



## **Committee on Economic, Social and Cultural Rights**

Report on the measures taken by the Republic of Poland to implement the provisions of the International Covenant on Economic, Social and Cultural Rights for the years 2007-2013

**Information provided by the Commissioner for Human Rights of the Republic of Poland in accordance with the International Covenant on Economic, Social and Cultural rights in connection with the consideration of the sixth periodic report of Poland (E/C.12/POL/6)**

**12 SEPTEMBER 2016**

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*Content of the Information provided by the Commissioner for Human Rights of the Republic of Poland corresponds with the List of issues in relation to the sixth periodic report of Poland.*

## **INTRODUCTION**

Commissioner for Human Rights is the constitutional authority for legal control and protection. In his activities, the Commissioner is integral and independent from other state authorities.

The Commissioner acts pursuant to the Constitution of the Republic of Poland and the Commissioner for Human Rights Act of 15 July 1987. The Commissioner is appointed by the lower chamber of the Parliament (Sejm) and approved by the higher chamber of the Parliament (Senate) for a 5-year term of office.

The Commissioner for Human Rights safeguards human and civic freedoms and rights specified in the Constitution and other legal acts. In order to fulfil this tasks the Commissioner investigates whether actions undertaken or abandoned by the entities, organisations or institutions obliged to observe and implement human and citizen rights and freedoms have not led to infringement of the law or the principles of social coexistence and justice, and undertakes appropriate measures.

## I. GENERAL INFORMATION

### Financial and human resources of the Commissioner for Human Rights (2)<sup>1</sup>

1. **[budget for 2016]** In 2016 the Commissioner for Human Rights was not granted the budget he applied for, moreover, the budget was decreased. The budget of the Commissioner for Human Rights in 2015 was 38,602,000 PLN. The Commissioner applied for an increase in 2016 by 18% i.e. to 45,566,000 PLN. Parliament however reduced the budget by 9,947,000 PLN i.e. to 35,619,000 PLN which equals the level of the Commissioner's budget for 2011. One of the reasons for decreasing the budget as explained by the Members of Parliament was engagement of the Commissioner in the discriminatory issues.
2. **[financial resources]** Financial resources provided by the Parliament are not adequate to effectively fulfill all statutory obligations of the Commissioner, especially in respect to the National Preventive Mechanism. According to the Act on the Commissioner for Human Rights, the Commissioner shall perform the function of the inspector for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (National Preventive Mechanism) within the meaning of the Optional Protocol to the Convention against torture and other cruel, inhuman or degrading treatment or punishment adopted by the United Nations General Assembly in New York on 18 December 2002. The tasks of the National Preventive Mechanism include visiting of prisons and pre-trial detention centers, juvenile detention centers and juvenile shelters, social care centers, psychiatric facilities etc. Those tasks are currently carried out by 11 professional personnel members. Due to budget constraints, the department's staffing prevents the Commissioner from having his preventive obligations fully implemented. The reduction in the budget of the Commissioner for Human Rights for 2016 also adversely influenced the length of the examining period for applications submitted by applicants, including cassations in criminal cases.
3. **[human resources]** The Office of the Commissioner for Human Rights employs 292 people.

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<sup>1</sup> Numbers in brackets indicate the paragraph from the List of issues in relation to the sixth periodic report on Poland dated 26 April 2016.

## II. ISSUES RELATING TO THE GENERAL PROVISIONS OF THE COVENANT (Arts. 1-5)

### Article 2 (2) - Non-discrimination (5, 6)

4. **[Equal Treatment Act-grounds of discrimination]** According to Article 32 of the Constitution of the Republic of Poland, all persons are equal before the law and have the right to equal treatment by public authorities. No one can be discriminated against in political, social or economic life for any reason. Despite the existence of the constitutional standard described above, as well as adoption of the Act of 3 December 2010 on the implementation of some EU regulations regarding equal treatment<sup>2</sup>, according to the Commissioner, the guarantees of equal and effective protection against discrimination have not been sufficiently ensured in Polish law. Equal Treatment Act stipulates closed catalogue of grounds of prohibited discrimination, that is gender, race, ethnic origin, nationality, religion, denomination, belief, disability, age and sexual orientation. Further, the Equal Treatment Act also establishes limited protection from discrimination in different areas, taking into account only specific grounds. Unequal treatment in education and health care is only explicitly prohibited due to race, ethnic origin or nationality. Unequal treatment in access to and conditions of use of social security, services, including residential services, objects and procurement of rights and energy, provided they are offered publicly, is prohibited only due to gender and race, ethnic origin or nationality. Victims of discrimination in the areas mentioned above, due to ground which is not covered by the Equal Treatment Act are not equally protected by the law. On the other hand Labour Code stipulates open catalogue of grounds of prohibited discrimination in employment, but it does not apply for employees who work under civil-law contracts.
5. **[Equal Treatment Act-prescribed measures]** The Commissioner also critically assesses the effectiveness of measures intended for protection and counteracting discrimination. According to the Equal Treatment Act, a person against whom the principle of equal treatment has been violated, is entitled to pecuniary damages. Such remedy should also comprise compensation for harm.
6. **[Equal Treatment Act-challenge to the Constitutional Tribunal]** The Equal Treatment Act was not amended although the Commissioner sent numerous recommendations on that issue. For the reasons stated above, on 31 March 2016 the Commissioner for Human Rights filed a motion with respect to the Equal Treatment Act with the Constitutional Tribunal, pointing out that the Equal Treatment Act does

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<sup>2</sup> Act of December 3, 2010 on the implementation of some EU regulations regarding equal treatment (Journal of Laws 2010 No. 254, item 1700 with amendments); further: Equal Treatment Act.

not cover certain social groups. This unjustifiably differentiates the procedural situation of the discriminated and, as the Commissioner believes, is contrary to the constitutional principle of equality, the right to a fair trial and the provisions of the Convention on the Rights of Persons with Disabilities.<sup>3</sup>

7. **[National Action Programme for Equal Treatment for 2013-2016]** The Governmental National Action Programme for Equal Treatment for 2013-2016 should be considered as a significant instrument shaping the government policy with regard to counteracting discrimination. Currently, the results of the past actions should be summed up and a programme for the future years should be prepared. Government Plenipotentiary for Equal Treatment and Civic Society, appointed in January 2016, is responsible for a broader range of issues – additionally, he implements actions for the development of civil society. There is a concern that the issues relating to the principle of non-discrimination are not treated as a priority.
8. **[Programme for the integration of the Roma Community in Poland for the period 2014-2020]** In 2015, the staff of the Office of the Commissioner for Human Rights visited the Roma settlements in Małopolska Voivodship (southern Poland). Living conditions in these settlements are still very bad. The works of the municipal authorities, partly financed using funds from the “Programme for the integration of the Roma Community in Poland for the period 2014-2020”, are mostly ad-hoc basis. According to the local and regional authorities, the correct – and often the only one proposed – solution to the housing problems of the Roma community is to purchase apartments or houses outside the settlements, often in other municipalities. This situation, due to the absence of the Roma’s consent to change residence, leads to a deadlock. The case of social and existential conditions of the Roma community remains a work in progress. The solution to the problem of improving housing conditions, in which a part of the Roma community live, may be the purchase – using funds from the Roma Programme – of new houses or apartments. Commissioner calls for the creation of a comprehensive program, independent of the currently implemented one, the aim of which would only include planning and financing the process of improving the living conditions of Roma settlements throughout Poland.<sup>4</sup> One should also introduce solutions that would encourage local and regional authorities to engage in activities to improve the living conditions of the local Roma communities.

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<sup>3</sup> Motion of the Commissioner to the Constitutional Tribunal as of 31 March 2016, available in Polish at: [https://www.rpo.gov.pl/sites/default/files/Wniosek\\_do\\_Trybunalu\\_Konstytucyjnego\\_ws\\_zakresu\\_stosowania\\_ustawy\\_o\\_rownym\\_traktowaniu.pdf](https://www.rpo.gov.pl/sites/default/files/Wniosek_do_Trybunalu_Konstytucyjnego_ws_zakresu_stosowania_ustawy_o_rownym_traktowaniu.pdf)

<sup>4</sup> Statement of the Commissioner to the Minister of Interior Affairs and Administration as of 18 December 2015, available in Polish at: [https://www.rpo.gov.pl/sites/default/files/Do\\_MSWiA\\_ws\\_poprawy\\_warunkow\\_mieszkaniowych\\_spo%C5%82ecznosci\\_romskiej.pdf](https://www.rpo.gov.pl/sites/default/files/Do_MSWiA_ws_poprawy_warunkow_mieszkaniowych_spo%C5%82ecznosci_romskiej.pdf)

9. **[Roma community – Limanowa/Czchów example]** The Commissioner received complaints about a project carried out by Limanowa's authorities (town in Małopolska Voivodship), the aim of which was to improve the conditions in which several Roma families from this city live. This project has received funding from the Roma Programme. With this funding, the city authorities have purchased a new house for the Roma. Not in Limanowa, however, but in Czchów, which is located in another commune (the Czchów commune) and another district (Brzeski District). The applicants, among whom there are also the Roma, claim that during the purchase the authorities did not take into account the opinions of the Roma themselves, who do not want to leave their current place of residence and hometown. The aim of the local authorities, in the opinion of the applicants, was only the deportation of the Roma outside city limits, and the improvement of residential conditions was only a pretext. Czchów citizens as well as its authorities protested against Roma families moving in. In February the mayor of Czchów issued a ban on settling in the property bought by Limanowa's authorities, justifying its decision with the need to protect public safety. In Commissioner's view such administrative act constitutes a discrimination on the ground of ethnic origin and restriction of a freedom of movement and living in a place of one's choosing. The Commissioner engaged in the mediation between the local authorities in respect of the transfer of Roma families from Limanowa to new property purchased in Czchów. The Commissioner also joined the administrative proceedings regarding the Czchów's authorities decision.
10. **[Roma camps]** The situation of the Romanian Roma in Poland has hardly improved.<sup>5</sup> This group keeps living in extreme poverty and under conditions that are tantamount to an affront to human dignity. The employees of the Office of the Commissioner monitor the situation of the Roma camps on a regular basis. Conditions in the majority of the visited settlements are very bad. Local government units are not able, independently and on their own, to solve the problem of improving the living conditions of the Roma community settled in their area. Situation of the Roma is worsened by extreme poverty, caused by lack of regular income, low level of education and the consequent lack of professional qualifications allowing competition in the labour market. The lack of residence registration in such cases excludes the possibility to receive social assistance benefits. The Commissioner for Human Rights approached the Minister of the Interior and Administration indicating the necessity to simplify the registration procedure for EU citizens in Poland.<sup>6</sup> The Minister of the Interior and Administration confirmed in its response that in 2016

<sup>5</sup> "Romanian Roma" understood as EU citizens from Romania.

<sup>6</sup> Statements of the Commissioner to the Minister of Interior Affairs and Administration as of 3 November 2015 and 10 June 2016, available in Polish at:

[https://www.rpo.gov.pl/sites/default/files/Do\\_MS\\_W\\_ws\\_sytuacji\\_prawnej\\_migrantow\\_pochodzacych\\_z\\_panstw\\_UE.pdf](https://www.rpo.gov.pl/sites/default/files/Do_MS_W_ws_sytuacji_prawnej_migrantow_pochodzacych_z_panstw_UE.pdf) and

[https://www.rpo.gov.pl/sites/default/files/Wystapienie%20do%20Ministra%20Spraw%20Wewnetrznych%20i%20Adm\\_inistracji%20ws%20sytuacji%20imigrantow%20romskich%20w%20Polsce%2010.06.2016.pdf](https://www.rpo.gov.pl/sites/default/files/Wystapienie%20do%20Ministra%20Spraw%20Wewnetrznych%20i%20Adm_inistracji%20ws%20sytuacji%20imigrantow%20romskich%20w%20Polsce%2010.06.2016.pdf)

changes would be introduced in order to facilitate the procedure of obtaining the right to be resident in the territory of Poland by EU citizens.

- 11. [eviction of Roma camp in Wrocław]** In June 2015 the Roma camp in Wrocław was liquidated, allegedly when some of its inhabitants were absent and without securing their property. Commissioner for Human Rights is investigating both the justification for the liquidation of the settlement as well as its methods. Issue of legality of the camp liquidation is under the scrutiny of the District Court in Wrocław. Situation of another Roma camp in Wrocław currently threatened with eviction is under the scrutiny of the Commissioner for Human Rights.<sup>7</sup>

### **Article 3 – Equal rights of man and women (7)**

- 12. [general information]** The Commissioner recognises the need for actions implementing the principles of equal status of women and men, as well as non-discrimination based on gender. The Commissioner also sees the need for modifying legal regulations and intensifying informational campaigns relating to the issue of balance between professional and family life, so the instruments would be addressed to both women and men on equal terms.<sup>8</sup>
- 13. [gender gap in politics]** The Commissioner acknowledges a relatively low level of women exercising their right to stand for election, as well as insufficient participation of women in the composition of public authorities. Striving for changes in this area, comprehensive initiatives in the field of education and promotion, in particular addressed to potential candidates, but also political parties and electoral committees, should be prepared and implemented in order to highlight the issues of gender equality in various dimensions of their activities.<sup>9</sup> The Commissioner pointed out that the application of appropriate legal mechanisms can significantly contribute to the real guarantee of the gender equality principle and the increase in the involvement of women in the electoral process. The quota system<sup>10</sup> currently applicable in the proportional elections is characterized by a limited efficacy, calling for supplementing it with regulations envisaging the alternating placement of female and

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<sup>7</sup> Letter of the Commissioner to the President of Poznań of 8 July 2016, not published.

<sup>8</sup> Report of the Commissioner as of 2015 available in Polish at:

[https://www.rpo.gov.pl/sites/default/files/BIULETYN\\_RZECZNIKA\\_PRAW\\_OBYWATELSKICH\\_2015\\_nr\\_7.pdf](https://www.rpo.gov.pl/sites/default/files/BIULETYN_RZECZNIKA_PRAW_OBYWATELSKICH_2015_nr_7.pdf)

<sup>9</sup> Education and promotion activities proposed by the Commissioner aimed at preventing the phenomenon of underrepresentation of women in the public sphere should be taken in particular as a part of implementation of the main objective no. 6 entitled Increasing participation of women in decision-making, and the specific objective no. 6.1 entitled Increasing the number of women in Parliament and local authorities, in the area of Equal treatment in access to goods and services of the National Action Plan for Equal Treatment for 2013-2016.

<sup>10</sup> Pursuant to the Electoral Code, each electoral list submitted by the electoral committee in elections to the Sejm, the European Parliament, poviats councils, voivodeship assemblies cannot contain less than 35% representatives of each sex.



male candidates on electoral lists (the so-called zipping). Such approach was not shared by the Government Plenipotentiary for Equal Treatment and Civic Society.<sup>11</sup>

14. **[gender gap in business]** There is also low representation of women in decision-making bodies in business. The Commissioner recommended introducing the legal provisions on the participation of women in the management and supervisory boards of public companies.<sup>12</sup> In the first place such measures should be applied to State Treasury companies. In response, the Minister of Treasury shared the Commissioner's view and informed about "Good Practices in ensuring balanced participation of women and men in the companies owned by the State Treasury", published on the Ministry's website. The Ministry aims at ensuring at least 30% participation of women in the supervisory boards, which members are appointed by the Minister of Treasury.

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<sup>11</sup> Statement of the Commissioner to the Government Plenipotentiary for Equal Treatment and Civic Society of 21 June 2016, available in Polish at:

<https://www.rpo.gov.pl/sites/default/files/WG.%20R%C3%B3wno%C5%9B%C4%87%20p%C5%82ci%20w%20prawie%20wyborczym.%2023.05.2016..pdf>

<sup>12</sup> Statement of the Commissioner to the Minister of Treasury as of 21 March 2013, available in Polish at: <http://www.sprawy-generalne.brpo.gov.pl/pdf/2012/09/712795/1710327.pdf>

### III. ISSUES RELATING TO THE SPECIFIC PROVISIONS OF THE CONVENANT (Arts. 6-15)

#### Article 6 – Right to work (9)

**15. [civil law contracts]** Commissioner for Human Rights still observes a large scale of employment under civil law contracts on the labour market in Poland. The phenomenon is a reaction to fluctuations in the demand for labour and higher employment costs. It takes the form of carrying out a paid activity by concluding contracts for services or contracts for a specific work, as well as by self-employment, which means in the majority of cases that the employer commissions external contractors, being physical persons running a business activity, to perform selected tasks. Such entrepreneurs are often former employees employed under outsourcing contracts due to the necessity to reduce labour costs. Commissioner for Human Rights applied to the Prime Minister with regard to the need to implement mechanisms to protect employment under civil law contracts and extend the competences of the Labour Inspectorate in terms of supervision and control over such type of employment.<sup>13</sup> As part of the strategic litigation programme, the Commissioner joined proceedings in a case of a security guard who initially provided services based on the employment agreement which was then changed due to economic reasons on employer's side to a civil law contract. The work performed and its conditions did not change. The court of first instance allowed the claim and determined that the parties were bound by an employment contract, regardless of its name.<sup>14</sup>

**16. [public procurement law]** The amended Public Procurement Law which came into force in July 2016 significantly strengthened the use of social clauses, which guarantee the respect for labour law and collective agreements in the workplace. New law also imposed on the procurer a general obligation to demand that contractor employs its workers on the basis of an employment agreement instead of civil law contracts. Additionally, the procurer may include in the procurement description additional requirements referring to environmental or social aspects, like employment of disabled, minors or unemployed.

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<sup>13</sup> Statement of the Commissioner to the Prime Minister as of 12 October 2015, available in Polish at: [https://www.rpo.gov.pl/sites/default/files/Do\\_PRM\\_ws\\_kontroli\\_panstwowej\\_nad\\_praca\\_wykonywana\\_na\\_podstawie\\_umow\\_cywilnoprawnych.pdf](https://www.rpo.gov.pl/sites/default/files/Do_PRM_ws_kontroli_panstwowej_nad_praca_wykonywana_na_podstawie_umow_cywilnoprawnych.pdf)

<sup>14</sup> Description of the case available in Polish at: <https://www.rpo.gov.pl/pl/content/zatrudnienie-pracownikow-ochrony-gdzie-konczy-sie-umowa-o-prace-zaczyna-umowa-cywilnoprawna>

## Article 7 – Right to just and favourable conditions of work (11, 12)

**17. [gender wage gap]** In Polish law, the guarantee of the equal right for women and men to equal pay for work of equal value is enshrined in the Constitution and the Labour Code. Therefore, data published by the Central Statistical Office and the Supreme Audit Office, showing that a real inequality on grounds of gender in terms of remuneration for work is persisting in Poland, is disturbing. The report of the Central Statistical Office on the remuneration structure indicates that the average pay of men in 2014 was 20,6% higher than the average pay of women. Men earn more than women in most of the public administration units, municipal companies and companies of the State Treasury examined by the Supreme Audit Office. Due to the gender pay gap women may receive lower pensions. Studies by Eurostat show that in Poland the differences in pension benefits reached nearly 24% in favour of men. Salary confidentiality and the lack of legislation on the transparency of salaries make it difficult to determine the inequalities in pay for the same work or work of equal value between men and women, who may not be aware of potential discrimination. Therefore, in Commissioner's view an obligation of remuneration transparency, in the first place in relation to entrepreneurs implementing public procurement, should be considered. Furthermore, actions aimed at development of the methodology for assessing the wage gap in enterprises and analysis of international law in relation to monitoring of the wage gap should be continued.<sup>15</sup>

**18. [long working hours of doctors]** Commissioner for Human Rights recognizes a problem of long working hours of doctors providing services based on civil contracts instead of employment agreements. The problem emerged again recently when media reported a death of an anesthetist after 72 hours of continued work. According to Polish legal system, if the doctor provides work based on employment contract he or she is subject to the regulations on maximum working hours per day and obligatory rest periods. This is not the case in respect to the doctors providing services as entrepreneurs or upon civil law contracts. Although the latter offers better earning opportunities, it also creates a danger of overrating one's mental and physical condition. In the view of Commissioner for Human Rights, all doctors regardless of the legal basis for their services should be bound to daily work and rest limits.<sup>16</sup>

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<sup>15</sup> Statement of the Commissioner to the Minister of Family, Labour and Social Policy as of 19 March 2016, available in Polish at:

[https://www.rpo.gov.pl/sites/default/files/Do\\_MRPiPS\\_ws\\_roznic\\_w\\_wynagrodzeniach\\_kobiet\\_i\\_mezczyzn.pdf](https://www.rpo.gov.pl/sites/default/files/Do_MRPiPS_ws_roznic_w_wynagrodzeniach_kobiet_i_mezczyzn.pdf)

<sup>16</sup> Statement of the Commissioner to the Minister of Health as of 1 September 2016, available in Polish at: <https://www.rpo.gov.pl/sites/default/files/wg%20MZ%20smierc%20lekarza.pdf>

## Article 8 – Trade union rights (14)

19. **[union rights for persons employed under civil law contracts]** The legislation has not been yet amended to give effect to the judgement of 2 June 2015 of the Constitutional Tribunal (case No. K 1/13) recognizing the right of persons employed under civil law contracts to join or to establish union rights. The Commissioner for Human Rights referred this issue to the Minister of Family, Labour and Social Policy, indicating that the urgent legislative change is required.<sup>17</sup>

## Article 9 – Right to social security (15, 16)

20. **[open pension funds]** On November 3, 2015, the Constitutional Tribunal (case No. K 1/14) recognized the regulations governing the principles of payment of benefits from the open pension funds (OFE), challenged by the Commissioner, as consistent with the Constitution. The Constitutional Tribunal stated that the funds from insurance premiums, also collected in open contributory pension funds, constitute – in constitutional terms – public funds, rather than private savings of the insured. In the opinion of the Commissioner for Human Rights, the implemented changes violated the principle of citizens' trust in the state and its law, as well as constituted a disproportionate limitation of the principle of the freedom of choice. The Commissioner also underlined that the open pension funds constituted a indispensable element of stable pension policy since the systemic change in 1999.<sup>18</sup> Following the Tribunal's judgment the question arises how the funds will be treated in future and whether the judgement opens door to further reform.

21. **[access of the homeless to social assistance and health care]** The Commissioner recognizes that the homeless encounter difficulties in obtaining social assistance, due to it being impossible for them to indicate the place to carry out a community interview and the lack of assistance on the part of the commune, where the homeless person last resided. The complications arise when homeless person without required documents should be admitted to the social care centers. There is also an ongoing problem with access of homeless to the health care, which was recently communicated by the Commissioner for Human Rights to the Minister of Health.<sup>19</sup>

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<sup>17</sup> Statement of the Commissioner to the Minister of Family, Labour and Social Policy as of 20 January 2016, available in Polish at:

[https://www.rpo.gov.pl/sites/default/files/Do\\_MRPiPS\\_ws\\_mozliwosci\\_zrzeszania\\_sie\\_w\\_zwiazkach\\_zawodowych\\_0.pdf](https://www.rpo.gov.pl/sites/default/files/Do_MRPiPS_ws_mozliwosci_zrzeszania_sie_w_zwiazkach_zawodowych_0.pdf)

<sup>18</sup> Motion of the Commissioner to the Constitutional Tribunal as of 29 August 2014, available in Polish at: [https://www.rpo.gov.pl/sites/default/files/Wniosek\\_do\\_TK\\_ws\\_OFE\\_0.pdf](https://www.rpo.gov.pl/sites/default/files/Wniosek_do_TK_ws_OFE_0.pdf)

<sup>19</sup> Statement of the Commissioner to the Minister of Health as of 15 March 2016, available in Polish at: [https://www.rpo.gov.pl/sites/default/files/Do\\_MZ\\_ws\\_zapewnienia\\_opieki\\_zdrowotnej\\_osobom\\_bezdomnym\\_oraz\\_innym\\_osobom\\_nieuzyskujacym\\_dochodu.pdf](https://www.rpo.gov.pl/sites/default/files/Do_MZ_ws_zapewnienia_opieki_zdrowotnej_osobom_bezdomnym_oraz_innym_osobom_nieuzyskujacym_dochodu.pdf)

The existing procedures on access to health care financed from public means are not adequate for homeless. For instance, full identification of an insured is required which can be troublesome with respect to people without ID and the address of permanent stay.

## **Article 10 – Right to protection and assistance to family**

**22. [domestic abuse]** Commissioner for Human Rights approves signing the agreement on functioning of the intervention-information phone line for people experiencing domestic abuse. However, it should be noted that this phone line is not available 24 hours a day, and a free 24-hour phone line for victims of domestic abuse and gender abuse will be launched no sooner than in 2017.<sup>20</sup> Still, a matter of concern is the small number of adjudicated orders to leave premises or restraining orders in relation to the general number of sentences for abuse under Article 207 of the Penal Code, particularly bearing in mind the high number of suspended custodial sentences.

## **Article 11 – Right to adequate standard of living (17, 18)**

**23. [eviction onto the street]** The judgement of the Constitutional Tribunal of November 4, 2010 (case No. K 19/06), accepting the motion of the Commissioner for Human Rights, ascertained unconstitutionality of the previous institution, the so-called temporary premises, enabling eviction to a homeless shelter or a night-shelter. Nonetheless, the Commissioner for Human Rights still observes a problem of eviction onto the street in case the removal from a housing takes place upon the eviction judgement without the right to a social premise. According to complaints filed to the Commissioner, eviction to a homeless shelter or a night-shelter still takes place, also with regard to pregnant women, caregivers of minors, bed-ridden etc., when the commune did not fulfil its obligation to provide a temporary premise within six months. In Commissioner's view there is an urgent need to change legislation to introduce means for enforcing a right to temporary premise from the commune.<sup>21</sup> Additionally, the problem arose with respect to people living in the apartments owned by Police (i.e. inhabited by police officers on duty or retired as well as relatives of deceased police officers). Commissioner filed a motion to the Constitutional Tribunal for adjudicating that a provision of the Act on the enforcement proceedings in administration is inconsistent with the Constitution to

<sup>20</sup> According to the schedule specified in the National Program for Counteracting Domestic Violence 2014-2020.

<sup>21</sup> Statement of the Commissioner to the Minister of Infrastructure and Construction as of 22 March 2016, available in Polish at:

[https://www.rpo.gov.pl/sites/default/files/Do\\_MiB\\_ws\\_zapewnienia\\_pomieszczen\\_tymczasowych\\_dla\\_osob\\_eksmitowanych.pdf](https://www.rpo.gov.pl/sites/default/files/Do_MiB_ws_zapewnienia_pomieszczen_tymczasowych_dla_osob_eksmitowanych.pdf)

the extent it authorizes an enforcement officer conducting the enforcement proceedings to remove the debtor and its household members with no new premises having been identified for rehousing.<sup>22</sup>

- 24. [satisfying housing needs by the communes]** Complaints filed to the Commissioner suggest that communes have very limited possibilities of implementation of the statutory obligation of satisfying housing needs of the local community, due to shortage of vacant municipal premises and lack of fund for constructing or obtaining new premises. It is particularly accurate with respect to citizens with the lowest income. Commissioner indicated that communes should be financially and organizationally supported by the state.<sup>23</sup>
- 25. [plenipotentiary for combating homelessness]** Commissioner for Human Rights applied to the Prime Minister for appointing a governmental plenipotentiary for combating homelessness. In the Commissioner's view only the systemic and interdisciplinary actions could lead to improving the situation of homeless in Poland.<sup>24</sup> The Prime Minister did not take up this initiative.
- 26. [food donation based on income level]** Commissioner for Human Rights in his statement to the Minister of Family, Labour and Social Policy of 19 July 2016 indicated a problem of inadequate access to the food banks, which are funded from the Fund for the European Aid to the Most Deprived based on the Regulation (EU) No. 223/2014 of the European Parliament and of the Council.<sup>25</sup> Food donation is provided to those who fall within the income limit set annually. According to the Commissioner, the income level is too low to provide support to all in need; it might be also advisory to consider other criterions apart from the income level to be taken into account while distributing food.

## **Article 12 – Right to physical and mental health (21, 22, 23)**

- 27. [conscience clause after the Constitutional Tribunal's ruling]** On 7 October 2015 the Constitutional Tribunal ruled that the law obliging physicians, if they invoke the so-called conscience clause, to refer patients to an alternate facility is

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<sup>22</sup> Motion of the Commissioner to the Constitutional Tribunal as of 9 October 2015, available in Polish at: <http://www.sprawy-generalne.brpo.gov.pl/pdf/2015/10/IV.7214.131.2014/543172.pdf>

<sup>23</sup> Statement of the Commissioner to the Prime Minister as of 17 March 2016, available in Polish at: [https://www.rpo.gov.pl/sites/default/files/Do\\_PRM\\_ws\\_pomocy\\_mieszkaniowej\\_dla\\_osob\\_najubozszych.pdf](https://www.rpo.gov.pl/sites/default/files/Do_PRM_ws_pomocy_mieszkaniowej_dla_osob_najubozszych.pdf)

<sup>24</sup> Statement of the Commissioner to the Prime Minister as of 17 November 2015, available in Polish at: <https://www.rpo.gov.pl/pl/content/do-prm-ws-przeciwdzialania-zjawisku-bezdomnosc>

<sup>25</sup> Statement of the Commissioner to the Minister of Family, Labour and Social Policy as of 19 July 2016, available in Polish at:

<https://www.rpo.gov.pl/sites/default/files/Wyst%C4%85pienie%20do%20Ministra%20Rodziny%2C%20Pracy%20i%20Polityki%20Spo%C5%82ecznej%20w%20sprawie%20problemu%20dost%C4%99pno%C5%9Bci%20do%20C5%BCywno%C5%9Bci%20z%20bank%C3%B3w%20C5%BCywno%C5%9Bci%2C%2019.07.2016.pdf>

unconstitutional (case No. K 12/14). Such obligation should be vested on the state and not on the individual doctors. From the date of entry into force of the Constitutional Tribunal's decision, i.e. October 16, 2015, Polish legal system lacks a clearly defined entity obliged to indicate real possibilities of obtaining a medical service from another doctor or other healthcare institution to a patient who was denied this service by a physician invoking the conscience clause. The lack of this mechanism poses a real threat to the possibility of obtaining medical treatment by patients. In his motion to the Minister of Health, the Commissioner highlighted the need for urgent action aiming to establish mechanisms that in such situations will allow patients to receive information about where they can actually obtain medical treatment.<sup>26</sup> The Minister of Health pointed out that, in spite of the Tribunal's "negative interference", the provision may still be applied – in the scope applicable after 16 October 2015 – and therefore the operative part of the judgement does not indicate that the executive or the legislature have to undertake any other actions. The Commissioner further referred this issue to the President of the National Health Fund, Chair of the Parliamentary Health Commission and the President of the National Medical Board.<sup>27</sup> In the opinion of the Commissioner, provisions of the Medical Profession Act concerning the conscience clause, in their present wording, may reduce access of patients to legal pregnancy termination procedures, due to the lack of expressly stated entity obliged to indicate to a patient, whose doctor, referring to the conscience clause, refuses to perform the specified procedure.

**28. [access to legal pregnancy termination]** There are factual problems with access to legal pregnancy termination in Poland. According to Commissioner's information, there are cases where doctors hinder the abortion by refusal to grant a referral to the medical specialist or refusal to conduct an antenatal diagnostic procedures. Another issue is situation where all doctors in a public health institution refer to the conscience clause (please see point 29 below). The Commissioner for Human Rights will take further measures in that respect.<sup>28</sup>

**29. [access to legal pregnancy termination - Podkarpackie Voivodship]** Problem related to the pregnancy termination refusal due to the conscience clause arose in Podkarpackie Voivodship in the southern Poland. According to media, there is no public hospital in the whole voivodship that performs an abortion in the

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<sup>26</sup> Statements of the Commissioner to the Minister of Health as of 12 October 2015 and of 14 December 2016, available in Polish at: <http://www.sprawny-generalne.brpo.gov.pl/pdf/2015/10/VII.812.5.2014/544636.pdf> and <http://www.sprawny-generalne.brpo.gov.pl/pdf/2015/12/VII.812.5.2014/604589.pdf>

<sup>27</sup> Statements of the Commissioner as of 22 February 2016 to the President of the National Health Fund, Chair of the Parliamentary Health Commission and the President of the National Medical Board, available in Polish at: <http://www.sprawny-generalne.brpo.gov.pl/pdf/2016/2/VII.812.5.2014/664957.pdf>, <http://www.sprawny-generalne.brpo.gov.pl/pdf/2016/2/VII.812.5.2014/664940.pdf> and <http://www.sprawny-generalne.brpo.gov.pl/pdf/2016/2/VII.812.5.2014/664947.pdf>

<sup>28</sup> Statement of the Commissioner to the Commissioner for Patients' Rights as of 11 July 2016, available in Polish at: <http://www.sprawny-generalne.brpo.gov.pl/pdf/2016/7/VII.7010.1.2016/787131.pdf>

circumstances allowed by law (eg. when the woman's life or health is endangered by the pregnancy). The Commissioner referred this issue to the Commissioner for Patients' Rights.

30. **[access of minor patients to gynecological treatment]** The Commissioner for Human Rights indicated the need for changes in the legal framework of the access of minor patients to gynecological treatment. According to current legal provisions, minor under 18 years old requires a parental consent for a visit and treatment. This causes additional stress for a teenager or may even impede medical consultation if the parents are absent or unaware of importance or hostile to gynecological treatment. In connection with the incoming signals, the Commissioner asked for the opinion the Commissioner for Patients' Rights, the Commissioner for Children Rights and the National Consultant in Obstetrics and Gynecology. The Commissioner also applied to the Minister of Health to change law in this respect by making the gynecological treatment of minors above 15 years old dependent only on her own consent. As pointed out such solution would be beneficial for the prevention of STD between teenagers and cancer prevention.<sup>29</sup> Minister of Health undertook to analyze the matter.
31. **[access to epidural during labor]** Commissioner for Human Rights analyzes a problem of uneven access to epidural provided during labor. Press reports indicate that 75 percent of all anesthesia during childbirth took place in the largest Polish cities, including Warsaw, Krakow and Katowice. According to data submitted by the National Health Fund, in smaller voivodships the epidural was used only in 1% of labors, while in the bigger ones – up to 24%. Such disproportionality is related mainly to absence of anesthetists. As part of the strategic litigation programme, the Commissioner joined proceedings in a case of where the epidural was conditional upon signing during the labor the donation agreement for the hospital.
32. **[consent for medical procedures during labor]** Commissioner for Human Rights analyzes a problem of irregularities in obtaining consents for medical procedures that might occur during labor (eg. episiotomy). The investigation regards cases when the consent is granted on a blank form, without listing the procedures and explaining their consequences as well as when woman is forced to grant consent during labor, when the conscious statement of will is excluded due to pain.
33. **[2011-2016 National Drug Addiction Programme]** Commissioner for Human Rights monitors the National Drug Addiction Programme with respect to people deprived of liberty as part of the National Preventive Mechanism. On one hand, the Commissioner acknowledges improvement of the professional preparation of

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<sup>29</sup> Statement of the Commissioner to the Minister of Health as of 29 July 2016, available in Polish at: <https://www.rpo.gov.pl/pl/content/wystapienie-do-ministra-zdrowia-w-sprawie-zasad-dostepu-mlodziezy-do-swiadczen-ginekologicznych-i-urologicznych>



therapeutic personnel in prisons as well as further decrease in a number of prisoners giving up the full treatment. On the other hand, however, the number of addicted prisoners undergoing a therapy did not increase and growing waiting lists for therapy are still a serious problem.

**34. [aging of the Polish society]** In the opinion of the Commissioner for Human Rights, activities should be undertaken, aiming at preparation of health care system for the aging process of the Polish society. There is a need to develop a health policy strategy related to this issue.<sup>30</sup>

**35. [psychiatric hospitals]** The Commissioner recognises the urgent need to introduce legislative changes concerning implementation of "the National Programme for Mental Health Protection", due to insufficient financial support of health care, which is confirmed by inspections and determinations of the Supreme Chamber of Control, as well as to increase the effectiveness and legitimacy of judicial supervision over admittance and stay in psychiatric hospitals.<sup>31</sup>

#### **Articles 13 and 14 – Right to education (25)**

**36. [education of Roma children]** It is still a great challenge to ensure to Roma children proper and discrimination-free access to education, as well as to provide them an opportunity for equal chances in learning. The postulates of the Commissioner relate to ensuring access to pre-school and extraschool education with an extended programme of Polish language instruction for children. At the same time, all attempts to place Roma children in special schools only because of their problems with adaptation or insufficient knowledge of Polish should be thwarted, as should the plans to create forms or departments only for the Roma at schools. The fact that the problem of the Roma-only forms in schools remains valid is demonstrated by the case of one of primary schools in Poznań where such a solution was adopted.<sup>32</sup>

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<sup>30</sup> Statement of the Commissioner to the Minister of Health as of 24 March 2016, available in Polish at: [https://www.rpo.gov.pl/sites/default/files/Wystapienie\\_do\\_Ministra\\_Zdrowia\\_ws\\_zapewnienia\\_opieki\\_zdrowotnej\\_ora\\_z\\_pomocy\\_osobom\\_starszym.pdf](https://www.rpo.gov.pl/sites/default/files/Wystapienie_do_Ministra_Zdrowia_ws_zapewnienia_opieki_zdrowotnej_ora_z_pomocy_osobom_starszym.pdf)

<sup>31</sup> As an example, a person placed in hospital under the applied protective mean, stayed there 11 years until, as a result of effective cassation of the Commissioner for Human Rights, the Supreme Court recognized that in the procedure directing them to hospital disqualifying shortcomings occurred.

<sup>32</sup> Letter of the Commissioner to the Director of Educational Department of the Poznań City Council of 6 February 2014, not published.

## Article 15 – Cultural rights (27, 28)

37. **[awareness of the cultural heritage of minorities]** Although there are legal provisions which should secure the promotion of cultural identity and heritage of national and ethnic minorities, like the Act on Radio and Television, the Commissioner acknowledges unsatisfactory number of public actions to popularize knowledge about minorities, their history and cultural heritage. As a consequence, in relation to the migrants a process of the so-called ghettoization takes place, especially in the eastern Poland where minorities are more common.
38. **[access to free Internet for visually impaired]** Commissioner for Human Rights indicated that introducing by one of the free Internet providers a requirement to hourly enter the CAPTCHA code caused serious impediment in Internet access to visually impaired users as the codes were not very readable. The letter in this respect was directed to the President of the Office of Electronic Communications.<sup>33</sup>



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<sup>33</sup> Statement of the Commissioner to the President of the Office of Electronic Communications as of 22 July 2014, not published.