**COMMISSIONER FOR HUMAN RIGHTS**

Warsaw, $DATA

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Written input by NHRI (Polish Ombudsman – Commissioner for Human Rights) to the CRC to the Combined fifth and sixth periodic reports submitted by Poland under article 44 of the Convention, due in 2020

The Commissioner for Human Rights (Commissioner) is a constitutional body appointed to protect and supervise the observance of human and civil rights. The Commissioner’s role is performed independently of other public authorities. The powers of the Commissioner are set out in the Constitution of the Republic of Poland as well as in the Act of 15 July 1987 on the Commissioner for Human Rights. The Commissioner is appointed by Sejm (the lower chamber of the Parliament) with the approval of Senate (the higher chamber of the Parliament) for a 5-year term of office.

The Commissioner plays the roles of National Human Rights Institution (NHRI/Ombudsman), National Preventive Mechanism (visiting body for the prevention of torture and other cruel, inhuman or degrading treatment or punishment), independent equality body (referred to in the EU anti-discrimination directives) and independent body monitoring the implementation of the Convention on the rights of persons with disabilities (CRPD) according to Article 33 (2) thereof.

In the fulfilment of his duties, the Commissioner takes into account the human rights protection standards set out in international legal instruments including the Convention on the Rights of the Child.

The Commissioner is a National Human Rights Institution with an "A status".

ARTICLE 2: NON-DISCRIMINATION

The low social awareness of **discrimination** and measures of legal protection against it has been confirmed by the research conducted by the Commissioner. There is no comprehensive anti-discrimination act, and the material and personal scope of protection against discrimination under the individual statutory acts varies. As a result, the available anti-discriminatory mechanism is rarely applied in practice. Many cases of de facto discrimination are covered neither by the Act on the implementation of certain European Union regulations on equal treatment, nor by the Labour Code, due to limited number of protected characteristics and protected fields, which means that they lack adequate legal protection. The situation is worsened by the fact the competence of the Commissioner as an independent equality body is limited to vertical cases.

No effective measures have been taken up to raise social awareness of discrimination and adopted measures to combat it. Moreover, the recommendation to amend the Act on equal treatment so that it covers discrimination in all areas, based on all grounds including gender, sexual orientation, disability, religion or age, in the fields of education, health care, social protection, housing, and private and family life, and provides for the definition of multiple forms of discrimination, has not been implemented. The government do not inform that such actions are planned.

The Penal Code recognizes as **hate crimes**: public promotion of a fascist or other totalitarian system, public incitement to hatred on national, ethnic, racial or religious grounds or lack of religious denomination (crime under Article 256(1) of the Penal Code), publicly insulting an individual or a group of people on the grounds of their nationality, ethnicity, race, religion of lack of religious denomination (Article 257), as well as using violence or unlawful threats against a group of people or a particular person due to his/her nationality, ethnicity, race, political persuasion, religion or lack of religious denomination (Article 119). In the opinion of the Commissioner, it is necessary to take a legislative initiative to amend Articles 119(1), 256(1) and 257 of the Penal Code in such a way that any offense motivated by prejudice other than relating to race, national or ethnic origin, religion or lack of religious belief is prosecuted ex officio and punished as a form of criminal behaviour. The obligation to disclose the perpetrator's motives and to apply a more severe punishment should also be extended to crimes motivated by hatred, committed on such discriminatory grounds as disability, age, sexual orientation or gender identity.

The Commissioner maintains that key proposed legislative changes should include a new Penal Code provision to punish membership in organizations promoting totalitarian regimes or inciting racial hatred, the existence of which is prohibited under Article 13 of the Polish Constitution.

The Commissioner also sees the need to create effective tools to reduce **hate speech on the Internet** – especially statements that promote racist ideologies, fascism or other totalitarian ideologies and incite hatred or offend individuals or groups of people based on nationality, ethnicity, religion or non-religious status. The Commissioner presented the Prime Minister 20 recommendations for the effective prevention of hate crime. The Commissioner believes it is advisable to develop codes of good practice by Internet service providers and NGOs, or to set up independent contact points similar to the contact point for Facebook, established in November 2018 under an agreement with the Ministry of Digitization. The new contact points, however, should have expanded authority to enforce the obligations of Internet service providers to counteract hate speech.

In February 2021, the European Commission, acting pursuant to Article 258 of the TFEU, issued a decision finding that Poland had failed to comply with EU law by incorrectly transposing Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. In the Commission’s opinion, the provisions concerning incitement to hatred by instigators of racist and xenophobic violence have not been correctly transposed into Polish criminal law, which has improperly narrowed the scope in which incitement to hatred is sanctioned; furthermore, Poland has incorrectly transposed the provisions on the criminalization of specific forms of incitement to hatred, ignoring the gross trivialisation of international crimes and the Holocaust.

Systemic threats to children’s rights concern **children born abroad in same-sex (LGBTQIA+) couples**, whose foreign birth certificates list same-sex parents. Since Polish authorities refuse, on the basis of the public order clause, to transcribe such children’s birth certificates to the Polish legal system, the children and their parents face many legal and practical obstacles to exercise their rights as Polish citizens.

The refusal of the birth certificate’s transcription into the Polish civil registry records leads to serious administrative and practical complications. Children born abroad in same-sex couples, although undoubtedly Polish citizens, face refusals to issue Polish identity cards, passports, and entry into public registers, particularly the PESEL system (a system that assigns an individual identification number to every citizen and is of high practical importance). Without the identity card and the PESEL number, the children’s right to public and private health care as well as other social services is endangered. The lack of a Polish identity card may also cause problems with providing legal justification of such person’s stay in Poland. The lack of transcription of the birth certificate causes administrative obstacles as well as impediments to legal recognition of the non-biological parent, which further interferes with the child’s and his/her non-biological parent’s private and family lives. The failure to enter the non-biological mother in the minor person’s identity document leads to the questioning of the parental relationship of the non-biological parent in many situations such as gaining access to medical assistance, including information on the minor's health condition.

On 2 December 2019 the Supreme Administrative Court composed of 7 judges adopted a resolution (ref. no II OPS 1/19) in which the Court confirmed that the transcription of a foreign birth certificate in which two women are listed as parents is not possible under the public policy clause. However, the Court emphasized that the refusal may in no case lead to a situation, in which a Polish citizen is not able to obtain Polish identity documents (an identity card and a passport) and a PESEL number. It has been emphasized that due to the need to protect the rights of the child, administrative authorities should apply the law so as to issue Polish documents and assign a PESEL number to a citizen based on the foreign birth certificate.

However, the resolution of the Supreme Administrative Court has not eliminated the problems faced by minor Polish citizens in similar situations, nor has it abolished the discriminatory treatment of those citizens and their parents. While the possibility of transcribing foreign birth certificates in which same-sex parents are listed has been de facto disabled, the possibility for minor citizens to obtain identity documents and PESEL numbers on the basis of their foreign records also remains significantly limited. Administrative bodies have numerous doubts as to how to interpret and apply the provisions of law, and despite several general statements made by the Commissioner to the Minister of the Interior and Administration, the Minister of Foreign Affairs and the Minister of Digitization, the authorities did not undertake any satisfactory steps to solve this problem.

The recent legislative proposal by the Ministry of the Interior and Administration for a new passport law does not improve the situation of this group of children. Although the proposed statute eliminates the requirement to submit a transcribed birth certificate together with the application for a permanent passport, the proposal requires a PESEL number in order to file the application. As indicated above, a PESEL number is, in many cases, impossible to be obtained, if the foreign birth certificate indicates same-sex people as parents. As a consequence, such children cannot successfully apply for a permanent passport.

By virtue of the decision of December 9, 2020 (national reference number III SA/Kr 1217/19), the Provincial Administrative Court in Cracow referred to the Court of Justice, pursuant to Article 267 of TFEU (C-2/21) a question for a preliminary ruling on whether the European Union law, ensuring EU citizens’ right to move and reside freely within the territory of the Member States, precludes a refusal by a Member State’s authorities to transcribe its minor citizen’s birth certificate issued by another Member State and required to obtain an identity document of the state whose nationality the citizen holds, if such a refusal is made on the grounds that the national law of the latter state does not provide for same-sex parenthood while two women are indicated as parents in the birth certificate concerned.

The case is now suspended until the final decision in the similar Bulgarian case C-490/20 has been taken.

According to the available data, in the years 2015-2016 70% of gay, lesbian, bisexual and transgender youth had **suicidal thoughts**. In light of modern scientific – medical, psychological and sexological – knowledge, non-heterosexual orientation or transgender identity is not a disorder or a disease, and does not require any kind of treatment. Conversion therapies i.e. practices aiming to change or supress one’s sexual orientation or gender identity are deemed to be ineffective, harmful and unethical by the recognized health authorities and institutions. Despite that fact, so-called “conversion therapies” are not prohibited in Poland and are accessible to LGBTQIA+ people of all ages, including teenagers.

Conversion therapies in Poland are conducted by facilities with a religious profile, private practitioners as well as within the public health service. The problem of conversion therapies in Poland was addressed, inter alia, by the UN Committee on the Rights of Persons with Disabilities. In the Concluding observations on the initial report of Poland, issued in 2018, the Committee expressed its concern at “reports of so-called “conversion therapy” being conducted by public and private health entities on lesbian, gay, bisexual and transgender plus persons without their consent, and based upon the presumed psychosocial impairment of the person”.

There is currently no effective mechanism of control over psychological care professionals (and religious facilities) offering such “therapies”. The reason is the lack of regulation of the professions of psychologist and therapist, which regulation lies in the competence of Minister of Labour. The Commissioner addressed the Polish Minister of Health and the Polish Prime Minister in order to tackle the problem by implementing the prohibition of conversion therapies of LGBTQIA+ people to Polish law. The Commissioner drew attention to the harmful effect of conversion therapies on the LGBTQIA+ persons’ health and pointed out that providing such therapies, especially without any professional control, may lead to human rights infringements. In response to the Commissioner’s address, the Minster of Health stated that he did not see the need to implement the prohibition into the public health regulations. The Polish Prime Minister has not replied to the Commissioner’s address yet, despite the re-inquiry.

Children who are born with atypical sex characteristics are often subject to irreversible sex assignment, involuntary sterilization, involuntary genital normalizing surgery, performed without their informed consent, or that of their parents, “in an attempt to fix their sex”, leaving them with permanent, irreversible infertility and causing severe mental suffering. The Commissioner received a report from the non-governmental organisation according to which in many cases the surgeries and medical treatments carried out on intersex children are not medically necessary and lead to serious complications in adulthood.

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment called all UN States to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, in context of intersex persons. He also called upon the states to outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups, including intersex persons.

The Commissioner addressed the Minister of Health in a complex inquiry regarding LGBTQIA+ rights, including rights of intersex people. In his statement, the Commissioner called for regulations by which any medical process leading to the change of sex characteristics would be postponed until the ability to give an informed consent by the intersex person, unless it poses a direct threat to the person’s health. The Minister of Health responded that further analysis in this regard needs yet to be conducted.

The Commissioner also receives reports on increased vulnerability of intersex children to discrimination. The Commissioner supports the postulate to include sex characteristics as a protected ground of discrimination in the law and to include the issue of intersexuality into the anti-discrimination educational activities.

The Commissioner has been indicating for a long time that there is a need to develop a comprehensive **national policy on violence**, that would cover different forms of violence both in private and public spheres, with special attention paid to vulnerable groups including children. With regard to the Act on counteracting **domestic violence**, the Commissioner points to numerous deficiencies thereof, and the need of its amendment in order to adjust its wording (and, as a result, the scope of protection under the act) to the relevant international provisions. The Commissioner recommends also trainings to increase the awareness and knowledge on measures among representatives of different public bodies competent in the area (i.e. police officers, medical staff, teachers) in order to improve the institutional response to domestic violence. This should be combined with increased financial and human resources allocated for that purpose. Otherwise the problem with limited access to support, especially mental health support services will remain unsolved, thus affecting negatively assistance for children – victims of domestic violence.

There is also a question of **economic violence against children**: law on the enforcement of child support money/alimony is not effective enough. As data from privately owned Economic Information Bureaus shows, more than 11.4 billion PLN is now owed in child support (to children directly, and to communities providing some child support – no more than 500 PLN monthly per child – in the debtor’s stead), and more than 282 000 debtors are registered in these private registries of debtors (94% of debtors are men).

The National Registry of Debtors, which was to be implemented in July 2021, is now postponed and should be operational in December 2021. It is to include data of alimony/child support debtors and there is hope that it will prove to be an effective tool to combat the issue by forcing debtors to perform their financial duties by paying their child support money.

The government pushed for the implementation of the so called „instant alimony” (a specific sum of money, available almost immediately) in 2018 and 2019, but the legislative proceedings were discontinued. Now the government claims to go back to the idea, but there is no draft of the new law.

ARTICLE 3: THE STATE’S OBLIGATION TO LEGISLATE

For years, the Commissioner for Human Rights has been reporting the need for a **comprehensive law on court experts**. In 2018, the Ministry of Justice prepared a draft law that raised many objections and was abandoned. The problem with experts’ opinions is more and more noticeable and has a negative impact on court proceedings, especially on their excessive length. Courts wait for experts’ opinions for relatively long periods of time. Unfortunately, the procedures for appointing experts are not transparent, and there are no effective tools to verify their qualifications. Therefore, the quality of their opinions is also questionable. The bill on the regulation of the profession of a psychologist is still not implemented effectively, i.e. there is no self-governing body for the profession of psychologists. It is recommended to prepare, subject to broad public consultation and adopt a new law on court experts.

The Commissioner underlined the necessity of full implementation of the Directive (EU) 2016/800 of the European Parliament and of the Council of May 11, 2016 on **procedural safeguards for children who are suspects or accused persons in criminal proceedings**. The Commissioner pointed out the lack of a dedicated list of rights adjusted to the needs and to the level of comprehension of a child, the structural deficiency of the system of efficient access to a lawyer and the lack of the possibility to register interrogations of children. Despite the Commissioner’s letters to the Minister of Justice the latter failed to reply and the directive 2016/800 still remains unimplemented.

ARTICLE 13: CHILDREN'S RIGHT TO FREEDOM OF EXPRESSION

In Poland, some forms of **expression** were limited because they were considered as a threat to public order, public health or morals. Some young activists were targeted by the state for participating in demonstrations against the Constitutional Tribunal’s judgment concerning abortion or those focused on preventing climate change. There were cases of excessive use of force by the police against the protesters. Some protests were interrupted by the police using tear-gas and provoking dangerous situations.

The child’s right to be heard and to express his/her wishes during judicial proceedings before the family and guardianship courts is provided for in the Code of Civil Procedure. However, the Institute of Justice’s report of 2015 showed that courts take very different approaches (i.e. they do not want to hear out children under 13 i.e. the age at which partial legal capacity is achieved) and do not have any guidelines or good practices available to them. Some judges ask children directly, others use indirect methods such as listening and watching through a one-way mirror as a child is being asked questions by an expert, usually a psychologist. Some judges even demand that a child signs his/her testimony. Thus, the standards of such hearings should definitely be regulated.

ARTICLE 15: FREEDOM OF ASSOCIATION AND FREEDOM OF ASSEMBLY

The Commissioner is watching with deep concern the increasing interference of Polish police officers with the freedom of assembly of young people. Since the beginning of the year, the Commissioner has intervened several times with regard to such cases. In January 2021, the Commissioner intervened in the case of a teenage member of the Youth Climate Strike, who used a sound device for a while during a demonstration. Admonished by the policemen, he put down the megaphone. Nevertheless, the police notified the family court of his demoralized behaviour. Proceedings in similar cases were also initiated in other cities. Courts discontinued the proceedings in all known cases. On August 8, 2021, the police detained several underage citizens in connection with alleged disruptive behaviour during an assembly in Lubin. According to media reports, randomly selected people who did not participate in the assembly, but were only passing by, were also detained. The guardians of these people were, according to the press, not informed about their detention. The Commissioner is conducting explanatory proceedings in this matter.

The Commissioner recommends training police officers in the protection of public gatherings and the rights of minors to manifest. In addition, for many years, the Commissioner has recommended changing the Law on Assemblies in such a way as to enable the organization of counter-demonstrations (the current system of cyclical assemblies allows for counter-demonstrations only 100 meters away from the cyclical demonstration, which in practice prevents counter-demonstrators from exercising their rights).

ARTICLE 20: DEINSTITUTIONALIZATION (FOSTER CARE, SINGLE PARENT SUPPORT)

• The system of **child care in foster families and family emergency rooms** operates in a manner that violates the statutory right of children to a stable nurturing environment. Due to the insufficient number of foster families (as a result of the lack of specialized support for foster families, unstable employment – only civil law contracts, low salaries, and the prohibition on taking on additional employment), even small children up to the age of 10 are placed in institutional care against the law, and the wards’ stays are prolonged beyond the legal limits.

• There is no cooperation between local government units in terms of admitting children to family care; moreover, new institutional care facilities are established.

• **Adoption** procedures remain inefficient (no standards of operation for adoption centres and lack of uniform rules for qualifying candidates for parents, archaic and non-transparent mode of handling adoption procedures, no central nationwide electronic database of children eligible for adoption - insufficient exchange of information between adoption centres).

• The systemic assumption that **foster care is temporary in nature** should be considered insufficient. Absence of specific legislative regulation of long-term foster care affects children placed with close family members in foster care, children whose legal situation takes many years to regulate, children who, despite the passage of years, cannot be returned to their biological family or cannot be placed with an adoptive family. When a child, for various reasons, remains in foster care for several years, "uprooting" a child from the only safe environment known to them is not in the best interest of the child.

**Special assistance** is provided to parents with minor children or other persons caring for children, and pregnant women. In the case of **violence or other crisis situations**, these persons can find shelter in homes for mothers with minor children and pregnant women. However, a large number of counties do not run homes for mothers with minor children and pregnant women, i.e. they do not carry out their obligatory task, and the interest of county governments in developing this form of assistance, even with possible financial support from the government program "For Life", is negligible.

In 2018, there were 19 such homes in Poland and although the number increased by 3 compared to 2017, there are still voivodeships that do not provide this form of assistance - Podlaskie, Kujawsko-Pomorskie, Wielkopolskie, Opolskie and Małopolskie. According to the data of Statistics Poland, in 2017-2018 there were 314 counties and 66 cities with county rights in Poland.

Serious financial, legal and procedural problems related to upkeep of these facilities result in municipalities being uninterested in placing people in need of support in such homes, which consequently affects the lack of interest in creating this type of facilities.

ARTICLE 21: INTERNATIONAL ADOPTIONS FROM POLAND

Article 21 of the Convention on the Rights of the Child provides for subsidiarity of foreign adoptions. At the beginning of 2017, the possibilities of pursuing foreign adoptions were restricted, resulting in a significant decrease: in 2012 there were 255 **international adoption** cases, in 2016 - 217, in 2017 - 98, in 2018 - 28, in 2019 - 12. It means the number of international adoption cases dropped over 20 times in 3 years. Only 2 (both Catholic) adoption centres are now allowed to effect international adoptions in Poland.

The government draft bill amending the Act on Support for the Family and the System of Foster Care (UD 135) provides for amendment of Article 167 of this Act. The proposed regulation provides for the possibility of qualifying a child for adoption involving a change of the child’s current place of residence in Poland to a place of residence in another country, if that is the **only** way to ensure a suitable substitute family environment. If it were to be assumed that the designated family forms of foster care exhaust the premise of a suitable substitute family environment, the proposed form of section 167 of the Act could result in the complete impossibility of international adoption.

Although in the light of Article 114(1) of the Family and Guardianship Code foreign adoption should indeed be treated as ultima ratio, the overriding interest of the child, its well-being, the possibility of comprehensive and harmonious development may require, in particular cases, rejecting the principle of priority of domestic adoption. International adoptions were frequently the only way for Polish children with disabilities or disorders to be adopted.

ARTICLE 22: THE SITUATION OF REFUGEE CHILDREN

The Commissioner pays a lot of attention to the situation of **foreigners**, especially minors who, due to their unclear status in the territory of Poland, have been placed in guarded centres run by the Border Guard, where they await a decision on their further stay in or expulsion from the country. The Commissioner has submitted requests to the Ministry of the Interior and Administration to undertake a legislative initiative aimed at introducing the prohibition to place minors and their parents or guardians in **guarded centres for foreigners**. The conditions in the centres, which are similar to those in prisons, are not suitable for children, and stay in such facilities can be traumatic for minors and have a negative impact on their psychological and physical development.

It is worth recalling the judgment of the European Court of Human Rights of April 10, 2018 in the case of Bistieva et al. v. Poland (application no. 75157/14), in which the Court, with regard to placing a family with children in a guarded centre, pointed out that the placement of a child together with his/her parents in a **detention centre** could not be justified by the best interests of the child. The authorities have to take all the necessary steps to limit the detention of families accompanied by children and effectively preserve the right to family life. In the present case, the Court was not convinced that the Polish authorities had done everything they should have done when placing the family in the centre, which should have been the last resort. The Polish authorities thus did not make an effort to find alternative measures ensuring freedom, nor to act in the best interest of the children, although they were obliged to do so under international law (UN CRC or the EU Charter of Fundamental Rights).

The problem of the **lack of access to the refugee procedure** at the railway border crossing in Terespol (Poland-Belarus) has been of great concern to the Commissioner for years. The Commissioner has been receiving constant complaints from foreigners who are refused entry to Poland by the Border Guard on the Polish-Belarusian border, regardless of their situation. The problem mainly concerns families with children travelling from Chechnya and Tajikistan. According to the complaints, the foreigners report to the Border Guard the intention to apply for international protection in Poland, but Border Guard officers do not accept their applications and send them back to Belarus. The problem was highlighted by the UN Special Rapporteur on the human rights of migrants in his report of 12 May 2021 on means to address the human rights impact of **pushbacks** of migrants on land and at sea. In the report which was presented to the 47th Session of the UN Human Rights Council, the UN Special Rapporteur refers, inter alia, to the judgment of the European Court of Human Rights, which found that the Polish Border Guard had demonstrated a “consistent practice of returning people to Belarus”, a policy which amounted to collective expulsion, in relation to Russian asylum applicants from Chechnya, including children, whose repeated applications at the border were not subject to proper review, and who were removed without proper assessment of substantial chain refoulement. The Special Rapporteur also pointed to recommendations identified by the Commissioner, following the CHR Office employees’ visits to the Terespol railway border crossing, held between 2016 and 2019.

The same practice is now under public and Commissioner’s scrutiny, as a group of **asylum seekers** are kept on the Poland-Belarus border since the middle of August, with their pleas and applications falling on deaf ears of the Border Guard. According to media coverage, there is at least one **minor** in this group.

ARTICLE 23: PROTECTION OF CHILDREN WITH DISABILITIES

• The situation of **children with disabilities** requires a systemic regulation, in particular the situation of those who, having come of age in foster care, are not able to become **independent**. It is necessary to develop solutions to prevent the transfer of adult children with disabilities to social welfare homes and other institutional-type facilities.

• With the consent of the foster parents, **long-term care** should be continued, in principle indefinitely, with funding for care provided. An alternative could be to allow all foster parents who continue to care for their ward to become eligible for a nursing allowance.

• **Deinstitutionalisation**, which includes support for people with disabilities, cannot be understood in a narrow way but has to take into account the fate of children who are looked after by the state and placed in foster care when they become adults.

There are no systemic solutions regarding the scope and forms of **support in an open environment for parents with disabilities** who, due to the nature of their disability, face significant barriers in performing parental functions. When the degree of disability of parents makes it impossible for them to care for their child independently, and they do not have the support of other persons close to them, it is necessary to create legal mechanisms enabling the child to remain in the family while safeguarding its welfare. It is necessary to create a legal framework for coordinated services.

Implementation of the judgments of the Constitutional Tribunal is essential for organizing and creating **a stable system of support for people with disabilities, their caregivers, and families**:

- elimination of the differentiation of the right to a nursing allowance for caregivers of a person with a disability based on the moment when the disability of the care recipient arose (judgment of 21.10.2014, ref. K 38/13),

- elimination of the exclusion of eligibility for a nursing allowance for a caregiver who has an established right to a partial disability pension (judgment of 26.06.2019, ref. SK 2/17).

It is necessary to work towards comprehensive regulation of the right to a **nursing benefit** for caregivers of people with disabilities who are entitled to old-age and disability pensions, as well as to implement solutions enabling caregivers collecting nursing benefits to take up additional employment that does not interfere with caring for a close family member, and to expand or create a system of respite care, enabling parents/caregivers to regain strength necessary for caregiving.

Poland is still at the beginning of the process of **deinstitutionalization**. The need of deinstitutionalisation is mentioned in the Disability Strategy 2021-2030. The activities are to be implemented by 2030 and are described as a long-term process, without mentioning specific draft laws. The government took additional steps to prepare strategy of deinstitutionalisation, but efforts should be considered as insufficient. The presented draft does not contain any precise and clear schedule of activities and includes only end dates of particular activities. The deinstitutionalisation process should point out the date of planned closure of residential care facilities. Personal assistance services are still project-based, non-systemic and limited in budget, duration and territorial availability. The personal assistance service has been replaced with the professionalization of carers, without presenting the basic principles of the system.

Despite the growing interest in inclusive education there are numerous complaints concerning incorrect organisation of **education for children with disabilities**. Work at the Ministry of Education and Science has been ongoing since 2017, but is still conceptual in nature. The efforts should be considered as insufficient.

Educational establishments not only provide educational activities, but also other support. Numerous complaints are received with regard to the manner in which the education process is organised, the lack of implementation of recommendations contained in decisions on the need for special education, or the extent of cooperation between schools and parents or guardians of students with disabilities. Emphasis must be placed on cooperation between schools and counselling centres, so that, after the diagnosis, the child is effectively supported in the further educational process in cooperation with teachers and parents.

Many of these difficulties intensified during the pandemic. Due to the temporary restriction of the operation of educational institutions, many students did not participate in educational activities. Remedial classes, speech therapy or physiotherapy were not provided to the students in the required form (many activities were conducted remotely or did not take place at all). At home, without access to the necessary facilities it is difficult to carry out, for example, sensory integration therapy or speech therapy.

Every school should employ specialists, e.g. a psychologist and an educational counsellor, particularly given the fact that the state’s education policy is oriented towards the introduction of inclusive education. Such specialists should also support children in the post-pandemic return to stationary education.

All children should have access to support, including financial aid, without the need to submit a formal certificate of disability. The closed catalogue of disabilities should be given up in order to guarantee the support for all children. There is also a need to develop and implement a system for monitoring the situation of graduates with disabilities, in particular graduates of special schools. This should enable the assessment of the capacities of pupils in special education and the improvement of solutions within the assumed process of revising the education system. It is also necessary to introduce bilingual education, taking into account the needs of pupils with hearing impairments who use sign language. This measure also requires appropriate staff training and the employment of sign language interpreters in schools.

Poland has yet to sign and ratify the **Optional Protocol to the Convention on the Rights of Persons with Disabilities** (ratified in 2012) which stipulates that any individual who feels disadvantaged by the actions taken by public institutions contrary to its provisions may apply for assistance to the Committee on the Rights of Persons with Disabilities.

In his comments on the Disability Strategy 2021-2030 the Commissioner stressed the need to ratify the Protocol, as an important instrument for the effective protection of the rights of persons with disabilities, including children, and pointed out that the new strategy should include a roadmap for the ratification of the document. The Ministry of Family and Social Policy has informed that the ratification of the Protocol is not planned, and the Commissioner’s request for defining a “roadmap towards the ratification of the document” has been considered as unfounded.

ARTICLE 24: PROTECTION OF CHILDREN’S HEALTH

Fragmented intervention, prevention and educational activities in the area of health care do not bring the expected result of pregnant women maintaining complete abstinence. There is also a lack of legal regulations in the area of family support system, which would draw attention to the problem of addiction of pregnant women in the context of access to aid benefits, e.g. family benefits, parental benefit, "For Life" program. The state is virtually helpless in the face of the threat to the child posed by alcohol consumption by pregnant women.

The broadly understood problem of **FASD** should become the subject of inter-ministerial activities resulting in the development and implementation of systemic solutions focused on prevention and treatment of alcohol dependence in pregnant women and assistance for families in which a child with FASD is raised.

**Mental health care for children** in Poland has been in a state of collapse for years. The number of suicides among children and adolescents (Poland has their second largest number in EU) is a clear proof of it. To remedy the situation, a reform of the system was to take place. Its main element was the establishment of the so-called first reference level facilities that were to provide community mental health services and become the backbone of the new system. Unfortunately, the introduction of the reform coincided with the outbreak of the COVID-19 pandemic, which, in many locations, made community services impossible. Additionally, the number of facilities contracted by the National Health Fund was highly inadequate to the needs. The new first reference level facilities were thus unable to relieve overcrowded psychiatric hospitals, in which a sight of children lying on mattresses on the corridors is not uncommon. It will be extremely hard to make up for the deep neglect of the mental healthcare for children by the state, manifested by i.e. low financing of these services.

ARTICLE 27: STATE SUPPORT IN THE AREA OF HOUSING ASSISTANCE

• A sound diagnosis is necessary regarding **homelessness and housing exclusion of young people**, leading to identification of the scale and nature of problems and needs, also indicating barriers to transition from homelessness. For this purpose, a separate category of "young adults" (18-25 years old) should be included in the conducted sociodemographic research.

• Assistance provided to persons experiencing a crisis of homelessness in night shelters or hostels is not targeted at individualized support for young people. The fact that young people aged 18-25 who leave the institutions or come from disadvantaged families seek shelter in such facilities requires development and implementation of a nationwide strategy to counteract homelessness of the youth. The strategic activities should be preventive in nature - by strengthening the support system and creating a base of protected housing for this group of people financed by the state budget, as well as interventional - intensifying the process of transitioning out of homelessness by means of a separate model of helping the young people experiencing the crisis of homelessness.

• The deadline for starting the emancipation process by choosing an emancipation assistant depends on the type of institution where the child is placed - from two months to a year before reaching adulthood. It is necessary not only to standardize the starting date of the first stage of emancipation, but also to extend this period.

• The institution of the emancipation mentor needs to be adjusted by introducing a professional emancipation assistantship, specifying the minimum formal requirements to be met by the emancipation assistant, the standards for its operation and the mode of supervision and the possibility to verify and enforce the implementation of tasks.

• The mode of developing the Individual Emancipation Programme should be modified, in particular with regard to the starting date of its planning and the obligation to correlate the plan with the choices made by the ward, e.g. the choice of education.

• It is advisable to specify the assistance granted to the child being emancipated in obtaining suitable housing conditions and to expand the financial aid granted by means of adapting premises for habitation.

• Participation of emancipated persons in the labour market requires a review and adoption of systemic solutions in the form of vocational activation programs for this group of persons.

ARTICLE 28: EDUCATION

In years 2020-2021, many children in Poland were at risk of falling behind due to school closures caused by COVID-19. Poland, just like other countries, implemented remote (distant) education programmes. However, **many children, particularly in poorer households and in rural areas, did not have internet access and personal computers**. The government of Poland addressed the issue by funding school equipment, but still the pandemic amplified the effects of existing learning inequalities. For some schools it was difficult to maintain contact with students and their parents, and there were no attempts by the minister of education to assess the scale of the problem. There were also complaints about the quality of remote learning, especially in pre-primary education. Many students lost access to psychological help offered by schools, which made the existing mental health issues worse.

The right of the child to education may be endangered due to **shortage of teachers** in some areas of Poland. Schools object to recent policies proposed by the minister of education, giving more power to school superintendents (especially in appointing school directors) and limiting the autonomy of schools in respect to teaching methods and cooperation with NGOs. Many students demand better access to objective information (e.g. on climate change or human rights) and more emphasis on essential and future-oriented skills.

Despite the development of the **institutional care for young children**, most of those under 3 years of age (79.5%) do not attend the crèche. When it comes to nursery schools, the disproportion in available places between urban (836 250) and rural (297 273) areas is visible.

The Commissioner highlighted the need to introduce anti-discriminatory education adequate to the cognitive abilities of children at each level of education. The Commissioner does not share the view of the Minister of Education and Science that the issue of non-discrimination and equality is included to a sufficient degree in the core curricula of history, ethics and social studies, and is concerned that this may place at risk the schools’ task to develop students’ tolerance and openness to others as well as to provide each student with a safe and secure learning environment. As confirmed by the research conducted by the Commissioner, the demand for anti-discrimination education at school is supported by 70% of the Polish society and 81.5% of students.

The government should also take effective steps to implement the recommendation of the Committee to eliminate **stereotypes, intolerance and discrimination**. The research conducted by the Commissioner confirmed that gender stereotypes are widely spread among the general public, determining the social and professional roles of men and women. Their elimination should be one of the main aims of the governmental multiannual policy on non-discrimination and equality. Unfortunately, the latest National Action Program for Equal Treatment was designed for the years 2013-2016. The newest program for 2021-2030 has not been adopted yet.

Currently, **sexual education** in Poland remains optional. Information on sexuality and reproductive health and rights is provided mainly within the framework of “Family Life Education” classes (the curriculum of which the Commissioner assesses as unsatisfactory from the perspective of the need for reliable sexuality education as well as the related WHO recommendation). Parents may decide that their minor children will not attend such classes. Non-governmental organizations that would like to provide sexuality education courses as additional ones have to obtain a prior consent of the school head and a positive opinion of the parents’ council. Thus, the regulations ensure that, as a rule, parents fully exercise their right to raise a child in accordance with their beliefs, as regards classes relating to human sexuality.

ARTICLE 30: NATIONAL MINORITIES

The Commissioner has observed difficulties faced by **foreign children, by children from certain national and ethnic minorities** as well as their parents in accessing remote education. In connection with these difficulties, on 23 March 2020 and 24 April 2020 the Commissioner sent statements to the Minister for National Education drawing attention to the inequalities in children and young people's access to education, caused by the ongoing restrictions due to the Covid-19 pandemic.

The Commissioner stressed that, in the current situation, special attention should be paid to the most disadvantaged pupils such as foreign children, including those staying in centres for foreigners, and children who belong to national and ethnic minorities. The problem most frequently reported to the Commissioner was the lack of computers and equipment enabling audiovisual communication with the teacher. This applies to foreign children staying in centres for persons seeking international protection, run by the Office for Foreigners, children staying in guarded centres under the authority of the Border Guard, and Roma children, including residents of Roma settlements, who have been facing digital exclusion for years. A recurring problem is also the lack of direct communication between teachers and parents due to the language barrier. Significant support is provided by cultural assistants who often substitute for teachers and support such children in their daily education. The Commissioner also reminded that the role of the Ministry is to prepare appropriate educational tools and materials, available in different languages, to enable the education of foreign children and members of national minorities.

In response, the Ministry of National Education acknowledged the threats indicated by the Commissioner but did not refer to the specific situation of the groups of children mentioned in the Commissioner’s remarks. It assured, however, that the impact of the pandemic on the physical and mental development of children and young people is being analysed on an ongoing basis. One of the proposed solutions is a programme currently prepared by psychologists appointed by the Ministry, which aims to support children, young people, teachers and parents who are experiencing psychological difficulties.

The situation of the **Roma minority** undergoes gradual improvement, which can be attributed to the activity of numerous Roma organizations as well as the functioning of subsequent editions of the governmental Programme for the integration of the Roma community in Poland (the so-called Roma Programme). What deserves recognition is the whole idea of the creation and existence of the Roma Programme which finances activities undertaken largely by Roma organizations aimed at supporting Roma culture but also improving dire conditions, in which a significant part of that population lives.

The sheer existence of the Roma Programme does not suffice to effectively counteract exclusion from the social and economic life. The example of Roma settlements in Małopolskie voivodeship shows that Roma who have been living in dramatically difficult housing conditions for several generations, deprived of any real opportunities on the local job market and fully dependent on social welfare, are unable to improve their lot. Their fate depends, to a large extent, on the support from the state and in particular the involvement of the local self-government units. Yet, no cooperation between local communities and local authorities or even an obvious conflict between them often make it impossible to deliver actual assistance to the Romani people and use the funds from the Roma Programme in an effective way. The consequences of the lack of involvement of the local self-government units are particularly visible when the local self-government owns the land on which Roma settlements are located. In such an instance it is the local authorities that decide whether to undertake necessary repair and construction work in the said settlements.

The Commissioner notices the need to, inter alia, allocate a separate part of the Roma Programme for investment activity. The execution of investment measures should at the same time be subject to increased supervision, also in terms of the quality and purposefulness of carried out investment work. One should also create financial mechanisms which would encourage local self-government units to make use of the available resources. What could constitute such a mechanism is, for example, an additional subsidy for the implementation of own tasks for municipality involved in providing assistance to Romani people. The government should also consider creating legal conditions allowing individuals, that is residents of Roma settlements, to use resources available under the Roma Programme. In this sense, the support provided under the Roma Programme would be similar in its form to social welfare benefits and could be used in accordance with the wishes of beneficiaries - for the renovation of their current dwellings or the purchase of a new real estate.

ARTICLE 37 AND ARTICLE 40: DETENTION PLACES FOR JUVENILES. PROCEEDINGS IN CASES OF CRIMINAL LAW VIOLATION BY A JUVENILE

• The existing legislation which, due to the lack of effective systemic solutions, may lead to the separation of **juvenile mothers** from their children, poses a significant risk of inhuman treatment of such mothers and thus requires urgent amendment. Juvenile mothers should be able to stay in detention establishments together with their children on daily basis so as to build emotional and family ties, rather than to have to come to meetings with their children who are brought up by other persons.

• The applicable legislation does not authorise the youth educational centres’ personnel to frisk inmates and do **body search**. In youth detention centres body search is done based on the provisions of an ordinance rather than provisions of an act. Moreover, the ordinance does not indicate persons authorised to conduct body search, or justification for such search, or it does not provide a measure of appeal against body search.

• Personnel of **youth educational centres, juvenile shelters, juvenile detention centres**, under their social rehabilitation activity, is responsible for, among others, preventing and counteracting the purchase and consumption of **alcoholic beverages, drugs and psychotropic substances** by the residents. For this purpose, educators or nurses in certain establishments carry out testing for the presence of alcohol, drugs or psychotropic substances in the organism of the juveniles.

The existing regulations do not allow for requiring a juvenile to undergo such testing. No testing, regardless of its complexity, should be performed without clear statutory empowerment of persons who perform it. Also, the implementing provisions should provide for a method of documenting such testing and allow for verifying its results, which constitutes a legal guarantee of the protection of interests of the juvenile.

• What still remains to be solved is the problem of police officers’ presence during meetings with a defence counsel and the lack of possibility for the lawyer or a **legal counsel** to initiate such meetings. It is especially important in terms of an effective realization of the right to defence, protection of legal professional privilege, the right to freedom and the protection of the confidentiality of communication. Furthermore, pursuant to legal regulations a defence counsel may contact a juvenile residing in the Police emergency centre for children only at the juvenile’s request. However, a juvenile may not be even aware that he/she already has a defence counsel, or may think that he/she does not need that type of professional assistance. In some cases, a juvenile may yield in to the pressure exerted by officers who may attempt to discourage or force him/her not to use such legal aid.

• There is no effective mechanism for **filing complaints by juveniles**. Current procedures do not provide protection against any negative consequences of filing a complaint, or protection against further harm from the perpetrator.

• Upon admission, the police officers do are not required to **notify the parents** about the minor’s admission to the police emergency centre for children, and the minor him/herself is not in the position to inform them about it. This may result in a situation where a parent/guardian does not know where and in what condition his/her child is kept.

• Comparing to other educational and correctional measures, placement in a youth educational centre is the most common measure adjudicated in Poland. It is also the most invasive measure as it involves deprivation of liberty of the juveniles. The key problem in the view of National Preventive Mechanism is the lack of a system of preventive therapeutic work with juveniles in Poland.

• There are **only two types of youth educational centres** in Poland: regular ones and special ones for juveniles with mild intellectual disability. As a result, factors such as physical disabilities, mental health issues, level of demoralization etc. are not taken into account in the process of placing an individual in a facility. Thus, the social rehabilitation process is not adjusted to their distinctive needs.

• The Act on Juvenile Delinquency Proceedings does not set any **minimum age limit** for placement in a youth educational centre. This, combined with the lack of specialized youth educational centres, may result in placing few-year-olds together with teenagers, regardless of the reason for their placement in the centre.

• Similarly as with the abovementioned age limit, The Act on Juvenile Delinquency Proceedings does not setany **minimum duration of placement in a youth educational centre.** During the preventive visits to youth educational centres in Poland, the National Preventive Mechanism learned about cases in which juveniles were placed there for a month or even less, which is far too short to even start any social rehabilitation process. Setting, in the Act on Juvenile Delinquency Proceedings, a minimum duration of placement in a youth educational centre would prevent deprivation of liberty when there is no objective possibility to influence the juvenile’s behaviour.

• The National Preventive Mechanism identified the problem of **pharmacological treatment with psychotropic drugs**, administered to juveniles in youth educational centres. The main problem is no system of comprehensive control over prescribing, to minors placed in the detention centres, psychotropic drugs that could be used in non-medical behaviour issues in juveniles and thus constitute inhumane and degrading treatment.

• Due to the **low number of therapists** qualified to conduct psychotherapy for juveniles in Poland, and due to the fact that most of the youth educational centres do not employ such specialists (most of the time there are only psychologists in youth educational centres), the support to juveniles suffering from mental health issues is not efficient. Instead of receiving adequate assistance from a psychotherapist, juveniles are prescribed psychotropic drugs, as mentioned above.

• The Act on the counteraction of sexual offences of May 13, 2016 provides that data on **sexual offenders is held in the Registry of Sexual Offenders** (with limited public access). In case of juveniles, their data is held in the Registry for 10 years after they reach adulthood. Entry into the Registry is made after the sentence has been passed by the court for juveniles. The legal effect of entering the juvenile’s data into the Registry is normally not considered during the procedure before the court for juveniles. The only way not to get the juvenile’s data entered into the Registry is for the court to state in the sentence that the data of the juvenile is not to be entered into the Registry. The juvenile and his/her parents usually learn about the data’s entry into the Registry when they receive the notification from the Registry and when it is too late to appeal the sentence (which is in itself problematic because the entry is made based on the law and not based on the sentence). This problematic regulation leads to situations in which e.g. 12-13 year old children sentenced for petty actions (such as sending a pornographic MMS or a link to a pornographic site) and rebuked or required to make an obligatory apology or undergo therapy, are entered in the Registry without their and their parents’ knowledge, for 15-16 years, without a clear and accessible way of appealing. The Ombudsman has been trying to help in such individual cases but his repetitive motions to the Minister of Justice to eliminate the problem have so far been futile.

**General psychiatric hospitals/psychiatric wards for children**

In 2018, the number of professionally active child psychiatrists was 415 (375 specialists and 40 first-degree specialists), i.e. there was 1 child psychiatrist per approximately 17 thousand children.

Due to the growing number of patients under 18 years of age who require hospitalization and to the insufficient number of places in psychiatric wards for children and young people, it is possible to place minor patients in adult wards.

It is a constant practice resulting from the lack of modern psychotropic drugs for children. It is a global problem as there are no medical tests that would allow to register new drugs for children.

Psychiatric wards for children and adolescents, that operate within the structures of general psychiatric institutions, have been struggling with problems related to financing, lack of places and overcrowding.

**National centre for forensic psychiatry for minors**

• There is no commission which could refer to an appropriate facility in which a therapeutic measure could be enforced; powers of such a committee, its mode of operation and funding should be defined by statute.

When issuing a judgement on detention in a therapeutic institution for juveniles, the court has no obligation to seek an opinion of a psychiatric committee; the situation is the same as in the case of adults with respect of whom a judgment on placement in a psychiatric hospital is rendered as a security measure.

• Placement under the Article 26 of the Act on Juvenile Delinquency Proceedings takes place if the court deems it necessary in order to prevent demoralization. Measures provided in the article are applied during the proceedings (after they have commenced). The court may place a minor immediately in a psychiatric hospital for the time of the proceedings. The court may also do this upon a motion of a manager of a correctional or foster institution in which the minor concerned has been placed temporarily. Judges follow such a procedure if proceedings are carried out to replace a correctional measure with a therapeutic measure.

As a consequence of currently applicable legislation perpetrators of severe crimes (e.g. manslaughter) can be accommodated at the same place as minors demonstrating demoralized behaviour (e.g. skipping school) and those subject to pre-trial proceedings which aim at determining whether they have committed a crime or whether they engage in demoralizing behaviour. At this stage it is also unknown for sure whether the minor requires psychiatric hospitalization, as prior to being placed temporarily in the psychiatric there is no obligation to ask for experts’ opinion.

• Legislative provisions set the minimum age of 13 only in respect of those **minor patients** who have been convicted as perpetrators of forbidden acts. However, in case of minors demonstrating demoralizing behaviour there is no minimum age. This means that psychiatric hospitals may be facilities in which perpetrators of crimes who are over 13 years of age may be kept together with demoralized minors below 13 (skipping school, abusing taboo words, alcohol and drug abuse).

According to the law, a stay in a psychiatric hospital is terminated by statute if the minor turns 18. A problem appears if, after turning 18, in a doctor’s opinion the patient still requires hospitalization and remains dangerous. In such a case courts may not extend the hospitalization period.

• Every instance of limiting contacts (visits, telephone calls, letters) with persons from outside the facility should be subject to court audit, which is important from the point of view of protection against arbitrary and unauthorized actions by the facility management and prevention of abuse in this area. It is necessary to indicate reasons based on which restrictions may be introduced, as well as a procedure to be followed in such situations.

• The patients are transported by ambulance assisted by the police, i.e. the policemen **handcuff** the patients (sometimes also including feet cuffs) and leave them in the ambulance attended by a medical rescue team and follow the ambulance in a police car. Handcuffs are taken off only at the Emergency Department. It was found that this is a routine practice (encountered by many hospitals) used towards all patients – detainees in order to prevent escape.

• **Body search** is carried out as a one-stage procedure (patient is required to strip naked), instead of a two-stage procedure (patients take off their top clothes, after the search they put on their top clothes and take off their bottom clothes), which is applicable in respect of detainees.

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD

The Republic of Poland did not ratify the **3rd Optional Protocol to the Convention on the Rights of the Child on a communications procedure**. The Protocol was signed by Poland on 30 September 2013 but was not ratified. The Commissioner is of the opinion that Poland should ratify the 3rd Optional Protocol on a communications procedure as soon as possible. The Commissioner informed the Ministry of Family and Social Policy of the need to ratify the Protocol. In response, the Ministry expressed its concern about the consequences which can arise from the recommendations of the Committee on the Rights of the Child as regards the change of Polish law or policy, and the related costs. In the opinion of the Government of Poland, the decision on the ratification will be taken after an analysis of the Committee’s decisions.

$IMIĘ I NAZWISKO

Commissioner for Human Rights

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