preventive treatment and implementation of child's early diagnosis system will support early detection of improper health and development condition, as well as recognition of symptoms in harmed children.

The Ombudsman for Children receives signals about low level of children needs protection as regards medical assistance during holidays and at nights.

## ■ ACCESS TO MEDICINE SPECIALISTS

## ■ QUALITY OF MEDICAL SERVICES DIRECTED AT CHILDREN

### Recommendations of the Ombudsman for Children:

- 1) **System of specialist children treatment should be financed and number of medicine specialists should be increased.**
- 2) **Function of system to grant and sign contracts for specialised medical services for children should be urgently analysed and systemic measures for improvement of children's access to health care should be taken.**
- 3) **Effective mechanisms should be introduced to control the implementation of tasks, as regards child health care, by practice settings.**
- 4) **Mental health care of children should be state priority in their health care.**
- 5) **Proper conditions must be created for mental and psychiatric children care.**
- 6) **System of centres for children with special needs must be built.**
- 7) **Domestic therapy programme dealing with prevention of depression and suicide attempts among children must be created.**

For many years the queue time for medicine specialist in Poland has been too long. Access of children to medical specialists is impeded, i.a. in the area of paediatrics, neonatology, ophthalmology, laryngology, orthodontics, psychiatry, neurology, rehabilitation or other metabolic diseases. Low cost estimation of specialised services, including psychiatric, differentiated localisation of centres and insufficient amount of specialists result in lack of proper care for children, especially specialised.

Despite of growing number of children with depression and anxiety disorder, suicide attempts or intended self-harm, Poland fails to provide sufficient number of specialists in the field of child psychiatry. Psychiatric care focuses mainly on hospital care, characterised by common treatment

of both children with severe disorders, who demonstrate provocative, sexual, rebel behaviours as well as children with depression and anxiety disorders, who demand specific protection and assurance of security. The development of laboratory care network, such as units and day care wards, which is characterised by high effectiveness of hospital treatment, is very slow. Range of therapy programmes for minor patients is not sufficient.

## ■ ACCESS OF DISABLED CHILDREN TO TREATMENT AND REHABILITATION

### **Recommendation of the Ombudsman for Children:**

#### **1) Access of disabled children to treatment and rehabilitation should be increased.**

Access of disabled children to dental treatment is particularly impeded due to small amount of dental clinics adjusted and contracted to treatment of such children. To be subject to treatment under general anaesthesia, children must travel to practice settings located even a few dozen kilometres from their place of their residence.

Disabled children should be treated and rehabilitated in accordance with the prepared treatment plan. Frequently, it takes a long time, even few or a few dozen of months, since registering in practice settings until applying of recommended treatment, which contributes to their lower effectiveness or even makes them totally useless. The Ombudsman for Children receives signals that doctors recommend smaller than necessary amount of treatments, due to health state of child with disability.

## ■ ACCESS TO NOVEL AGENTS AND THERAPEUTIC PROGRAMMES

### **Recommendation of the Ombudsman for Children:**

#### **1) Access of children to novel agents and therapeutic programmes must be facilitated.**

Long-lasting procedures as to acceptance of medical conduct standards and making the medicines available contribute to considerable limitation in accessibility to medicines and therapeutic programmes. The examples are: cleft palate treatment, medicines used in the therapy of so called rare diseases, update of vaccination plan available within public funds.



## ■ HEALTH CARE IN KINDERGARTENS AND SCHOOLS

### Recommendation of the Ombudsman for Children:

- 1) **Systemic measures aiming at provision of proper health care in schools and kindergartens must be taken.**

In Poland only a few kindergartens and schools provide health prevention . In practice, it is a job contract with a nurse for a few hours weekly, which, according to the Ombudsman for Children, does not properly cover the needs of children, who stay there, including chronically ill children.

## ■ DIFFICULT ACCESS TO SANATORIA AND HEALTH RESORTS

### Recommendation of the Ombudsman for Children:

- 1) **Systemic measures to improve accessibility of sanatoria and health resorts for children must be taken.**

In Poland, children with modern age and chronic diseases constitute more than 20% of the evolving population. Despite the fact, doctors fail to refer children for sanatorium treatment and stay in health resort.

## ■ PROBLEM OF OVERWEIGHT AND OBESITY AMONG CHILDREN

### Positive remark

- **Introduction by Polish legislator of proposals stipulated by the Ombudsman for Children, referring to assurance of whole food in mass catering and ban on, so called, junk food sale in school shops.**

### Recommendation of the Ombudsman for Children:

- 1) **State should support and promote healthy life style, including healthy food for children and their physical activity, as a systemic solution.**

Obesity and overweight in Poland are growing problems. As research shows catering in schools and kindergartens is badly balanced and not adjusted to the age and development needs of children. Every tenth Polish child is obese, every fifth is overweight. Only 30% of children undertake any form of physical activity, which is a must for physiological needs of child's organism. This results from bad eating habits, also of parents, little physical activity of children, which leads to deterioration of physical fitness. It is also caused by new ways to spend free time –

many hours spent in front of computer, world of virtual friends. For many years the Ombudsman for Children has strived to introduce nutrition standards for child. The postulates proposed by the Ombudsman for Children were considered by Polish legislator in 2014.

Particular sectors take measures to promote healthy eating and healthy life style, however, according to the Ombudsman for Children they are not effective due to lack of coordination and systemic solutions.

- **CHILD AND MOTHER CARE IN HEALTH AND EDUCATION PROGRAMMES WHICH PREVENT PREMATURITY.**
- **MATERNITY CARE**
- **SUPPORT FOR YOUNG PARENTS (INCLUDING ADOLESCENT) IN THE AREA OF MOTHERHOOD AND FATHERHOOD PREPARATION**

#### Positive remark

- **Standards for maternity care have been developed**

#### Recommendations of the Ombudsman for Children:

- 1) **Effective education and health programmes of mother and child care, preventing prematurity must be introduced.**
- 2) **Systemic measures to improve effectiveness of standard implementation for maternity care.**
- 3) **Systemic measures for conscious motherhood and fatherhood must be introduced, as well as instruments for adolescent parents and their children must be expanded.**

In Poland as many as 6,1% of all new-borns are preemies. This indication should be estimated as very high.

Despite standards implementation of maternity care, the degree of implemented procedures is not satisfactory. The problem of abnormalities during labour which leads to bodily harm, or even death of a child, demands assessment and taking remedial action.

In Poland 3,5–4% of children are born of adolescent mothers, these pregnancies are usually not planned. This raises specific health consequences, both for adolescent mother and her child.

Adolescent parents are not given proper support. Health care system is not designed for meeting the needs of such families, including emotional needs.

## ■ ALCOHOL CONSUMPTION BY PREGNANT WOMEN

### Recommendation of the Ombudsman for Children:

- 1) **Systemic measures to promote health and sober motherhood must be taken.**

High percentage of women who declare alcohol consumption, while they are pregnant, brings concern. This may lead to neurobehavioral abnormalities and changes in children's body build and inner organs ("Fetal Alcohol Syndrome" – FAZ).

## ■ USE OF ALCOHOL AND PSYCHOACTIVE SUBSTANCES.

### Recommendation of the Ombudsman for Children:

- 1) **Measures to assess the phenomenon of alcohol and psychoactive substances consumption must be taken in order to apply effective remedial action.**
- 2) **Access of minors to medicinal products without prescription should be limited.**

Data on alcohol and psychoactive substances consumption, which are gathered in Poland by different institutions and non-governmental organisations, are fragmentary. These data are not systematically updated and don't reflect the whole problem and its scale.

There is no possibility to assess the scale of the phenomenon due to lack of data which hampers drawing up and implementing effective preventive programmes.

Children do not get sufficient protection against effects of access and consumption of medicinal products without prescription. Currently children can buy in the pharmacy all medicinal products without prescription. It must be stressed that purchase and appliance of medicinal product is connected with individual decision on treatment. Only an adult person may take this kind of responsibility. The state should not shift the responsibility to minor without consulting legal guardians or doctors.

## ■ CHILD'S HEALTH RECORD

### Positive remark

- On the initiative of the Ombudsman for Children, the Ministry of Health developed the range of systemic solutions, which refer to child's lot, in particular to legal introduction and sanction of medical document – Child's Health Record, as well as introduction of standards in the preventive health care for children.

### Recommendation of the Ombudsman for Children:

- 1) Child's Health Record should be a compulsory medical document, in which all medical actions taken in relation to the child are registered.

## ■ CHARTER OF CHILD–PATIENT

### Positive remark

- Charter of Child–Patient has been submitted to all hospital child wards in Poland as well as other medical facilities dealing with paediatric care.

Charter of Child–Patient was developed in cooperation of the Ombudsman for Children and Health Service Ombudsman. The Charter presents, in a brief and understandable manner, rights pertaining to children in health care facilities.

## Right to be brought up in family environment

*(...) States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.*

(Article 18 of the Convention on the rights of the child)

### ■ RIGHT OF THE CHILD TO BE BROUGHT UP BY BOTH PARENTS

#### *Recommendation of the Ombudsman for Children:*

- 1) Works in Polish parliament, referring to the implementation of child rights to be brought up by both parents, in case there is no, so called, “Upbringing plan”, must be closed as soon as possible. Provisions must be promptly set up to ensure that both parents exercise parental authority, in case there is no, so called, “Upbringing plan”, if it is in the best interest of the child.

The existing legal regulations in Poland don't foster the right of the child to be brought up by both parents. If parents don't develop so called “Upbringing plan” (“Parental plan”) the court automatically decides to restrict parental authority of one of a parent, as regards particular duties and rights in relation to a child in a situation when they can't agree as to parental right exercise and contacts with a child. As a consequence, a parent with good qualifications in upbringing is excluded from child's life or his role is marginalised.

On the initiative of the Ombudsman for Children, the proposal to change provisions in this regard was presented in 2014. It is being currently proceeded in Polish parliament.

- **SUPPORT FOR BIOLOGICAL FAMILIES**
- **IMPROVEMENT OF PARENTAL COMPETENCES**
- **MONITORING OF CHILD'S AND ITS BIOLOGICAL FAMILY'S LOT**
- **ASSISTANCE FOR FAMILY IN CHILD UPBRINGING**
- **CONTACTS OF THE FAMILY WITH A CHILD PLACED IN FOSTER CARE**
- **MEASURES TAKEN BY EDUCATIONAL CENTRES FOR CHILD'S RETURN TO ITS BIOLOGICAL FAMILY**
- **REGULATION OF LEGAL SITUATION OF CHILDREN PLACED IN FOSTER CARE**

### Positive remark

- Act on support of the family and system of foster care introduces numerous assistance instruments for biological family as to combating of upbringing difficulties of a child.
- Numerous institution supporting family have been established to combat difficulties in upbringing of a child.
- According to the provisions of Polish law, placement of a child in foster care is of temporary nature and aims to create conditions for child's return to its biological family. If return to biological family is not possible, provisions introduce the priority of adoption.
- Legal regulation obliges to initiate a proceeding in the area of parental authority for a child, who is placed in foster care for not more than 18 months.

### Recommendations of the Ombudsman for Children:

- 1) Intensification of practical implementation processes of programmes aiming to improve educational competences of parents, in particular adolescent parents, as well as programmes to promote positive upbringing methods and encouraging self-improvement.
- 2) Systemic solutions must be introduced which are directed at support for family, in particular in case of adolescent parents.
- 3) Measures must be taken to mitigate effects of economic parent migration or other obstacles in exercising of parental authority.
- 4) Family Support Fund should be established with the aim of institutional and material help for families in situation of upbringing problems with children.
- 5) Effectiveness of institution function, which are obliged to support families, must be improved. Bodies responsible for family support should remain in strict cooperation.

- 6) Family therapy and workshops of upbringing competences should be one of the basic factors for family support as to upbringing difficulties.**
- 7) Court monitoring of child's and its biological family's lot after foster care placement must be strengthened.**
- 8) Measures must be taken to prevent contact restriction of children placed in foster care with their biological family.**
- 9) Effective control measures must be taken in respect of implementation of measures by foster care centres.**

The problem of insufficient cooperation of institutions obliged to support families is still present in Poland. It hampers recognition of individual child needs and reaching proper decisions about their lot. Decisions to place child outside its biological family are final and should follow when all remedy measures have been used. In case of decision to place a child in foster care, it is necessary to further monitor a family and offer it a complex assistance as to combating difficulties, including improvement of upbringing competences. Proper support given by family assistant, social worker, educational centre, residential institution, psychological and pedagogical counselling centre, non-governmental organisation will help parents and legal guardians to properly exercise parental authority. Courts are too reluctant to oblige parents to participate in upbringing competences workshops and in family therapy.

Family courts don't conduct proper controls over assistance given to a family and its effects, after placement of a child in foster care. Moreover, many children who remain in foster care for longer period are characterised by unregulated legal status. Impact assessment must be carried out as to introduction of legal regulation, which obliges to initiate a proceeding in the area of parental authority for a child, who is placed in foster care more than 18 months.

The problem of punishment, in the form of contact restrictions with biological family for children placed in foster care, still raises concern. Such practice violates the right of a child to personal contacts and maintain ties with biological family. Foster care centres often fail to perform basic task as to taking effective measures for child return to biological family.

The above problems should be given special attention of controlling bodies (province governors, starosts, chief educational officer).

## ■ LITTLE CHILDREN PLACED IN INSTITUTIONS OF FOSTER CARE

### Positive remark

- Pursuant to the Act on support of the family and system of foster care, children under 7 years cannot be placed in institutionalised foster care, unless there are exemptions provided in the Act. Also children under 10 years are not permitted in foster care since 2016.

### Recommendations of the Ombudsman for Children:

- 1) Family judges must be trained in the area of the Act on support of the family and system of foster care.
- 2) Cases of little children placement in institutionalised foster care must be reduced to a minimum.

As the research conducted by the Ombudsman for Children shows there is a problem of family courts as regards practical decisions, which place children under 7 years in institutionalised foster care despite the provisions of the Act. According to the data of the Ombudsman for Children (March 2014) there were all together 4 029 children under 10 years in such care, including between 0–3 years – 800 children, and at the age of 4–6 there were 969.

- **RIGHT OF A CHILD TO BE BROUGHT UP BY A PARENT CONVICTED BY A COURT DECISION FOR IMMEDIATE CUSTODIAL SENTENCE.**
- **RIGHT OF A CHILD TO CONTACT WITH CONVICTED PARENT**
- **RIGHT TO CHILD UPBRINGING OF ADOLESCENT MOTHERS, PLACED IN EDUCATIONAL AND SOCIAL REHABILITATION CENTRES**

### Positive remark

- Recently, there have been regulations introduced in Poland referring to exercising of child right to upbringing and care by a parent sentenced for a crime by a court for immediate custodial sentence. Such possibility has been created before serving a sentence of imprisonment (deferring of a sentence for sentenced pregnant woman or sentenced person who solely executes parental authority), as well as in the course of imprisonment by a convicted person in separation conditions (break in serving a sentence, upbringing of a child by convicted woman, staying in penitentiary unit).
- Polish law provides conditions to execute by a child a right to maintain personal contacts with an imprisoned parent. The sentenced should be, if possible, placed in penitentiary units located as close as possible from the residential institution, where child resides.



- **The possibility has been introduced to place child under 10 in residential center, if there is here r his mother or father, and in any exceptional circumstances, particularly due to health condition or siblings.**

#### **Recommendations of the Ombudsman for Children:**

- 1) Institution of court–appointed guardian for a child must be introduced, when the court decides about upbringing of a child by a person with immediate custodial sentence.**
- 2) Decent conditions of child rights execution should be guaranteed for contacts with parent sentenced in penitentiary unit.**
- 3) Conditions must be provided, which ensure child upbringing for adolescent mothers, who are placed in residential institutions, as well as educational and social rehabilitation centres.**

According to the Ombudsman for Children, as a rule, it is vital that Polish law provides possibility for a child to contact a parent with immediate custodial sentence. However, each case should be thoroughly examined by the court, and the priority in making decision should always be the best interest of a child. It is necessary to introduce institution of court–appointed guardian for a child, who is statutory entitled to act for and in the interest of a child. This proposal is relevant when realising that the Ombudsman for Children receives signals about placing mothers with their children, sentenced for a long–term imprisonment for crimes including violence, where child became a victim. It raises justified doubts, as to the validity of family court decisions, which accept placement of a child with convicted mother in mother’s and child’s home, organised by the penitentiary unit. It results in the risk of objectification of a child (application of a mother solely in order to improve living standard while serving a sentence), which obviously is a violation of child’s welfare.

Children have a right to regular and direct contacts with imprisoned parents, if such contact is in the best interest of a child, which means in the situations, when child, her or his actual guardian or family court gives consent for such form of contact. There are, however, no separate provisions, which differentiate contacts with minors. In penitentiary units, there are no so called “family rooms”, where sentenced persons (imprisoned or temporary arrested) could meet their children in the best possible conditions, which contributes to reduction of trauma connected with experience of prison and contact with sentenced persons. Conditions of meeting with children

don't foster sense of closeness, security and intimacy. Such meeting takes place in rooms, which are available for other prisoners and visitors, in conditions far from being child friendly.

Polish law doesn't provide possibility of child placement with her or his adolescent mother, staying in educational and social rehabilitation units. Adolescent mothers are deprived of the possibility to bring up their children.

## ■ **ADOPTION PROCEDURES**

### **Recommendations of the Ombudsman for Children:**

- 1) Legislative works must be completed as soon as possible in relation to the project, which reduces the possibility of parents to target future adoption parents solely out of relatives and spouse of a parent.**
- 2) Programmes must be developed and implemented to increase the interest of disabled children, awaiting adoption.**

In order to eliminate so called adoption grey market, according to the Ombudsman for Children, it is necessary to regulate conditions of so called targeted adoption. The possibility to target future adoptive parents by the biological parents should be limited to parent's spouse and relatives of child's parents. The Ombudsman for Children proposed an appropriate change in provisions, which is being proceeded in Polish law.

In Poland insufficient amount of disabled children adoption still raises concern. It is necessary to develop and implement programmes which increase the interest of disabled children, who await adoption.

## Right to decent social standards

*States Parties shall recognize for every child the right to benefit from social security, including social insurance (...).*

(Article 26 of the Convention on the rights of the child)

### ■ POVERTY

#### Positive remark

- **Introduction of The Charter of Large Family**
- **Introduction of support for families with income, which allow to obtain maintenance.**

#### Recommendations of the Ombudsman for Children:

- 1) **Systemic support for families, in particular multi-child, must be intensified.**
- 2) **Reduction of poverty, in particular child poverty, should be a priority of Polish state.**

Poverty among children is still a significant problem. According to the data of Central Statistical Office, 23% of people in families who bring up 4 or more children live below the lower limit of penury. The worst situation is present in rural areas and smaller towns.

According to the Ombudsman for Children, The Charter of Large Family (system of rights for large families) is a very valuable initiative of the recent period. The data of Central Statistical Office show that 627 thousand of families in Poland benefit from The Charter of Large Family. The programme encompasses 3,4 Million children and their guardians.

Introduction into Polish Law, which relates to family maintenance benefit, the principle: “Złoty for złoty” was very positively assessed. It says that the maintenance benefit is reduced by the amount, which is above the income limit.

### ■ MAINTENANCE BENEFIT

#### Recommendations of the Ombudsman for Children:

- 1) **More effective disciplinary measures should be introduced for support of family debtors.**

- 2) **Measures must be taken, which are directed at employment support programme for family debtors and improvement of their earning possibilities.**
- 3) **Income limit should be increased to such level which entitles to benefit from Alimony Fund.**

Firstly, it must be noted that execution of alimony benefits, granted by virtue of court decision, may be conducted in two ways. First is a debt enforcement. Second is paying by the Alimony Fund due alimony benefit for a child, and then enforcement proceedings against debtor is conducted, if debt enforcement proves ineffective for 2 months.

The problem raises as to effective alimony enforcement against debtor. In the first half year of 2014, 628.475 alimony enforcement cases were carried out (598.529 proceedings of previous year and 29.946 of new proceedings). 4.540 alimony proceedings have been enforced successfully, which constitutes 0,72% of all cases. Also the effectiveness of actions by districts against alimony debtors was hardly 7,9%.

It is a consequence of improper action coordination of the bodies appointed to execute alimony duty, lack of legal action to conduct debt enforcement in case of residence change, failure of systematic control as to property of alimony debtors, malice of those who are obliged to alimony. Growing number of people who fail to pay alimony is being observed among those, who stay abroad.

Access to alimony benefit from Alimony Fund is limited, income limit which entitles to this benefit was changed in 2008 and is PLN 725 per person in the family.

## ■ **SYSTEM OF FAMILY SUPPORT FOR CHILDREN, INCLUDING DISABLED CHILDREN**

### Positive remark

- **In Poland, there is a system of family support for children, including disabled children.**
- **The length of maternity leave has been increased, the possibility of parental leave (so called paternity leave) has been introduced.**
- **Benefits for disabled children have been increased.**
- **The possibility to use maternity leave for people overtaking care for child in case of death of mother or her abandoning the child or due to inability of mother to independent living and taking individual care of child.**

- **Possibility has been introduced for a father to overtake the right to parental maternity and leave, as well as maternity leave, if mother has no social insurance.**

**Recommendations of the Ombudsman for Children:**

- 1) **The system of family support should be simplified.**
- 2) **Benefits and supplements for families should be increased, if the state financial possibilities allow for this.**
- 3) **Social awareness in the field of family support system should be improved.**

According to the Ombudsman for Children the family support system is not effective. The system of benefits and supplements is very complicated, the social awareness in this area is insufficient, and differentiation of their receipt by entitled persons, their amount and reglementary nature contribute to even larger limitations in state assistance.

The family assistance is mainly focused on implementation of complex benefit system (few dozen of financial benefits aiming at family support). Benefits, allowances and supplements for guardian intended for disabled children assistance and their families are insufficient and fail to precisely consider the amount of time and money to meet the needs of those children.

State assistance for healthy children is also not sufficient in relation to their actual needs. Limits of income per capita in the family indicators which entitle to allowances or deprive of such right, in case these are exceeded, are very low.

Parents in difficult financial situation are not given sufficient support to combat crisis, and at the same time assume responsibility of parents for creating conditions for proper development of their children and self-empowerment as well as exit from circle of welfare benefit user.

- **HOUSING OF FAMILIES WITH CHILDREN**
- **TEMPORARY SHELTER FOR FAMILIES WITH CHILDREN**
- **ENFORCEMENT OF DECISIONS AS TO RECOGNISED DISABILITY**

**Recommendation of the Ombudsman for Children:**

- 1) **Introduction of systemic solutions directed at district support for the development of public housing and temporary shelters for families with children.**

Insufficient free housing resources and funds for development and modernisation of existing accommodation facilities, as well as construction of new housing contributed to failure by districts of due statutory obligation to improve public housing construction. Families with children reside in low standard accommodation with poor technical state. Flats are often shared with other members of family. Granting of applications for housing allocation or change of flats takes usually a few years. There are no systemic solutions directed at the support for districts in public housing development.

In Poland there is no sufficient room, where families with children, who are at risk of homelessness, could find temporary shelter while at the same time maintain family integrity.

Despite indication in the disability decision about the necessity for a child to have a separate room, self-governmental authorities award a communal housing to the family without taking these recommendation into account. Moreover, there are cases, when families are awarded with communal housing, which are not capable for children with disability or chronic disease due to technical state and low standard.

## ■ ARCHITECTURAL BARRIERS

### **Recommendation of the Ombudsman for Children:**

- 1) Proposal to adjust public buildings and means of transportation to disabled children must be realised.**

There are still architectural barriers present in public space, which hinder or prevent proper function of disabled children in the society. Particularly the problem is non-adjustment of educational centres and others to the needs of disabled children.

## ■ FREE LEGAL ASSISTANCE FOR FAMILY

### **Recommendations of the Ombudsman for Children:**

- 1) Legislative works referring to free legal assistance for society should be completed as soon as possible.**
- 2) Elements of practical law education should be introduced to school programmes.**

There is no system of unified legal assistance in Poland. Counselling institutions are scattered, and families in need have problems to receive such assistance. The additional problem is low legal

awareness of the society. One of the reason for such situation is low level of legal education in schools.

Since years the Ombudsman for Children has proposed to introduce “practical education on law” to school curricula of all class levels. It is undoubtedly a good start for the society to learn about legal issues and grassroots work for the development of civil society.

Currently there are legislative works in Polish parliament on establishing of free legal assistance for the society.

## Right to education

*States Parties recognize the right of the child to education (...) on the basis of equal opportunity (...).*

(Article 28 of the Convention on the rights of the child)

### ■ EQUAL EDUCATIONAL OPPORTUNITIES OF CHILDREN IN RURAL AND URBAN AREAS, AS WELL AS IN POOR ENVIRONMENTS

#### Positive remark

- For the last few dozen of years numerous measures have been taken in Poland for the purpose of equal educational opportunities of children in rural areas and poor environments, many local, regional and Polish nationwide programmes have been carried out, as well as co-financed from European Union funds, such as “School starter kid”, “Our primer”.
- Recent years show the growing indicator of popularisation as regards preschool education of children in rural and urban areas.

#### Recommendations of the Ombudsman for Children:

- 1) Further measures to promote preschool education of children in rural and urban areas, as well as in poor environments.
- 2) Introduction of effective systemic solution for equal educational opportunities in rural areas and in poor environment at all educational levels as well as monitoring of the effects of these measures.
- 3) Introduction of additional mechanism to increase expenses for child from poor environment.

Despite the efforts and measures taken, it is difficult to talk about effective equal educational opportunities yet. Support for children of poor environments as to equal educational chances consists in fact of the material support (scholarships, allowance). Such help is usually spent on basic needs of the family, instead of support of child education.

60% of children live in rural areas and in small towns. Decrease in births and population of children, as well as economic migration of all families are problematic for small schools in rural areas, posing risk for many educational facilities and contributing to them being closed. First of all, access to early education in the rural areas is significantly smaller than in towns. Children dwelling in the rural areas and in small towns, who stem from poor environments have usually



worse educational achievements than children in large towns. Job opportunities of rural youth are smaller than their peers from towns.

## ■ ACCESS OF CHILDREN TO NURSERY CARE

**Recommendations of the Ombudsman for Children:**

- 1) **Further systemic measures should be taken to increase number of attendance in nursery care facilities.**
- 2) **Quality of care services in nursery clubs should be improved and monitoring of these facilities should be increased.**

In recent years the access of children to nursery care has improved. As data of the Ministry of Labour and Social Policy show, there were 1 688 nursery schools and 383 nursery clubs. 436 of day caretakers and about 8 300 nannies have taken care of children under three years.

Hence, there is an increase in the number of nursery schools and clubs, as well as day caretakers and nannies, still the number of bodies in charge of taking care of the smallest children should be deemed insufficient.

The Ombudsman for Children receives signals about low degree of supervision as to work and quality of care services in nursery clubs. Due to the smallest children, there is an immediate necessity to introduce high standards and quality of services offered by the employed persons.

## ■ ACCESS TO PRE-SCHOOL EDUCATION OF CHILDREN AT THE AGE OF THREE AND FOUR

### Positive remark

- **Changes in educational law have been introduced, which aim to guarantee a right to pre-school education for children. Since the 1st of September 2015 each child at the age of four is guaranteed by the district a place in a kindergarten, and since 1st of September 2017 – the same refers to a three year old child.**

**Recommendations of the Ombudsman for Children:**

- 1) **Self-governments must be given donation for educational tasks for children above 5 years to provide access of all children to preschool education.**

- 2) **Function of other forms of pre-school care provided by the Act on care of children under 3 years should be activated and adjusted to the needs and possibilities of districts.**

In recent years access of children at the age of three and four has been improved. The percentage of children using pre-school care is still unsatisfactory. Data received from The Ministry of National Education reveal that in a school year 2014/2015 the indicator of pre-school children upbringing popularisation at this age is 71,5% (in a school year 2013/2014 about 64%).

There are still disparities in the children access, of the discussed age group, to the pre-school education, depending on place of residence (in the rural area – 48%, in towns – 75,4% in relation to children at the age of 3 years, and at the age of 4 years – 67,8% and 87,2%).

- **CATERING OF CHILDREN IN NURSERY FACILITIES, KINDERGARTENS AND SCHOOLS**
- **SCHOOL CANTEENS**

#### Positive remark

- **On the initiative of the Ombudsman for Children the statutory eating norms have been introduced, which guarantee nutritious food in a mass catering and ban on selling so called junk food in school shops.**

#### Recommendations of the Ombudsman for Children:

- 1) **Effectiveness of changes, introduced by virtue of Act on security of food and catering, should be monitored .**
- 2) **The system of school canteens should be redeveloped.**

Research on catering assessment in nursery facilities, kindergartens and schools shows that child diet is badly balanced, not adjusted to their age and development needs.

The Ombudsman for Children has repeatedly proposed to take immediate measures as regards quality improvement of child catering by introduction of proper legal regulations, aiming at appliance of catering norms, developed by the National Food and Nutrition Institute in Poland. Postulates of the Ombudsman for Children have been considered by Polish legislator.

In recent years, the complete elimination by the self-governments of school canteens or their replacement by internal catering have become a social problem. In the first case many children

from poor families have been deprived of warm meal, frequently the only one during the whole day. In the second case, it resulted in the increased prices of meals and decrease of their quality.

- **DIRECTORS' SUPERVISION OVER THE WORK OF EDUCATIONAL CENTRES**
- **EDUCATIONAL MEASURES IN SCHOOLS**
- **EDUCATION OF TEACHERS IN THE FIELD OF PRACTICAL PREPARATION FOR WORK**
- **COOPERATION OF SCHOOL WITH PARENTS AND GUARDIAN OF A CHILD**

**Recommendations of the Ombudsman for Children:**

- 1) **Taking effective measures to execute proper supervision of tutors', teachers' and professionals' work from the directors of educational centres .**
- 2) **Increase of supervision from entitled institutions over the inner regulations of schools and centres.**
- 3) **It is necessary to change rules of candidates recruitment for pedagogy studies and to improve quality of future teachers' preparation for work with children, including increase in number of practical classes hours.**
- 4) **It is necessary to guarantee for teachers the support in first years of professional work and carrying out periodical verification of their suitability and motivation for practising their profession.**
- 5) **The improvement of cooperation is necessary between personnel of schools and centres with parents and guardians.**

Directors of educational centres do not always execute the pedagogical supervision over tutors', teachers, and professionals' work. It hampers the proper execution of education and instruction process. Reservations raise as to quality of prevention programmes and educational programmes, as well as their modification, which are carried out based on effectiveness research of the measures taken.

Actions of schools and centres should be directed at provision for each child of harmonious development: intellectual, emotional, physical and social. Schools and centres experience difficulties as regards creation of safe and friendly conditions for children, which are adjusted to their needs. Actions of teachers and tutors as well as professionals, employed there, are also incoherent.

Growing number of children with opinions and decisions from psychological and pedagogical counselling centre demand from the teachers to have better competences. Failures in this regard

contribute to the tutors being helpless and bring about the appliance of wrong methods of work with children, including violence, threats and force or humiliation. Lack of sufficient knowledge and experience cause that methods, which motivate and stimulate harmonious emotional development of a child, are used too rarely.

For many years the problem remains of improper relations between employees of school and child's parents. Negligence in this area caused exaggerated focus on relations between adults, while decreasing the range of child's problems. Parents don't feel as co-hosts of the centres. Insufficient knowledge of law among parents results in existence of improprieties in the function of parental associations (as regards election of parental association members, competences of parental association, condition of voluntary fees for parental association fund).

### ■ **PSYCHOLOGICAL AND PEDAGOGICAL ASSISTANCE IN KINDERGARTENS, SCHOOLS AND CENTRES.**

#### **Recommendation of the Ombudsman for Children:**

- 1) **It is necessary to make changes in education of teachers and professionals and their professional trainings, as well as their cooperation with psychological and pedagogical counselling centres, which will be adjusted to the actual needs of children.**

The problem of psychological and pedagogical assistance in kindergartens, schools and centres has remained unsolved for many years. It particularly refers to children with educational problems (with autism, Asperger's syndrome, ADHD and disruptive behaviour disorder).

Employed educators are frequently not capable to adjust work methods to the needs of children. It happens that they do not know the legal provisions in force, which apply to children, as well as possible educational methods.

### ■ **ACCESS OF CHILDREN, INFECTED WITH HIV AND SUFFERING FROM HIV, TO PRE-SCHOOL AND SCHOOL EDUCATION – IN A PROSPECT OF THEIR FUNCTION IN PEER GROUPS.**

#### **Recommendations of the Ombudsman for Children:**

- 1) **Taking measures to combat discrimination of children infected with HIV and suffering from HIV.**

- 2) Carrying out research to determine the scale and grounds for this phenomenon, level of knowledge and attitudes of parents, having children at the pre–school and school age, in the area of infection and prevention of HIV.
- 3) Takin measures directed at increase of knowledge in the area of HIV prevention, among people employed in educational centres and among parents of healthy children.

The Ombudsman for Children receives signals about everyday problems, which are faced by guardians of minors with HIV/AIDS. One of the crucial issue is to separate, directly or indirectly, infected children from healthy ones, particularly in kindergartens and early school centres. It happens that infected child cannot participate in organised classes, and as a result it is deprived of possibility to develop in a proper and harmonious manner, which eventually starts the process of social exclusion.

Research on this phenomenon should be conducted and their results can serve as a starting point for further effective measures, including potential educational campaigns, intended for adults to teach their children life attitudes based on tolerance and knowledge in this area.

- **CARE FOR DISABLED AND CHRONICALLY ILL CHILDREN IN EDUCATIONAL CENTRES**
- **FUNDS FOR CHILDREN WITH DISABILITIES**

#### Positive remark

- **Adoption of legal regulation, which introduced an obligation to advance funds, by the bodies of self–governments, in order to meet needs of pupils with disability in the amount not being smaller than the educational subsidies received for this purpose.**

#### Recommendation of the Ombudsman for Children:

- 1) **Disabled and chronically ill children should not meet any obstacles in the form of assistance by persons with proper qualifications.**

For many years the Ombudsman for Children has received signals about difficulties, as regards access to medical services, performed by school nurse, directed at disabled or chronically ill children. What raises concern is that teachers are afraid to perform simple activities, which don't

demand specialised knowledge and abilities (eg. usage of insulin pump or glucometer) in case a child suffers from chronic illness (eg. diabetes).

It is essential to carry out training courses in this area for directors of educational centres. Disabled children should not meet any obstacles in the form of assistance by persons with proper qualifications. Also short trainings in the area of assistance for chronically ill child, would considerably improve security and raise comfort of a child in a centre.

Analysis of cases conducted by the Ombudsman for Children indicates the existing failure of agreement between the director of school or a centre and a managing body (which decides on the amount of funds) as regards meeting the needs of pupils, who are certified to have special educational needs. In such a manner, the possibility to verify, if the funds received from state budget in the form of educational subsidies are used accordingly to its purpose, i.a. for education of disabled children.

Introduction of legal obligation to advance funds, by the bodies of self-governments, in the form of educational subsidies should be positively assessed. Still these funds need not necessarily to be aimed at the needs of particular child. The Ombudsman for Children receives signals that funds within educational subsidies for disabled children, are not entirely allotted to secure the needs of these children. The self-governments are not obliged to settle these funds in detail.

## ■ THE QUALITY OF WORK IN YOUTH EDUCATIONAL CENTRES, YOUTH CENTRES FOR SOCIO THERAPY CENTRES AND RESIDENTIAL INSTITUTIONS

### **Recommendation of the Ombudsman for Children:**

- 1) Standards as to care, education and upbringing should be introduced in youth centres for sociotherapy and youth educational centres.**

The Office of the Ombudsman for Children has developed work standards as to care, education and upbringing in youth centres for sociotherapy and youth educational centres. These standards have been passed to the Minister of National Education and it has been suggested to implement them into the legal system. The Office of the Ombudsman for Children has been currently working on the development of work standards in residential institutions, which will be passed to the Minister of Work and Social Policy in order to be implemented into the legal system.

- **EXERCISING OF DISABLED CHILD'S RIGHT TO RECREATION**
- **ACCESS TO NEW EDUCATIONAL TECHNOLOGIES AND CULTURAL ASSETS FOR DISABLED CHILDREN**
- **IMPLEMENTATION OF THE OBLIGATION TO FACILITATE TELEVISION PROGRAMMES FOR DISABLED PERSONS**

**Recommendations of the Ombudsman for Children:**

- 1) Measures should be intensified in order to improve disabled children access to recreation, which is organised among peers.
- 2) Measures should be taken in order to design and develop new technology solutions adjusted also to the needs of children with different kinds of disability.
- 3) Measures should be take, aiming at expand access of disabled children to cultural assets.
- 4) Emission time of television programmes for disabled children with hearing or seeing disorders.

According to the Ombudsman for Children, children with disabilities take too little part in different forms of recreation. For example, as data of 2013 show, disabled children constituted 0,3% of all participants in organised winter holidays, and 0,9% in summer holidays.

The problem should be discussed that many educational programmes, using the new achievements of technology, eg. e-school books, are intended only for healthy children.

Despite definite improvement in the area of disabled children access to cultural assets, there is still no offer for children with different forms of disability in the public media sphere and in numerous libraries, museums and other cultural centres.

Hence, Polish law obliges television suppliers to provide services for disabled people with hearing or seeing disorder in a particular length of time, the emission time for disabled children remains insufficient.

- **TRANSPORT OF CHILDREN TO SCHOOLS AND KINDERGARTENS**

**Recommendation of the Ombudsman for Children:**

- 1) Effective measures must be taken to enable transport of children, including disabled, to schools and kindergartens.

The problem of improper organisation of child transport to schools and kindergartens still exists. Parents didn't give consent for group points, which are significantly distant from their place of residence. They indicated that it would threaten the security of children, who would have to cover considerable distances, along busy and poorly lit or dark road without roadsides. The main ground for the growth of the problem was closedown of small rural schools.

Disabled children were in particularly difficult situation. Many districts disobey the duty of transport. They repeatedly refuse to transport children to schools selected by parents (schools which guarantee full realisation of recommendations included in the indication for special education). The other problem is connected with lack of adjustment of child transport with lessons' schedule which results in unreasonable prolonged stay of disabled child out of home.

## **Right to protection against violence, cruelty, exploitation, demoralisation, negligence and other maltreatment.**

*States Parties shall take all appropriate (...) measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse (...).*

(Article 19 of the Convention on the rights of the child)

- **PROHIBITION OF CORPORAL PUNISHMENT TOWARDS CHILD**
- **REACTION AGAINST VIOLENCE TOWARDS CHILDREN**
- **HIGH DEGREE OF ACCEPTANCE FOR CORPORAL PUNISHMENT**

### **Positive remark**

- **On the initiative of the Ombudsman for Children the complete prohibition of corporal punishment has been introduced to Polish law.**
- **Adoption of the Act on prevention of violence in the family.**
- **Permanent monitoring of social attitudes towards corporal punishment as a method of upbringing has been introduced.**
- **Statutory obligation to signal the violation of upbringing interest of a child by criminal court has been introduced.**



### **Recommendations of the Ombudsman for Children:**

- 1) It is necessary to carry out permanent trainings for skills improvement of persons who are involved in the prevention of family violence.**
- 2) Bodies of local self-government should take reasonable measures, in the field of counselling and interference, in the families which are at risk of violence.**
- 3) Implementation of the Act on prevention of violence in the family should be monitored, and research on the function of rapid response system to the violence towards children should be carried out, including in the area of coordination of proper services, their evening and night as well as holiday shifts.**
- 4) Generally applied rules should be introduced to indicate films according to the category of child's age.**

On the initiative of the Ombudsman for Children, the prohibition of corporal punishment for minors by persons with parental authority or guardians or in care, has been introduced into Polish law. The prohibition came into force and is effective since 1st of August 2010. Its introduction aims to protect child against violence in family by shaping proper parental attitudes and using appropriate educational methods. Prohibition of corporal punishment includes also prohibition of “beating a child”, as well as punishing by so called “slapping” in order to force a child to be obedient.

Duty to signal violation of upbringing interest of a child means that the court is obliged to notify appropriate family and guardianship court, if while examining the case of crime against minor or participation in it, it deems reasonable to deprive or restrict parental rights.

The Ombudsman for Children regularly monitors the implementation of the Act on prevention of violence in the family.

Research ordered by the Ombudsman for Children show that in the recent years social acceptance for child abuse is decreasing, but this process is slow.

On the initiative of the Ombudsman for Children the campaigns on the violence against children have been conducted, including i.a. social campaign of 2013, titled “React on the violence towards children. You have a right” aimed at alteration of passive attitudes towards act of children abuse and decrease in social acceptance for violence.

It must be noted that there are films, frequently emitted with the indication of underestimated age category, not adjusted to the age, development and degree of maturity. Film age categories are indicated in the discretion of the distributor.

The Ombudsman for Children has repeatedly proposed to introduce legal regulation on establishing and complying with the general standards, defining the procedure to provide films with the indication of child age category by the film distributors.

## ■ **SEXUAL ABUSE OF CHILDREN**

### Positive remark

- The Republic of Poland ratified The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, concluded on 25 October 2007 in Lanzarote. The Ombudsman for Children has repeatedly proposed to ratify the Convention since 2008.
- In accordance with the proposals of the Ombudsman for Children, Poland has introduced, in recent years, a wide range of amendments in provisions of criminal law as a result of the ratification by Poland of the above mentioned Convention (change in prosecuting the offence of rape to offence prosecuted ex officio, introduction of aggravated felony types, risk increase of the criminal sanction – if the victim is a minor).
- Catalogue of crimes, which exempt institution of expungement has been expanded (conviction for imprisonment without conditional suspension for crime against sexual freedom and customs, if a victim is under 15 years, is not subject to expungement).
- The time limit expiry for prosecution of crimes such as human trafficking and crime against sexual freedom and customs has been prolonged, if the victim is minor (as repeatedly proposed the Ombudsman for Children). Time limit expiry may not proceed until the minor victim is 30 years old.
- Procedure of “Blue Cards”.
- The possibility has been introduced by the Act to decide on punitive and probation measures, including order to leave the place cohabited with the victim, prohibition to move closer to the victim, order for the offender to participate in corrective and educational programmes.

### Recommendations of the Ombudsman for Children:

- 1) Function and effectiveness of changes implemented in the criminal law, as to combating sexual crimes against minors, should be monitored.

- 2) It is necessary to carry out trainings to improve effectiveness of recognising symptoms of child–victim and social campaigns, which raise awareness in the area of possibility to receive assistance by crime victim.
- 3) The catalogue of cases which exempt expungement should be expanded.
- 4) Measures should be taken in order to bring into effect the prohibition to broadcast pornography with the use of tele–informative networks.
- 5) Mechanism should be introduced to guarantee children protection against content, not suitable for them, which is broadcasted in the cinemas and trade.
- 6) The bodies, which conduct proceeding in relation to suspected violence, are reluctant to use possibility to order punitive or probation measures in order to prevent violence in the family.
- 7) It is necessary to increase engagement of medical services in recognition of violence against children.
- 8) It is vital to supplement the curriculum of medicine and stomatology studies with classes on prevention of violence in the family.
- 9) The nationwide campaigns should be carried out, which pay attention to the necessity of taking measures, if the symptoms of violence, including child abuse, are stated.
- 10) Obliging enforcement agencies and other institutions to immediately inform the Ombudsman for Children about sudden deaths and abuse of children in foster care.

The measures should be positively assessed, which have been taken by Polish legislator within 10 recent years with the aim to protect particularly children–victims, including protection of children against paedophilia, combat of child pornography, separation of dangerous criminals from the society. Provision changes in this area, particularly in Polish Criminal Act, consider most of postulates proposed by the Ombudsman for Children.

According to the Ombudsman for Children, these regulations need further changes towards complete protection of children against sexual crimes.

Institutions responsible for criminal proceedings in relation to suspected violence are too reluctant to take measures to separate the offender from the harmed family. Courts are too reluctant to oblige offenders to participate in corrective and educational programmes, which are intended to introduce permanent changes in the attitude of criminal offender and to guarantee the security of the victims.

Despite the fact that medical services have medical knowledge allowing to diagnose violence, there are still too few doctors, who commence the procedure of “Blue Cards”. The Ombudsman for Children has repeatedly proposed to introduce, in Poland, a duty to immediate informing of the Ombudsman for Children, by the enforcement agencies and other institutions, about sudden deaths and abuse of children in foster care. It is necessary to strengthen the protection against violence and abuse, of children placed in foster care.

#### ■ PUNISHMENTS WHICH VIOLATE DIGNITY OF A CHILD

#### ■ VIOLENCE AGAINST CHILDREN FROM GUARDIANS AND TEACHERS

##### Recommendations of the Ombudsman for Children:

- 1) **Supervision should be increased by the entitled institutions over the inner regulations of schools and centres with children.**
- 2) **Measures should be taken to improve qualifications, in the area of human rights, of persons employed in schools and other centres.**
- 3) **It is necessary to undertake cooperation of all services and organisations in order to eliminate acceptance of violence and to change attitude towards acts of child abuse.**
- 4) **Commencement of development system of teaching staff in the area of human rights.**

The problem which has been existing in Poland for many years is related to establishing in schools and centres, including foster care, of punitive system, which violates rights of a child, eg. punishing in front of the group, no possibility to appeal to the received punishment, no instrument of time limit expiry of the punishment, application of punishments out of inner regulations.

The Ombudsman for Children has noted many cases of violence against children as the educational method in schools. What raises concern is the lack of proper reaction from directors and personnel of centres, where children stayed. The directors of the centres haven't always undertaken cooperation with institutions established to protect children against violence (law enforcement agencies, courts). Disciplinary commission doesn't expressly disapprove of teachers' and tutors' behaviours, who violate bodily integrity, which fails to foster promotion of educational methods eliminating corporal punishments and developing the authority of teachers.