

# Report on the Activity of the Ombudsman for Children for 2016 with Comments on the Observance of the Rights of the Child



Warsaw 2018



RZECZNIK PRAW DZIECKA

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of the Ombudsman for Children for 2016  
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**Publishing works:**

Biuro Rzecznika Praw Dziecka

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Warszawa 2018

**ISBN:** 978-83-89658-57-9

**Editorial office:**

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**Graphic design:** Studio graficzne ESTA

**Print:** Zakład Poligraficzny SINDRUK

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*who knows the paragraphs of written laws I demand  
a place for an educator, who knows the mysteries of  
unwritten laws...*

*Janusz Korczak*



## I. OMBUDSMAN FOR CHILDREN

*Article 12.1 The Ombudsman shall annually and not later than until 31 March present to the Sejm and the Senate the information on his activity and comments on the observance of the rights of the child<sup>1</sup>.*

On 7 July 1991 the Republic of Poland ratified the Convention on the Rights of the Child, which prompted non-governmental organisations and other agencies working for the protection of children's rights to call for establishing the institution of the Ombudsman for Children. In result, a new regulation was added to the 1997 Constitution of the Republic of Poland providing for legal fundamentals required to appoint the Ombudsman. Pursuant to Article 72, Item 4 of the Constitution "the Act specifies the competence and appointment procedure for the Ombudsman for Children". Thus, the Ombudsman for Children was officially established as another constitutional body of state control.

According to the Act on the Ombudsman for Children, which was adopted by the Sejm of the Republic of Poland on 6 January 2000, the Ombudsman shall guard the rights of the child, defined in the Constitution of the Republic of Poland, the Convention on the Rights of the Child and other regulations of law, while respecting parents' responsibilities, rights and duties.

Within the meaning of the Act a child is every person from the moment of conception until the age of majority (Article 2, Item 1). The Ombudsman shall act for the protection of the rights of the child, in particular:

- 1) the right to life and health protection;
- 2) the right to be raised in a family;
- 3) the right to decent social conditions;
- 4) the right to education;
- 5) the right to be protected against violence, cruelty, exploitation, demoralisation, neglect and other forms of maltreatment.

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<sup>1</sup> Act of 6 January 2000 r. on the Ombudsman for Children (Dz. U., Journal of Laws of 2015, Item 2086 with later amendments).

All the actions undertaken by the Ombudsman shall aim at ensuring the child's complete and harmonious development while respecting his or her dignity and subjectivity. The Ombudsman shall extend special care and assistance to disabled children.

The Act provides the Ombudsman with the power of issuing a warning, signalling problems and taking the initiative. In accordance with its provisions the Ombudsman shall have the competence to present the respective public authorities, organisations and institutions with evaluations and motions aimed at ensuring the effective protection of the rights and interests of the child, as well as facilitating the working mode regarding various issues in this area. The Ombudsman is also be entitled to call for the respective organs to take a legislative action, issue a legal act or amend the existing legal acts.

The establishment of the Ombudsman for Children, together with all his prerogatives has substantially enriched the previously available set of instruments for protecting the rights of the youngest citizens. The Ombudsman's activity allows for the constant and systemic analysis of problems concerning the child and family.

On 24 October 2008 the Act on the Ombudsman for Children was amended, which strengthened his mandate, empowering him among others to:

- ▶ initiate legal actions in civil and administrative cases, and to participate in them empowered with the rights enjoyed by the prosecutor;
- ▶ require that preparatory proceedings be instituted by the respective authorities and to file motions for punishment in case of an offence;
- ▶ appeal against administrative decisions;
- ▶ examine every case on the spot, even without prior notice;
- ▶ require from public authorities, organisations or institutions to submit the respective explanations or information, as well as to provide access to files and documents.

Pursuant to the amended Act, the authorities, institutions and organisations to which the Ombudsman submits his motions relating to the cases that he deals with are obliged to take a position with respect to such motions maximum within 30 days from their receipt<sup>2</sup>.

<sup>2</sup> The Act of 24 September 2010 amending the Act on the Ombudsman for Children and on remuneration for persons holding executive positions in state (Dz. U., Journal of Laws, No 214, Item 1345.)

Passing the Amendment to the Act on the Ombudsman for Children and some other acts on 24 September 2010 constituted another significant step towards formulation of the mandate of the Ombudsman for Children<sup>3</sup>. Thus Ombudsman's competence was reinforced, as he was provided with further procedural powers entitling him to:

- ▶ enter into proceedings before the Constitutional Tribunal initiated on the basis of an application submitted by the Polish Ombudsman, i.e. Human Rights Defender [in Polish: "Rzecznik Praw Obywatelskich" which literally translates as "Commissioner for Citizens' Rights"], or in case of constitutional claims concerning the rights of the child, as well as to participate in such proceedings;
- ▶ applying to the Supreme Court to adjudicate cases of divergence in law interpretation with regard to regulations of law concerning the rights of the child;
- ▶ lodging cassation or appeal against legally valid sentence;
- ▶ enter into the already ongoing proceedings on juvenile cases with the rights enjoyed by the prosecutor.

The above mentioned Act specified the tasks of the Ombudsman for Children even more precisely, among which are promoting and promulgating the rights of the child along with means of their protection, including special care and assistance – so that they correspond with the standards of children's rights protection as defined i.a. in the Universal Declaration of Human Rights and in Article 13 of the Convention on the Rights of the Child.

By executing the sentence of the Constitutional Tribunal of 19 October 2010 and in order to provide the Ombudsman with full independence, by power of the amendment of 15 July 2011 regulations were introduced to the Act on the Ombudsman for Children which say that he is empowered to, through executive order, grant a statute that defines the organisation of his Office and appoint and dismiss his deputy.

In subsequent amendment<sup>4</sup> the legislator specified the regulations of the Act on the Ombudsman for Children, introducing mechanisms that allow for quick and efficient reaction on the part of the Ombudsman. Also the processing of and

<sup>3</sup> The Act of 24 September 2010 amending the Act on the Ombudsman for Children and some other acts (Dz. U. Journal of Laws, Item 1307).

<sup>4</sup> Act of 09 July 2015 amending the Act on the Ombudsman for Children (Dz. U., Journal of Laws of 2015, Item 1192)



access to information collected in the course of examination of a specific case were subject to legal safeguards, to protect the rights and welfare of minors.

The Ombudsman for Children performs tasks with the assistance of his Office which is composed of the following organizational units<sup>5</sup>:

- ▶ Team for Child Helpline and Contacts with Clients which is responsible for disseminating information, providing support and carrying out emergency interventions;
- ▶ Team for Education and Upbringing which is responsible for monitoring the observance of the rights of the child and intervening in cases connected with respecting the right to education, care of the family and the child, access to culture, entertainment and leisure activities, including cases related to sports and artistic activities, as well as development of skills and interests;
- ▶ Team for International and Constitutional Affairs which is responsible for monitoring the observance of the rights of the child against Polish international obligations, especially the Convention on the Rights of the Child and the regulations of the general European system for the protection of the rights of the child, issuing opinions on any discrepancies between the legal acts and the international law instruments, analysing new instruments of the international law, analysing state reports for international supervisory bodies, preparing opinions and motions concerning discrepancies between the legal acts and the Constitution of the Republic of Poland and international agreements, as well as for providing assistance to Polish children living abroad;
- ▶ Team for Family and Juvenile Affairs which is responsible for monitoring the observance of the rights of the child and intervening in cases connected with execution and observation of the right to be raised in a family, placement in foster care or full-time residential institutions, as well as with protecting the child against violence, cruelty, exploitation, demoralisation, neglect and other maltreatment;
- ▶ Team for Social Affairs and Administrative Law which is responsible for monitoring the observance of the rights of the child and intervening in cases connected with the observation of the right to decent social conditions, as well as the right to life and health protection;
- ▶ Team of the Ombudsman for Children responsible for providing factual and organisation support to tasks performed by the Ombudsman for Children;

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<sup>5</sup> The Order No. 30A of the Ombudsman for Children of 30 October 2011.

- ▶ Administrative Team which is responsible for the organisational, administrative and financial issues connected with the Office of the Ombudsman for Children.

The Ombudsman for Children appointed also:

- ▶ By the Order No 23 of 31 July 2012 – The Team for safety of children in cyberspace.
- ▶ By the Order No 23 of 10 October 2013 r. – the Social Advisory Board of the Ombudsman for Children;
- ▶ By the Order No. 24 of 10 October 2013 – Social Codification Commission of Family Law at the Ombudsman for Children.
- ▶ By the Order No. 30 of 05 November 2014 – the Team for normalization of children’s placement and stay in foster care in the field of care and upbringing;
- ▶ By the Order No. 32 of 05 November 2014 – the Team for normalization of children’s placement and stay in youth education centres and youth social therapy centres in the field of care, upbringing and education.
- ▶ By the Order No. 30 of 07 October 2016 – The Team for adoption procedures.
- ▶ By the Order No. 26 of 1 August 2016 – the Team for helping the pupils of foster care, youth education centres, youth shelters and juvenile detention centres become independent;
- ▶ By the Order No. 29 of 07 October 2016 – the Team for standards of school and peer mediation.

The following persons have served their terms of office as the Ombudspersons for Children since 2000:

- ▶ I term – Marek Piechowiak (28 June 2000 – 12 October 2000),
- ▶ II term – Paweł Jaros (16 February 2001 – 07 April 2006),
- ▶ II term – Ewa Sowińska (07 April 2006 – 30 June 2008),
- ▶ IV term – Marek Michalak (25 July 2008 – 27 August 2013),
- ▶ V term – Marek Michalak (since 27 August 2013).
- ▶ Article 12.1 The Ombudsman shall annually and not later than until 31 March present to the Sejm and the Senate the information on his activity and comments on the observance of the rights of the child. Both Chambers hold a debate and acknowledge the Information without subjecting it to voting.

## II. PROTECTION OF CHILDREN'S RIGHTS

### 1. THE RIGHT TO LIFE AND HEALTH PROTECTION

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

(Article 6 of the Convention on the Rights of the Child)

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

(Article 24 of the Convention on the Rights of the Child)

Pursuant to Article 24 of the Convention on the Rights of the Child, the state is obliged to ensure every child the right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.

In 2016 the total of 5,389 cases were reported to the Ombudsman for Children with respect to the right to life and protection of health.

The Ombudsman for Children referred to other authorities and institutions with a request to initiate actions or provide information in cases pertaining, among other things, to:

- ▶ insufficient availability of specialist doctors of medicine,
- ▶ the physical condition of oral cavity of children and youth,
- ▶ the organisation of health care for population of developmental age,
- ▶ accessibility of modern medical treatment,
- ▶ protecting children against HIV,
- ▶ medical care at childbirth,
- ▶ vaccinations,
- ▶ treatment costs,
- ▶ paediatric standards,
- ▶ post-natal depression,
- ▶ protecting the life and health of unborn children,
- ▶ using sunbeds by children,
- ▶ using psychoactive substances, the so called "smarties",

- ▶ lack of experts at the stage of court proceedings initiated by appeals against the rulings of Voivodeship Disability Evaluation Boards,
- ▶ safety of medical procedures.

## 1.1. General addresses regarding the right to life and health protection

### • bad condition of children's oral cavity – address of 07 January 2016

The Ombudsman for Children pointed out in his address<sup>6</sup> to the Minister of Health that it was necessary to take measures in order to improve the condition of children's teeth. He stressed that the results of the All-Polish Monitoring of Oral Cavity Condition which was carried out in the years 2008-2012 showed that 85% of 6-year-old children and 95% of 18-year-old young people suffered from dental caries, so the problem might be referred to in terms of epidemic. In the Ombudsman's opinion, the condition of children's oral cavity was improving too slowly, that is why a deeper analysis of the situation, followed by essential remedial measures was necessary. The Ombudsman believes also that a Strategy of Elimination of Dental Caries in Children must be urgently developed, and it should include such issues as: promotion of health prevention (hygienic procedures, fluoridation etc.), educating children (healthy diet, condition of oral cavity during pregnancy, treating milk teeth etc.), higher cost estimation of procedures included in the children's dental services catalogue, introducing the so called adjustment factor for dentists who treat children as a motivating mechanism to undertake treatment of children, educating dentists in the field improving their child-friendly procedures and skills, protective measures applied in educational facilities, treating diagnosed dental caries in children and youth.

In his address, the Ombudsman for Children pointed also out that another very important issue in eliminating dental caries in children was to distinguish and finance educational measures dedicated to prevention of caries and addressed to parents. This activity should include not only issues related to healthy life style of children but also show caries as the cause of serious health problems of general nature.

<sup>6</sup> ZSS.422.2.2016.EK

In response<sup>7</sup> the Minister of Health informed that measures had been taken to extend the catalogue of dental services guaranteed to children. This change was then processed in the Agency for Health Technology Assessment and Tariff System.

The Minister agreed with the Ombudsman that specialists in dental care provided to children and youth played an essential role in the system of dental care, that was why the Ministry was going to undertake action in order to encourage physicians to chose that specialization by setting a higher level of remuneration for residents. The Minister informed also that a list of medical preventive services for children and youth had been developed. It was only up to the child's carers whether their children would benefit from the services or not. Preventive health care aiming to eliminate dental caries would be addressed especially to pregnant women and mothers of little children as well as to children of pre-school age, their parents and teachers. In reference to the issue of dental offices in schools raised by the Ombudsman for Children, the Minister informed that at that time data was being collected to be analysed and used to develop the best possible system of dental care for children and youth. The Minister referred also to what the Ombudsman for Children suggested about developing a Strategy of Eliminating Dental Caries in Children.

On 23 March 2016, a working group for dental care of children and youth cooperating with the representatives of the Ombudsman for Children started its work in the Ministry of Health. The group was to design changes in the catalogue of health care services and other measures that might have positive influence on the condition of oral cavity of children and youth.

As a result of the group's work, the President of National Health Fund, by Order No. 51/2016 of 27 June 2016 amending the Order defining the conditions of concluding and performing contracts for dental treatment, adjustment factor for cost estimation of dental procedures dedicated to children and youth – 1,2 – allowing to increase the yearly percentage of treated children and decrease the debt of health care centres which treat only children and youth.

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<sup>7</sup> MD-L.073.1.2016

- **Using tanning beds by minors – addresses of 7 January and 04 August 2016**

The Ombudsman, having appreciated the need to introduce legal solutions with respect to the problem of using tanning beds by minors<sup>8</sup>, again addressed the Minister of Health and asked him to subject the problem to analysis.<sup>9</sup>

Considering the data presented by the World Health Organization which confirmed that the risk of falling ill with skin cancer due to excessive exposition to artificial UV radiation in tanning beds, the Ombudsman saw the urgent need to undertake legislative measures to protect health and life of the youngest. The Ombudsman pointed out that countries such as: Australia, France, Germany, Austria or Great Britain had already introduced the ban on using tanning beds by children.

In response<sup>10</sup> the Minister stated that the task entitled “informative and educational activity to raise awareness of risk connected with excessive exposition to UV radiation” was entered into the list of tasks under the operational objective entitled “Limitation of exposition to environmental and professional health risk actors” to the National Health Programme for the years 2016-2020 which is attached to the draft ordinance of the Council of Ministers on the National Health Programme for the years 2016-2020.

The Ombudsman for Children continued his endeavours to improve the practical dimension of the child’s right to health and addressed<sup>11</sup> the Parliamentary Team for Oncology at the Sejm of the Republic of Poland – after the works aiming to introduce the ban on using tanning beds by minors were resumed. He stressed that the statistical data on skin cancer cases, including epidemiological surveys, indicated a connection between the use of tanning lamps and the incidence of melanoma. Using tanning beds more than once a month increases the risk of falling ill with melanoma by 55% and in persons under 30 – by 75%<sup>12</sup>. Quickly increasing incidence of melanoma among young people, especially women, is also alarming. The Ombudsman stated that lack of control over the appliances used in tanning beds may create health risk for persons who use them. Addiction to sunless tanning is another very serious problem. The Om-

<sup>8</sup> ZEW/500/26-1/2014/ESn; ZSS.422.13.2015.MW

<sup>9</sup> ZSS.422.1.2016. MW

<sup>10</sup> ZP-Z.073.29.2015.

<sup>11</sup> ZSS.422.40.23016.MW

<sup>12</sup> <http://akademiaczerniaka.pl/artykuly/pokaz-artykul,tydzien-swiadomosci-czerniaka-17-23-2016-r> – accessed on 26 July 2016 r.

budsman noticed that although all educational initiatives were very important, they would not lead to elimination of the problem. Hence, the Ombudsman addressed the Team and asked for consideration of his position in the legislative work over the draft act.

- **Health care in gynaecology and obstetrics – address of 07 January 2016**

The Ombudsman for Children, to continue the activity initiated in 2014<sup>13</sup> regarding lack of relevant medical care during the time of childbirth which resulted many times in the child's death, asked in his address<sup>14</sup> to the Minister of Health for presentation of conclusions drawn by the *Team for Assessment of the Functioning of Health in the field of Gynaecology, Obstetrics and Neonatology* and the measures taken by the Ministry to increase the quality of services in gynaecological, obstetric and neonatal care. As the Minister of Health had already informed before, the appointed Team was supposed to analyse the problem and develop post-inspection addresses along with relevant conclusions and recommendations.

In response<sup>15</sup> the Minister of Health informed that so far the gynaecological, obstetric and neonatal wards in 15 voivodeships had been inspected. After the whole inspection procedure is over and the post-inspection addresses are submitted, the Team would gather to analyse the collected material and further steps would be taken. This activity undertaken to improve the situation will be still monitored by the Ombudsman for Children.

- **Protection of life and health of children – addresses of 14 March and 01 April 2016**

The Ombudsman for Children, as soon as he learned about the death of a child who was born alive in the procedure of pregnancy termination, addressed<sup>16</sup> the Minister of Health with a demand for relevant reaction to the situation and expressed his opinion that both this case and other cases required detailed inspection to determine all the circumstances of the case.

In response<sup>17</sup> the Minister of Health informed that state consultants in the field of gynaecology and neonatology had presented their opinions on relevant medical procedure and therapy in that case. Based on the opinions submitted to

<sup>13</sup> ZSS/500/25/2014/EK

<sup>14</sup> ZSS.422.4.2016.EK

<sup>15</sup> MD-L.073.2.2016 (BK)

<sup>16</sup> ZSS.422.17.2016.EK

<sup>17</sup> MDP.073.6.2016 (AB)IK:522103

him, the Minister of Health ordered an inspection of medical files of the mother and the child.

Having in mind that the child's right to health and life should be protected as it is guaranteed by the Constitution of the Republic of Poland and the Convention on the Rights of the Child, the Ombudsman for Children addressed<sup>18</sup> also the Minister of Justice – Prosecutor General requesting him to take over supervision over the case of the child who was born alive during the procedure of pregnancy termination, by power of his highest authority. The Ombudsman stressed that this case required a detailed investigation so that all circumstances of the case could be identified and clarified.

In response<sup>19</sup> the Ombudsman was informed that the investigation had been subject to internal supervision. On the other hand, due to the nature of the case, it would be still monitored by the Department of Pre-Trial Proceedings of the State Prosecutor's Office.

On 1 April 2016 the Ombudsman for Patients addressed<sup>20</sup> also the Ombudsman for Patients asking for presentation of results of pre-trial proceedings.

In response<sup>21</sup> the Ombudsman for Patients informed about the undertaken pre-trial proceedings and collected body of evidence. The Ombudsman for Patients stated that the operations of the hospital staff did not give any reason to undertake further procedures, in the face of the fact that there were no evidence that any rights of patients had been violated.

- **Sale of hormone contraceptives to minors – address of 24 March 2016**

In his address<sup>22</sup> to the Minister of Health, the Ombudsman for Children upheld his position<sup>23</sup> expressed in the opinion of 12 March 2015 submitted to the Minister of Health under public consultations over the draft act amending the Ordinance of the Minister of Health of 18 October 2002 on selling medical and therapeutic products<sup>24</sup>.

<sup>18</sup> ZSS.422.14.2016.KT

<sup>19</sup> PK-II-Ko 179.2016

<sup>20</sup> ZSS.422.17.2016.EK.

<sup>21</sup> RzPP –WPR.420.31.2016.ANS

<sup>22</sup> ZSS.422.16.2016.GR

<sup>23</sup> ZSS.422.14.2015.JZ

<sup>24</sup> Dz. U., Journal of Laws, Item 1531



The Ombudsman for Children again stressed that purchase and use of a medicine was equivalent to taking an independent decision about a therapy and leaving a child free to buy medicines was not right, as the child was then left with the burden of responsibility for the effects of using those products. The Ombudsman stated that responsibility for such decision might only be taken by an adult person who was aware of possible negative effect of using those products. Application of a hormone agent – in the Ombudsman's opinion – should take place only when recommended by a physician. The Ombudsman stressed the free access to hormone products for minors is also contrary to the rule of parental responsibility for children's health condition and the duty to care for it and that it limited parental authority.

In response<sup>25</sup> the Minister of Health agreed with the Ombudsman and informed that the ministry was working on relevant legislation to regulate the access to hormone contraceptives for internal use.

- **The accessibility and quality of health care services in paediatrics – address of 31 March 2016**

The Ombudsman for Children again addressed<sup>26</sup> the Minister of Health with respect to accessibility and quality of paediatric services. The Ombudsman stressed that part of his demands regarding organisation of paediatric care had been met yet there were still problems requiring urgent remedial measures. He stated that the problem of insufficient financing of big paediatric hospitals which provided highly specialized medical services for children remained unsolved – the services were still costly. Hence it was necessary to verify the cost estimation of paediatric services so that their costs would be more realistic.

Limited access to a paediatrician on the day a child came to see a doctor was another problem indicated in the address. The Ombudsman stressed that children very often could not get help of a specialist which made their parents go and seek services of private, payable paediatric offices or they had to wait to be serviced in hospital emergency departments. The Ombudsman pointed also that the number of paediatricians working in shifts was too small. Because paediatric offices and wards are understaffed, the Ombudsman receives information that subsequent paediatric wards are going to be closed for a certain period of time. Another problem which is still unsolved is that paediatric beds are used only in the period of autumn and winter whereas in the summer time they are used only partially. The Ombudsman touched also the question of too

<sup>25</sup> ZSS.400.3.2015.JZ

<sup>26</sup> ZSS.422.12.2015.EK

small number of nurses in paediatric wards because of which an ill child cannot be taken care of in a comprehensive way and there is no possibility to educate children's carers.

The Ombudsman pointed also to the difficult conditions and equipment deficiencies in many paediatric wards and that shared patients' rooms made it difficult to observe the right of the child to intimacy and free contact with parents or carers. The Ombudsman noted then that children were placed in one room regardless of the nature of their illnesses which could make the treatment even more complicated and facilitate internal dissemination of infections.

In response<sup>27</sup> the Minister of Health agreed with the Ombudsman and informed that he appreciated the urgent need to analyse the health care system for children and youth in its many aspects. He assured that the Ministry of Health was analysing the problems presented by the Ombudsman for Children and that measures were being undertaken to develop improvements in health care for the youngest patients. The Minister informed also that he had appointed working teams of experts whose task was to develop proposals of changes in the system that would improve the quality of health care of the population of developmental age. Among them he appointed a Team for developing a draft act on basic health care. He also informed about the modular system of education and specialization in the field of paediatrics, which, in the opinion of the Minister, would facilitate accessibility of paediatricians under basic health care. The Minister however did not refer to the remaining problems mentioned in the Ombudsman for Children's address, though he declared his readiness to cooperate in promoting health care of children and youth.

The numerous demands of the Ombudsman for Children regarding the need to change the system and level of financing care of the youngest patients, including the proposal to distinguish a separate the catalogue of services dedicated to children resulted in the decision by AOTMiT to include the group of hospital services for children in the Tariff Plan for 2017. The above mentioned group of services includes 28 subgroups of the child illnesses section and 32 subgroups of other sections dedicated to patients under 18 years of age and concentrates over 2% of the expenses incurred by the National Health Fund for services in hospital treatment.

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<sup>27</sup> MDP.073.10.2016

- **Access to modern treatment of children – address of 26 April and 28 September 2016**

The Ombudsman for Children pointed in his address<sup>28</sup> to the Minister of Health to the limited access to modern methods of treatment for children suffering from the Leśniowski-Crohn's disease. The address was submitted as a consequence of appeals of parents of ill children and opinions of experts who treated them. The Ombudsman stressed that according to the experts in case the standard therapy proved to be unsuccessful the children should have had instant access to biological treatment as the modern therapy was proven to be successful in most cases and guaranteed remission of the disease. It lets children come back to normal way of life, regular school attendance, prevents from or puts off the necessity of surgery. The Ombudsman stressed also that the then present criteria of qualifying children into the treatment programme were very restrictive and biological treatment was possible only when the child's condition deteriorated remarkably. He also pointed out that though the leading physician who managed the treatment did see the need to prolong it, such treatment under the programme might be continued only for a year.

Another very important problem raised by the Ombudsman was lack of treatment programme for ill children who required to be treated with Adalimumab. A child, in order to be subjected to treatment with application of that medicine, had to be admitted to a hospital for inpatient services and stay for three days in it to facilitate settlement of costs with the payer. As the medicine is given every two weeks, the child suffers great distress arising from numerous and unnecessary hospital stays. The Ombudsman pointed out that it was the minor patients who were the victims of this misunderstanding between the adults and called the Minister of Health to consider child-friendly solutions.

In response<sup>29</sup> the Minister of Health presented a list of reimbursable medicines possible to be given to patients with inflammatory bowel disease and presented medicine programmes designed for this type of disease. He also informed about measures taken to include Adalimumab into the list of reimbursable drugs in Leśniowski-Crohn disease treatment. On the other hand he assured that he was undertaking any and all possible measures to improve the patients' access to efficient and safe pharmacological treatment covered by public expenses.

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<sup>28</sup> ZSS.422.23.2016.EK

<sup>29</sup> PLA.4600.363.2016.PB

Having analysed this response the Ombudsman for Children again addressed<sup>30</sup> the Minister of Health indicating that this response was not satisfactory in that it did not refer to all problems mentioned in the first address. The Ombudsman upheld his view that the right of children suffering from the Leśniowski-Crohn disease was limited. He underlined that ill children deprived of biological treatment were exposed to harmful surgery. He also made reference to the petition submitted by parents of ill children addressed to the Minister of Health and again demanded analysis of the problem and introduction of solutions that would allow for effective treatment of children suffering from Leśniowski-Crohn disease.

In his response<sup>31</sup> the Minister of Health assured that the Ministry of Health attached a lot of weight to the problem of children with IBD and scheduled relevant changes in the system for January 2017. He also informed that he was well familiar with all problems raised in the address regarding the Leśniowski-Crohn disease and specific options of possible solutions were subject to analysis by the Department of Pharmacy and Drug Policy. The Ombudsman was informed that a meeting had been held with the author of the petition regarding the treatment of IBD addressed to the Minister of Health.

In another letter<sup>32</sup> the Minister of Health informed that from 01 January 2017 changes would be applicable with respect to drug programmes dedicated to gastroenterology. The programme of biological treatment was prolonged from 12 up to 24 months which should increase its effectiveness. Another medicine was made available to children under the programme.

- **Lack of experts at the stage of court proceedings initiated by appeals against the rulings of Voivodeship Disability Evaluation Boards – address of 27 April 2016**

In his address<sup>33</sup> to the Minister of Justice the Ombudsman for Children pointed to the problem of missing experts at the stage of court proceedings initiated by appeals against rulings of the Voivodeship Disability Evaluation Boards.

In the course of proceedings referring to statement of disability the circumstances that describe the condition of minors require special information under Article 278 § 1 of the Code of Civil Procedure. Opinion of experts taken

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<sup>30</sup> ZSS.422.23.2016.EK

<sup>31</sup> PLA.4600.574.2016.PB

<sup>32</sup> PLA.4600.562.2016.PB

<sup>33</sup> ZSS.422.22.2016.KK

into account in proceedings before labour court and social security court is a Crown's evidence. Hence, the court may not substitute this evidence with another, e.g. the evidence of testimonies of witnesses or certificates authorized by physicians. The Ombudsman for Children, having analysed a number of court cases, concluded that the number of expert in various fields of paediatrics was insufficient, the waiting time before examination by court experts was too long and that particular specialists were not included in the lists of the presidents of District Courts. The Ombudsman pointed out that such state of affairs might lead to infringement of the constitutional right to have one's case heard without undue delay, under Article 45 Item 1 of the Constitution of the Republic of Poland.

The Ombudsman made also reference to the draft act on court experts of 29 October 2014 published on the website of the Government Centre for Legislation, which was being processed at that time. The Ombudsman stated that it would be appropriate to supplement the draft with a specimen of court experts list that would be uniform all over the country and a generally accessible database gathering information from presidents of District Courts. As it was necessary to introduce a comprehensive legal act to the legal system that would regulate the question of court experts, the Ombudsman for Children asked the Ministry for relevant measures to solve the discussed problem.

In response<sup>34</sup> the Minister of Justice informed that he agreed with the Ombudsman with respect to the need to improve the functioning of the justice system also with regard to the use of court experts' opinions. The Minister passed also the information that a decision had been taken with respect to initiation of legislative work over the draft of new comprehensive legal regulation of issues connected with court experts in one normative instrument in the range of act, independently of the draft prepared in 2014 by the Government Centre for Legislation.

- **Poisoning with the so called "smarties" – address of 04 May 2016**

Following the information<sup>35</sup> passed to the Ombudsman for Children by the state consultant in clinical toxicology on the number of medical interventions that could have been related to the use of new psychoactive substances, new drugs, the so called "smarties", the Ombudsman for Children addressed<sup>36</sup> the

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<sup>34</sup> DL-VI-072-4/16

<sup>35</sup> Response submitted to the Ombudsman for Children by the Centre of Poison Control – Warsaw, 18 March 2016 OKZ-In/22-03/2-16

<sup>36</sup> ZSS.422.9.2016.JW

Minister of Health with a request for comprehensive action to effectively eliminate from the market harmful psychoactive substances that might damage life or health of children.

The data given by the Centre of Poison Control – Warsaw showed that there had been 7,359 interventions altogether in 2015, 2,109 of which concerned persons up to 18 years of age (that is 28,6%). In his address the Ombudsman for Children pointed to the need to develop and introduce legal solutions that would successfully eliminate harmful psychoactive substances that are widely available. According to the Ombudsman, adding subsequent agents to the list of prohibited substances was not an effective solution. New substances with modified composition appear regularly on the market which allows to deal in the drugs without breaking the law.

In response<sup>37</sup> the Minister of Health agreed with the Ombudsman for Children and stated that the regulations of law that were binding at that time limiting the availability of “smarties” did not allow for full elimination of the drugs from the market. He also informed of legal solutions and other measures introduced to eliminate the problem. He added that the Ministry of Health had undertaken preliminary works to develop possible strategies and analyse them in detail which would allow to implement the best solutions to finally eradicate “smarties”.

The Ombudsman will observe the activity of the Ministry in that matter.

- **The case of the Children’s Memorial Health Institute – address of 25 May 2016**

Having learned that part of the medical staff had “left the patients lying in their beds” in the Children’s Memorial Health Institute, the Ombudsman for Children decided to immediately inspect the problem on site.

More details are to be found in the Chapter entitled “Monitoring Activity”.

Having in mind the agreements made in the course of the inspection, the Ombudsman addressed<sup>38</sup> the Minister of Health and asked him to take necessary measures to fully secure the child’s right to have their health and rights protected. Moreover, following the information that the operations of the staff might have endangered children’s life or health, the Ombudsman passed this address to the Prosecutor General.

<sup>37</sup> ZPP.073.24.2014

<sup>38</sup> ZSS.422.28.2016.KT

In response<sup>39</sup> he received information that the Minister of Health was monitoring the situation of the Institute on a regular basis and was being systematically updated by the management of the Institute. He assured that children were being provided with appropriate care in another hospital of the same referral level. He also stated that considering the financial demands of the nurses who were protesting in the Institute, the Minister of Health issued an ordinance dated 08 September 2015 on *general terms of contracts for provision of health care services*<sup>40</sup>, which provided additional financial resources dedicated to services provided by nurses and midwives.

The Prosecutor's Office, following the information received in the address originally submitted to the Minister of Health, started an enquiry.

The Ombudsman undertook measures to fully secure the right of the youngest patients of the Centre and presented his position in the course of works of the Sejm of the Republic of Poland with regard to the Information on the situation in the Institute presented the Prime Minister.

In his speech the Ombudsman stressed that the Children's Health Institute was a symbol of top quality health services and should retain this renown as the pride of Polish care for children's health, yet instead it might become a memorial of irresponsibility of adults and a symbol of suffering of innocent children and their parents. He called for solution of the problem as soon as possible.

He pointed out that those events proved that the system which should secure the child's rights to health and life protection was very fragile. He then stressed the under no circumstances would he approve of children being exposed to health damage or loss of life because of the activity or idleness of adults or of conflicts and "economic barriers" being more important than the highest value that is the child's well-being.

The Ombudsman addressed all circles and all persons responsible for health and safety of child patients with a request for urgent steps that should be taken to provide for continuity of services and treatment. He also repeated the demands that he had formulated in recent years with respect to the children's health protection system which referred i.a. to the need to recalculate the costs of medical procedures dedicated to children, shorten the waiting time to be seen by a physician or to provide for as many nurses as necessary.

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<sup>39</sup> PP-WPS.073.4.2016/DZ

<sup>40</sup> Dz. U., Journal of Laws Item 1400 and 1628.

- **Protection of unborn children against infection with HIV – address of 1 July and 13 September 2016**

The Ombudsman for Children in his address<sup>41</sup> to the Minister of Health presented demands regarding protection of children against being infected with HIV by their mothers. The Ombudsman pointed out that though it was possible to detect the HIV infection in pregnant women and provide the child with effective protection, cases of children infected by this virus were still reported. He stressed that then binding regulations of law allowed pregnant women to have their blood testes against HIV twice during the pregnancy, yet only 30% of obstetricians ordered them to do such a test. According to the Ombudsman it is necessary to find out the reasons for such low level of HIV testing by pregnant women and undertake measures to let them exercise their right more effectively.

In response<sup>42</sup> the Minister of Health informed that low level of testing blood against HIV in pregnant women might have been connected both with physicians being reluctant to order such tests and low awareness of women. Hence the Ministry of Health was supporting the informative and educational activity of the the State AIDS Centre addressed to medical staff in general.

Having analysed this answer the Ombudsman for Children again addressed<sup>43</sup> the Minister of Health on 13 September 2016 with respect to protection of children against HIV as he concluded that the Minister's answer did not shed light to the reasons why physicians were so reluctant to order the above mentioned tests. He wrote that underestimating this test might imply lack of due care on the part of the physicians for the health of mothers and their children. He also stated that effectiveness of specialist supervision over the diligence of procedures that physicians performed with respect to pregnant women. Hence the Ombudsman again addressed the ministry asking for more detailed information.

In response<sup>44</sup> the Minister of Health agreed with the Ombudsman that physicians might have been underestimating the importance of HIV tests. He informed that this test should be ordered as it was included in the standards of perinatal care; so the Ministry of Health had prepared an announcement which would remind physicians and midwives of their roles in promoting HIV

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<sup>41</sup> ZSS.422.35.2016.EK

<sup>42</sup> MDP.073.23.2016.JK

<sup>43</sup> ZSS.422.35.2016.EK

<sup>44</sup> MDP.073.23.2016.JK



testing. He assured that the announcement would be disseminated also among the state consultants in obstetrics and gynaecology, perinatology, neonatology, nursing in gynaecology and obstetrics.

- **Postpartum depression – address of 10 October 2016**

In his address<sup>45</sup> the Minister of Health the Ombudsman for Children pointed to the problem of children suffering from the consequences of their mothers' postpartum depression. According to the Ombudsman, social dimension of the illness and its potentially dangerous consequences made it necessary to analyse the problem in more detail. Women with symptoms of postpartum depression are not willing to express their emotions and people around them are not aware that those women need support. Women who experienced difficulties during pregnancy or who are not prepared to be a mother are especially exposed to postpartum depression. The Ombudsman asked for provision of information concerning the matter, especially with respect to the scale of diagnosed postpartum depression, possible options of psychological and psychiatric support an ill woman can get and preventive measures financed from public resources.

In response<sup>46</sup> the Minister of Health informed that the postpartum depression touched around 13% of women. Poland adopted a programme in 2014 entitled "*Psychiatric health care programme – prevention of depression in Poland for the years 2016 – 2020*". It allowed to include women in postnatal condition into the group of higher risk of depression. The Minister informed also that both physicians who took a special training in obstetrics and gynaecology and persons who were studying the profession were being given special information on psychosomatic disorders in obstetrics. According to the Minister, the scope of this knowledge allows to assess the emotional and mental condition of the patient after the labour and whether it is necessary to provide her with specialist help (psychological or psychiatric). Currently available solutions allow to provide special support to women with diagnosed developmental defects of the fetus starting from the 21st week of pregnancy.

- **Vaccination of children – address of 23 November 2016**

The Ombudsman for Children, alarmed by the growing number of false information on vaccines for children that have appeared in the public, including in

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<sup>45</sup> ZSS.422.44.2016.EK

<sup>46</sup> MDP.073.34.2016.JK

the media, addressed<sup>47</sup> the Minister of Health and asked for urgent action to prevent contents potentially harmful to children from being disseminated.

The Ombudsman stressed that protective vaccination were especially important in prevention of infectious diseases. He also pointed to the need to undertake action to give parents access to reliable information developed by experts in protective vaccination, also by means of an all-Polish social campaign. He also suggested creation of vaccination consultancy points to which children requiring specialist assessment of physical condition before vaccination would be referred. According to the Ombudsman the message concerning protective vaccination should be uniform and the authority of experts should be made use of.

In response<sup>48</sup> the Minister of Health assured that he did see the activity of anti-vaccination movements and took measures to disseminate reliable and correct information that presented benefits of vaccination. He informed that in his opinion the regulations of law regarding vaccination were comprehensive and raised no doubt. The Minister however did not refer to the arguments posed by anti-vaccination circles regarding the conflict of values (liberty against safety) and, at the same time, he pointed to the constitutional sources of the idea to limit some rights and freedoms of the citizens.

The Ombudsman for Children will be still monitoring the issue.

- **Disseminating dangerous information about vaccines – address of 23 November 2016**

Polish Public Radio and Polish Public Television had presented programmes that presented biased and controversial opinions on preventive vaccination. The content presented by public broadcasters could have triggered a feeling of fear and threat in receivers. At the same time, those contents could have made other receivers who vaccinated their children, feel guilty of doing harm to their children. No experts in vaccinology, epidemiology or paediatrics were invited to the programme so that they could have presented their specialist knowledge on preventive vaccination.

As social acceptance is the prerequisite for full use of the potential of vaccination, the Ombudsman asked<sup>49</sup> the President of the National Broadcasting Coun-

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<sup>47</sup> ZSS.422.47.2016.EK

<sup>48</sup> MDP.073.46.2016

<sup>49</sup> ZSS.422.46.2016.KT

cil for a position in the matter and information whether the National Broadcasting Council had undertaken or was going to undertake action to put down the tendency of disseminating contents which might have harmful effects on children's health and consolidate biased and controversial opinions on preventive vaccination.

In response<sup>50</sup> the Ombudsman received information that the National Broadcasting Council had carried an investigation in the matter and asked the broadcasters to explain their motives. They referred to the charges presented by the Ombudsman included in his address and assured that it had not been their intention to carry out an "anti-vaccination" action.

- **Lack of paediatric standards – address of 28 November 2016**

The Ombudsman for Children addressed<sup>51</sup> the Minister of Health and asked him to start work over uniform standards of preventive health care for children and youth. The Ombudsman for Children had been soliciting for development and implementation of standards of preventive health care for children and youth since 2008. In September 2015 a draft ordinance of the Minister of Health regarding standards of medical procedures in providing preventive health care services for children and youth was subjected to social consultations. Those works had been terminated as the 7th term of the Sejm passed.

The Ombudsman pointed out that definition and introduction of uniform organisation and scope of preventive health care for children and youth by state and non-state actors was the third "sealant" facilitating observance of child's fate in the health protection system – next to the Child's Health Record and the standards of medical procedure in providing perinatal health care services in gynaecology and obstetrics, health care of pregnant women, of women in labour, postnatal period, in case of certain complications and health care of women in case of obstetric failure. The developed standards would lead to more successful preventive health care and early identification of health problems in children.

In response<sup>52</sup> the Minister of Health informed that the works over the draft ordinance amending the ordinance on standards of paediatric procedures had been terminated. This decision was justified by the fact that the Ministry of Health had been driven by the priority defined as "Reinforcement of the family

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<sup>50</sup> DPz-WSW.051.1074.7.2016

<sup>51</sup> ZSS.422.48.2016.JW

<sup>52</sup> MDP.073.49.2016.WS

doctor institution” and the decision to appoint a team for development of the basis for the act on primary health care. It was assumed that the regulations of the act should define, i.a., the scope and organisation of preventive health care of children and youth and that those regulations would be the starting point for elaboration of new solutions in that field.

- **Standards of medical procedure and monitoring child's fate – address of 21 December 2016**

The Ombudsman for Children, alarmed by the fact that as soon as the regulations regarding standards of perinatal care become invalid the monitoring of child's fate would not be regulated by law any more, addressed<sup>53</sup> the Minister of Health and asked him to analyse this problem and take legislative steps necessary to provide protection of child's rights by using the legal mandate given to the Minister of Health and to reintroduce similar regulations that would secure children's health.

The Ombudsman referred to the following ordinances of the Minister of Health:

- ▶ of 20 September 2012 amending the Ordinance on standards of medical procedure in providing healthcare services of perinatal care for a pregnant woman, at labour, confinement and of neonatal care, Dz. U., Journal of Laws of 2016, Item 1132)
- ▶ of 20 December 2012 on standards of medical procedure in anaesthesiology and emergency care for actors providing health care services (Dz. U., Journal of Laws of 2013, Item 15)
- ▶ of 09 November 2015 on standards of medical procedure in relieving travail (Dz. U., Journal of Laws of 2015, Item 1997)
- ▶ of 09 November 2015 on standards of medical procedure in providing perinatal health care services in gynaecology and obstetrics, health care of pregnant women, of women in labour, postnatal period, in case of certain complications and health care of women in case of obstetric failure (Dz. U., Journal of Laws of 2015, Item 2007).

In his address to the Minister of Health the Ombudsman for Children stressed that application of standards of legal nature in medical procedures were invaluable as it guaranteed the patients the same diagnosis and uniform treatment regardless of the facility that provided it – which is a guarantee embodied in the constitutional principle of equal access to health care services provided by state actors. Standardization means that a woman in labour suffering great

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<sup>53</sup> ZSS.422.50.2016.KT

pain may have her travail relieved regardless of the subjective opinion of a doctor or his good will. Definition of standards by the Minister of Health in the form of an ordinance is undoubtedly a step forward in building the culture of safety in health care for children and their mothers as well as exercising respect for them as humans, citizens and patients. Establishing the standards in an ordinance guarantees that they will be followed. Even the best descriptions of medical procedures (good practices) developed by teams of experts in various medical disciplines are treated only as guidelines and not as mandatory rules of conduct.

From the perspective of the Ombudsman for Children who cares for the best protection of child's interests, the fact that the child's life could not be monitored under the law any more is highly alarming. He had solicited for introduction of regulations that could "seal" the system of child's life monitoring for many years, addressing the Minister of Health many times<sup>54</sup>. Suggestions were designed to prevent a child from being "lost" in case the child was not registered in a health care facility. Such cases were often reported and it appeared that it was necessary to regulate the problem.

By the Ordinance of the Minister of Health of 16 September 2015 amending the Ordinance on standards of medical procedure at providing healthcare services of perinatal care for a pregnant woman, at labour, confinement and of neonatal care<sup>55</sup> items 19-23 were added to the content of amended Ordinance. Under the new Ordinance a medical facility which is taking care of a newborn child is legally bound to notify a midwife of primary health care of the labour. The midwife should start providing care of the newborn not later than within 48 hours from the moment she is notified. To prove that such notification is effective it is necessary to get a confirmation of receipt, which is attached to internal health record of the newborn kept by the facility which discharges the patient. Additionally, a medical facility which provides care of a newborn child is obliged to notify the competent Local Family Support Centre on the day the mother and the child are discharged from it on the suspected occurrence of parenting disorders in the newborn's family and lack of mother's or carers' willingness or intention to choose the primary care midwife or the primary healthcare facility which would take over care of the newborn.

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<sup>54</sup> ZSS/500/12/2012/EK, ZSS/500/11/2014/EK.

<sup>55</sup> Dz. U., Journal of Laws of 2015, Item 1514.

Without doubt the regulations are necessary to tighten up the system of child's data circulation and in result – to prevent from negligence in care over newborn children.

In response<sup>56</sup> the Minister of Health informed that care of a pregnant woman, a woman in labour, in puerperium and a woman taking care of a newborn child should be regulated by law. As the currently binding standards of medical procedure are still in force, the Minister of Health would take up work over the new ordinance on organisation standards. Also the Minister of Health would be able to make an announcement on the guidelines concerning diagnostics and treatment in services covered by public expenses. The Ministry would start developing the outlines of medical procedures for i.a. perinatal care.

Following the question raised by the Ombudsman regarding provision of care of a newly born child the Minister of Health informed that initial work over amendment of the ordinance of the Minister of Health of 09 November 2015 on types, scopes and specimens of medical records and ways it may be processed had already started<sup>57</sup>. A specimen of "pregnancy record" had been developed that would provide for notification of primary care midwife that the future mother should be taken care of as soon as she is discharged from the medical facility after childbirth.

## 1.2. Individual cases connected with the child's right to life and health protection

- **The right to guaranteed healthcare services**

Cases reported to the Ombudsman for Children referred to details of exercised right of the child to benefit from services covered by state funds, i.a. the right to benefit from healthcare benefits when the child's parents were not insured<sup>58</sup> or when the child was temporarily staying abroad<sup>59</sup>.

In cases that raised doubts the Ombudsman asked the relevant medical entities for explanations or gave detailed information to petitioners with respect to legal regulations and possible solution to the problem. The Ombudsman informed parents on their rights, particularly on the regulations of law that said

<sup>56</sup> OZO.073.2.2017/EW

<sup>57</sup> Dz. U., Journal of Laws, Item 2069

<sup>58</sup> ZSS.441.1067.2016.EK; ZSS.441.448.2016.EK; ZSS.441.304.2016.EK

<sup>59</sup> ZSS.441.215.2016.EK

that each child of Polish nationality had the right to benefit from health care services financed by state resources, based on the principles defined in the Act of 27 August 2004 on *health care services financed from public funds*<sup>60</sup>. He also gave practical guidelines what to do in case parents were not insured (e.g. to inform the medical facility on that fact before the visit began). In such cases the Ombudsman told parents or carers that a medical facility was obliged to register their child as patient and make a relevant entry into the special list of patients whose healthcare services were covered by state funds.

Cases connected with child's right to have their parents present during their stay at a health-resort fell into another category of cases. For example, there was a case<sup>61</sup> of a boy who was referred to health-resort because of his chronic disease. The boy's mother was informed that her stay with the boy could only be categorized as holiday leave. In her opinion, such option was unfair both to the child – as it was not always possible to be granted leave in the required period of time – and to the parent, as the parent would had to use up his or her leave.

The Ombudsman asked the Department of Supplements in the Social Insurance Institution to clarify the problem. According to the received information the Ombudsman told the mother that based on the medical certification issued after the child is medically examined it was possible for the parent to be granted the right to attendance allowance for the time the parent would be spending with the child. This means that in order to provide care of a child staying at a health resort the mother of the child does not have to use up her holiday leave.

- **Availability of specialist care/ attendance services**

The Ombudsman was addressed by parents who reported problems connected with care of ill children<sup>62</sup> diagnosed with behavioural disorders or general developmental disorders with autism spectre. Such disorders influence the life of the whole family of the ill child, making the parents feel hopeless against the problems of the child. Parents wrote letters to the Ombudsman saying that they were incapable of improving the child's condition, it was difficult for them to accept the child's diagnosis and that they felt hopeless and discouraged. They saw however a chance in specialist attendance services.

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<sup>60</sup> Dz. U., Journal of Laws of 2015, Item 581 with later amendments).

<sup>61</sup> ZSS.441.80.2016.EK

<sup>62</sup> ZSS.441.987.2016.EK; ZSS.441.146.2016.KZ; ZSS.441.198.2016.KZ; ZSS.441.1207.2016.KT

In such cases the Ombudsman – apart from giving information on legal procedures to be granted the service of home attendance – took also action to support the parents emotionally and encourage them to develop uniform and regular rules of educating the child. He stressed that it was very important to act consistently and be cooperative with the other parent and made them aware that other problems of everyday life added to this and could lead to deterioration of the child's condition.

Cases reported with reference to availability of special attendance services concerned various problems such as too short time of attendance, lack of professionals authorised to attend the child with special needs, unwillingness of the attending person to cooperate with the child's carers.

Parents applying for specialist attendance services find it difficult to accept that the service is an additional benefit. Therefore other services already granted to the parents of the child provided also at school or in the kindergarten were also taken into account before granting subsequent allowances. Children whose parents applied for such attendance services were often diagnosed to have various other diseases based on which they were diagnosed with disability. Here it must be mentioned that lengthy proceedings were one of the most serious problems in qualitative evaluation of disability. They resulted from insufficient number of physicians of various medical disciplines. The Ombudsman for Children found the issue important and addressed the Minister of Justice<sup>63</sup> with respect to the matter.

For example, there was a case reported to the Ombudsman regarding a boy<sup>64</sup> who was granted special attendance services for persons with mental disorders provided at home, by power of decision issued by a mayor, for the period from 01 November 2016 to 31 December 2016. At the same time, the same decision defined the scope of the services and stated that the services were to be provided at home where the child lived by an entity selected in the course of a relevant procedure and the parents of the child were discharged from any payments for it.

The mother appealed against the decision and notified the Ombudsman for Children about it. She submitted the appeal to the Local Government Appeal Council, claiming that the mayor deprived her son of 45 hours of specialist support per month for no reason. She stressed that limiting the number of hours from 90 (for which she had applied) to 45 was arbitrary, against the medical

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<sup>63</sup> ZSS.422.22.2016.KK

<sup>64</sup> ZSS.441.1207.2016.KT



certification and her application and could be a threat to her child's correct development.

The Ombudsman watched the proceedings of appeal and analysed the conclusion of the case. The decision the mother appealed against – under the law in force – was issued according to discretionary standard, and an administrative body might grant the allowance but is not obliged to do so in its full scope. The legislator has used the term “may” with respect to decisions on specialist attendance services which leaves decisions to the discretion of the administrative body and which means that the fact of meeting the criteria of law does not automatically oblige any administrative body to grant the service to the interested person according to the wish of the applicant.

The administrative body acting under discretionary standards, is authorised to settle the case yet again it does not mean that this settlement should be arbitrary. As a result of the Ombudsman's analysis of that case, it was concluded that the body which issued the decision accounted for all important circumstances of the case and facts and did not exceed the limits of administrative discretion. Obviously the services granted to the child did not satisfy all the needs of the child yet this circumstance could not be the basis to deem the decision unlawful which in turn could be a premise to bring a claim.

- **Availability of healthcare services and benefits**

Parents in cases<sup>65</sup> reported to the Ombudsman regarding limited accessibility to healthcare services pointed to difficulties in access to physical therapy or comprehensive post-traumatic treatment of e.g. dental injury and expected detailed explanations with respect to the way the health care system was working. The Ombudsman made efforts to explain all the issues and provide answers to all petitioners.

For example, there was a case of dates and frequency of check-up visits by a midwife after a child was born. The Ombudsman was addressed by the mother who informed him that the midwife came up only once. The mother wanted to know if it was right. She was informed of the regulations concerning the issue<sup>66</sup> and of the possibility to get information near her place of residence.

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<sup>65</sup> ZSS.441.428.2016.EK; ZSS.441.416.2016.EK; ZSS.441.76.2016.EK

<sup>66</sup> Dz. U., Journal of Laws of 2012, Item 1100 with later amendments).

In another case<sup>67</sup>, a girl diagnosed with neurological disorders and psychomotor retardation could not start her treatment because of its limited accessibility. Her mother notified the Ombudsman that a medical facility had informed her that when the girl starts therapy in one facility, it automatically excludes the option to benefit from health care services in another centre. The Ombudsman had to intervene and asked both medical facilities for explanations and made reference to the binding regulations of law.

As a result of the intervention undertaken by the Ombudsman the girl was admitted for therapy in the new facility and she also continued the therapy she had started in the other facility. Also the Ombudsman informed the mother of the possibility to benefit from services supporting a child covered by public funds. Then he addressed the paediatrician who was taking care of the child and asked him to support the mother in her efforts, also by helping her assess correctly the legitimacy of those efforts.

- **Long waiting time for medical services and their quality**

The Ombudsman, similarly as in previous years, was notified of cases of long waiting time for a child to be admitted by a specialist<sup>68</sup> (e.g. ophthalmologist, cardiologist, surgeon), long waiting time for a surgery<sup>69</sup>, limited access to rehabilitation procedures or to rehabilitation equipment<sup>70</sup> and the quality of provided medical services<sup>71</sup>. Problems related with waiting for emergency aid<sup>72</sup>, most often at night or in the late afternoon, fall into a separate category of cases.

For example, there was the case<sup>73</sup> of a minor who was diagnosed to have malformation after birth. The mother was informed by the medical staff that the child had to be operated on. The medical facility where the surgery was scheduled, withdrew its previously given consent to the procedure, without giving any reason. The Ombudsman asked the manager of the facility why the child was refused to be operated on. He was informed that the surgery would be a complicated undertaking and would require comprehensive coordination with respect to relevant medical devices and staff from several medical facil-

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<sup>67</sup> ZSS.441.871.2016.EK

<sup>68</sup> ZSS.441.628.2016.EK; ZSS.441.306.2016.EK; ZSS.441.171.2016.EK

<sup>69</sup> ZSS.441.1502.2015.EK

<sup>70</sup> ZSS.441.1343.2015.EK

<sup>71</sup> ZSS.441.1468.2015.EK; ZSS.441.438.2016.EK; ZSS.441.552.2016.EK

<sup>72</sup> ZSS.441.599.2016.EK; ZSS.441.565.2016.EK; ZSS.441.1468.2016.EK

<sup>73</sup> ZSS.441.405.2016.EK

ities. It occurred then that the waiting time was getting longer and longer not because of a refusal but because of this necessary circumstance.

The Ombudsman gave the mother hints and guidelines regarding further proceedings, including the necessity to consult the child's condition at the Child's Memorial Health Institute. In result he obtained the information that the child was consulted in the Centre and the day of surgery was initially scheduled as the starting point of the child's therapy. Following the information that the child's condition had worsened (regular bleeding at night), showing that the child's health or even life could have been in danger, the Ombudsman intervened at the medical facility where the boy was staying. He also contacted the facility where the boy was to be admitted. One of the employees of the Ombudsman for Children's Office was regularly contacting the mother by phone and provided her with relevant information. The mother was supposed to broaden her knowledge with respect to proper treatment for the boy and comprehensive information on further therapy. In result, the surgery was rescheduled to take place sooner and the first procedure was carried out as emergency and was successful. The minor is still the patient of the Child's Memorial Health Institute which is going to carry out subsequent surgeries.

In another case<sup>74</sup> a girl, who was a premature baby diagnosed to have numerous health problems which had to be subjected to more detail tests and examination. The mother received referrals to many specialists yet as she was informed of long waiting time for consultations, she gave up. She did some of the tests in private facilities and paid for them while she ignored other tests and procedures which did not let her child be diagnosed comprehensively. In result she focused only on identifying symptoms that could have indicated health problems of her daughter in daily care (e.g. the child could not sleep or slept restlessly or woke up regularly) and claimed that the child was not getting necessary help.

The Ombudsman contacted the mother and suggested that she should start to actively cooperate with the child's physician, also in defining the priorities in further treatment. He informed the woman that it was really necessary for the girl to have all the specialist tests done in one medical facility as only such proceeding would allow to correctly assess the effectiveness of undertaken treatment. It occurred then the mother had family problems, e.g. no support on the part of the father and she felt very strong need to perform her professional work.

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<sup>74</sup> ZSS.441.628.2016.EK

The Ombudsman for Children's employee assured her the she would get the support she needed and have all her questions answered with respect to the organisation of treatment and health care related issues. In result, the scheduled treatment of the child had begun and the mother started to apply solutions that provided the child with everyday care at home.

In another case<sup>75</sup> a mother filed a complaint in which she undermined the legitimacy of the requirement to register in a surgery clinic for a child to have the cast taken off. The mother found the obligation to register and the necessity to wait for admission, as she claimed that taking the cast off is a standard, mechanical procedure and should not require any medical qualifications. The Ombudsman for Children explained to her that apart from taking the cast off it was also necessary to assess the condition of the hand, hence the need to be registered.

The above mentioned examples show that apart from necessary interventions in cases when bodies obliged to undertake certain measures do not do so, one of the very important roles of the Ombudsman for Children is to provide support and raise awareness with respect to provision of proper health care to a child.

- **Treatment costs**

Similarly as in previous years, the Ombudsman was addressed<sup>76</sup> with requests concerning financial support for children with respect to their health care. The requests concerned additional financial resources for, i.a., physical therapy or physical therapy stay at a medical facility, purchase of physical therapy equipment or special nutritional supplements<sup>77</sup>.

In such cases, the information was passed that the Ombudsman for Children had no statutory possibility to provide financial support, and the interested parties were provided with information on types and addresses of institutions that applications for financial support might be addressed to, or the Ombudsman represented the interested parties<sup>78</sup> in order to obtain financial help for them.

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<sup>75</sup> ZSS.441.306.2016.EK

<sup>76</sup> ZSS.441.995.2016.EK; ZSS.441.1064.2016.EK

<sup>77</sup> ZSS.441.1238.2015.EK; ZSS.441.626.2016.EK; ZSS.441.56.2016.EK; ZSS.441.1392.2016.EK; ZSS.441.1392.2016.EK; ZSS.441.1161.2016.EK

<sup>78</sup> ZSS.441.1161.2016.EK

The Ombudsman was i.a. addressed<sup>79</sup> by a mother of a boy suffering from cerebral palsy, spastic quadriplegia and the progressing degeneration of the bone structure and skeletal system. The problem was connected with costs of specialist medical transport of the child to the place where diagnostic tests would be carried out – which was abroad.

As the Ombudsman found out the President of the National Health Fund did not refer to the problem of costs of transport in the decision admitting the child to the tests due to negative opinion of the physician who referred the child to the tests.

The Ombudsman agreed with the mother with regard to the fact that the physician's opinion was harmful to the child and undertook intervention in the National Health Fund, the Ministry of Health and the local social support centre. After that the President of NHF issued a decision by which he agreed to cover the costs of the specialist medical transport. At the same time, as a result of the action undertaken by the Ombudsman, the family was granted allowance to cover part of the costs of the transport. The boy made it to the tests according to the schedule.

Another case<sup>80</sup> involved a boy with physical disability. A company that sold equipment for physical therapy delivered a wrong wheelchair for the boy and the boy could not use it. The company did not want to exchange the equipment and offered to adjust the wheelchair to the size of the boy which did not guarantee either health benefit or the convenience to the child.

The Ombudsman undertook intervention. He addressed the local family support centre with a request for provision of support to the boy's parents. He also addressed the institution responsible for distribution of wheelchairs and asked them to accelerate the procedure of returning money. Return of the money was the condition for exchange of the wheelchair.

Additionally the Ombudsman addressed the NHF Department with a request for inspection whether the company proceeded correctly with respect to exchanging wrong equipment. The Ombudsman watched the case proceeding until he received the information that a different type of wheelchair – adjusted to the boy's needs – was bought.

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<sup>79</sup> ZSS.441.680.2016.KT

<sup>80</sup> ZSS.441.56.2016.EK

- **Organisation and operation of health care entities**

Cases reported to the Ombudsman in this category referred to irregularities in organisation of medical facilities, their work, current logistic problems<sup>81</sup> and insufficient cooperation with particular divisions of a given facility<sup>82</sup>. Problems reported to the Ombudsman resulted often from misunderstanding the information made available to the patients which in turn caused conflicts and delays in provision of medical care to children.

The petitioners requested<sup>83</sup> also intervention because of a risk that the facility would be closed or reported<sup>84</sup> the need to establish a specific facility within the territory they inhabited.

When undertaking interventions, the Ombudsman for Children addressed the local authorities responsible for securing the health care needs and asked for analysis of how well the children's needs were being satisfied, asked the voivodeship departments of the National Health Fund and the state consultants and voivodeship consultants in particular branches of medicine for explanations or to take measures and for opinion regarding the way the minor's health care needs are satisfied.

To picture this, let us give an example of case<sup>85</sup> reported to the Ombudsman regarding liquidation of the physical therapy centre for children in order to connect it with a facility for adults. The parents were satisfied with services provided by a facility dedicated only to child health care. They thought highly of the developed model of comprehensive physical therapy for children and high competences of the medical staff.

The inquiry undertaken by the Ombudsman led to getting detailed information regarding legitimacy of decisions in the context of the best interest of the child. As a result of the Ombudsman's intervention, the manager of the facility and the mayor informed that the intended changes resulted from the need to use the premises in a more economical way. The mayor assured that the conditions in which the physical therapy would take place in the new facility would similarly good both in terms of the services and the backup facilities and the equipment. He also assured that the parents of treated children were

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<sup>81</sup> ZSS.441.918.2016.EK; ZSS.441.562.2016.EK

<sup>82</sup> ZSS.441.1468.2015.EK

<sup>83</sup> ZSS.41.17.2016.EK; ZSS.441.292.2016.EK

<sup>84</sup> ZSS.441.1454.2015.EK

<sup>85</sup> ZSS.441.583.2016.EK

and would still be informed on a current basis of the actions undertaken by the local self-government.

As the assessment of the introduced modifications would be possible only after they are introduced, the Ombudsman informed the parents who reported the problem that due to the fact that the case was yet to be solved, it was possible to report claims only after the project was realised. The Ombudsman is still monitoring the case.

In another case<sup>86</sup>, a surgical department for children was to be liquidated. The Ombudsman was informed that as a result of this, it would be necessary to carry out surgeries in facilities located tens of kilometres away. The Ombudsman asked the management of the hospital and the state and voivodeship consultant in surgery to explain the problem. The Ombudsman met also the local authorities to discuss the issue. He presented arguments for leaving the children's department as it was. As a result of this activity, the department was not liquidated and a special sub-division was formed as part of the surgery department. The location of the children's sub-division was designed and organised in such way that the children who stayed there did not have any contact with adult patients which did not expose them to any health risk.

The Ombudsman for Children was also addressed<sup>87</sup> by the employees of day care physical therapy department for children with psychiatric problems and informed him of the possible termination of its functioning due to high maintenance costs. The department admitted and educated children endangered with mental disorders who, due to their diagnosed illnesses, could not benefit from the regular education system.

The Ombudsman undertook intervention. He addressed the manager of the facility and asked him for information on the current state of affairs and further plans. He also addressed the voivodeship consultant in the field of child and adolescent psychiatry and asked him for opinion whether it was legitimate to maintain such type of facilities and to the education officer asking for assessment of the effectiveness of the primary school established in the facility. As one of the potential threats to the functioning of the department was lack of financial resources and high maintenance costs, the Ombudsman addressed a superior institution with a request for support suggesting also that those local self-governments which refer patients to those facilities most often should participate in their maintenance costs.

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<sup>86</sup> ZSS.441.1353.2016.EK

<sup>87</sup> ZSS.441.633.2016.EK

The department is still operating and the Ombudsman for Children controls the case on a regular basis.

In another case<sup>88</sup>, the Ombudsman had to intervene with respect to maintenance costs of surgery department for children in a hospital. The department was intended for liquidation as the manager explained that the patients' beds were not fully used and there was a need to increase the standards of care of adult persons. The opinion of the voivodeship consultant in child surgery was, however, different, similarly as the opinions of doctors employed there. The intended change did not account for the fact that it would be then necessary to transport children who required urgent treatment to facilities located over a dozen kilometres away which would considerably lengthen the time of waiting for a health care service. The Department serviced considerable part of the northern part of the city and its northern suburbs and smaller towns.

The Ombudsman asked the management of the hospital and local authorities to explain the circumstances of the situation. The Ombudsman for Children's representative actively participated in the sessions of the Social Council of the Hospital and the session of the City Council at which the intended liquidation was discussed. The undertaken action, including arguments presented by the Ombudsman, the liquidation was given up in the end. At the same time the opinion of the local authorities regarding necessary restructuring of the hospital was upheld in a letter submitted to the Ombudsman.

The above described affairs were strictly connected with an event that took place in the Institute, that is temporary limitation of health care services for children due to nurses going on strike.

The Ombudsman for Children, having learned that part of the medical staff had abandoned patients in their beds, undertook intervention immediately and decided to start inquiry and inspect the problem on site. A team authorized to inspect the facility found in the course of the inspection that the situation poses a direct threat to the life and health of children staying in the Institute.

As it was found out, on 24 May 2016 all scheduled procedures were cancelled and children with serious illnesses were transported to other medical facilities which could also make their condition worse. Only a ward manager nurse and one unit nurse and doctors were taking care of children who could not be transported or remained in the ward for other reasons.

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<sup>88</sup> ZSS.441.1353.2016.EK



Apart from the inspection, the Ombudsman undertook also intervention at the Minister of Health, asking<sup>89</sup> for urgent action to fully secure the rights of children to have their life and health protected. he met the Minister of Health to discuss the situation in the Institute. Following the information obtained from the hospital's management saying that children's health and lives may be in danger, the Ombudsman sent the address to the Prosecutor General. Then the Ombudsman continued monitoring of the course of events in the Institute.

Moreover, at the presentation of the Report of the Prime Minister on the situation in the Institute (8th June 2016), the Ombudsman for Children presented his position and demands and called all environments and persons responsible for health and safety of patients to undertake urgent action to secure the availability and continuity of treatment of children.

The situation was finally solved and the nurses came back to their patients. More details are to be found in the Chapter entitled "Monitoring Activity".

In another case, the Ombudsman was informed of irregularities in provision of services in a municipal hospital. The notification said that a physician refused to see and help<sup>90</sup> a sick child.

The Ombudsman's inquiry revealed that the doctor who was on duty at the reception room of the Paediatric Ward of the Municipal Ward was ready to provide a health care service to a child but only after the mother had completed all formalities connected with child's admission and registration which had to be done in a separate building that was part of the hospital complex. When explaining the problem the management of the hospital admitted that the procedure applied by some employees of the hospital that made the child's carer go to another building to complete all formalities connected with the child's stay could be inconvenient.

After the Ombudsman's intervention, the procedures were changed and the medical staff was obliged to perform all the services including procedures of registration and other administrative operations connected with the youngest patients in one place.

Another category of cases<sup>91</sup> was connected low quality of the premises in which minor patients and their carers had to stay.

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<sup>89</sup> ZSS.422.28.2016.KT

<sup>90</sup> ZSS.441.1416.2015.KT

<sup>91</sup> ZSS.441.1381.2016.EK

The Ombudsman received a claim<sup>92</sup> against the conditions of the building in which children were registered and admitted to treatment in a paediatric hospital. The claim was submitted by a mother who wrote that the temperature in all rooms did not meet any standards and it was 16 Celsius degrees in the night from 3 January to 4 January 2016 in the patients' room. Further on, it did not improve either. The Ombudsman intervened at the hospital's management asking why the rooms were so cold and what was done to improve the situation.

In response the management said that low temperature in the rooms was caused by a central heating breakdown which could not be located precisely. The installation was repaired finally and the conditions of the rooms improved.

- **Protection of the rights of minor patients**

The Ombudsman undertook also measures in cases belonging to a wide category of rights of minor patients, similarly as in previous years. The cases referred i.a. to: the problem of parents / carers staying with the child at the hospital or health resort<sup>93</sup>, presence of the parents (carers) during medical procedures done to a child<sup>94</sup>, parents' consent to provide services to a child without the parents being present<sup>95</sup>, improper attitude towards the child in medical facilities<sup>96</sup>, including neglecting the child's need to privacy and intimacy<sup>97</sup> or heartless performance of medical procedures<sup>98</sup>.

For example, there was a case<sup>99</sup> reported by a father of a boy who had to have a minor procedure done at a hospital. The father was informed that neither of the parents could be present when the procedure was to be performed and also a day after the procedure. The father believed that regardless of the circumstances, a child had the right to be with his or her parent all of the time.

The Ombudsman for Children explained the parent the problem was regulated by the Act of 06 November 2008 on the rights of patients and the Ombudsman for Patients<sup>100</sup> according to which a patient staying in a health care facility for

<sup>92</sup> ZSS.441.14.2016.EK

<sup>93</sup> ZSS.441.1265.2015.EK; ZSS.441.80.2016.EK; ZSS.441.52.2016.EK; ZSS.421.4.2016.EK  
ZSS.441.1421.2016.EK

<sup>94</sup> ZSS.441.1455.2015.EK; ZSS.441.643.2016.EK

<sup>95</sup> ZSS.441.13.2016.EK

<sup>96</sup> ZSS.441.244.2016.EK; ZSS.441.410.2016.EK

<sup>97</sup> ZSS.441.1049.2015.EK

<sup>98</sup> ZSS.441.1422.2016.EK

<sup>99</sup> ZSS.441.259.2016.EK

<sup>100</sup> Dz. U., Journal of Laws of 2016, Item 186.

persons who require all day health care was entitled to maintain personal contact or call or write to other persons, yet restrictions were possible if motivated by risk of epidemic or the of patient's life or health was endangered in this way. It was stressed that each issue concerning the presence of a carer when a child is subject to a medical procedure should be considered in terms of child's safety and the parent has the right to be informed in detail.

The Ombudsman received also questions<sup>101</sup> regarding legitimacy of collecting fees for the parents' stay wt a hospital with their children and the limit of the fees. In such cases the Ombudsman for Patients asked the hospital managers for explanations and addressed relevant claims to the Ombudsman for Patients.

For example, there was a case<sup>102</sup> of a fee for parents who stayed with their child in a hospital, which was in their opinion too high and even unnecessary. The inquiry initiated by the Ombudsman allowed to settle that the collected fee was for the all-day use of sanitary fittings, kitchen appliances and a bed in a hotel. The Ombudsman told the parents about the option to be partially exempted from the charge, divide it into instalments or postpone the deadline of its payment. He also told them that in case of difficult financial situation the could have benefited from subsidiary support offered by local social support centres.

The Ombudsman gave all necessary detailed information to all persons who asked about issues connected with fees and charges and suggested solutions in each case and referred to the Act on the rights of patients and the Ombudsman for Patients. He also explained that collecting fees and charges from child's parents or carers who were going to accompany the child at a hospital is acceptable and legal. He stressed that the rules and regulations of collecting fees and charges must be made public and persons who could not afford to pay them, had to be exempted from them.

In another case of this type<sup>103</sup> a mother came to the Ombudsman and asked whether the rights of a child were not violated when a medical facility required the parents to pay a fee for making available the medical records which were needed in disability evaluation proceedings.

The Ombudsman told the petitioner that a medical facility, pursuant to the Act on the rights of patients and the Ombudsman for Patients was entitled to collect fees for making the medical records available by preparing extracts, copies,

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<sup>101</sup> ZSS.441.1433.2015.EK

<sup>102</sup> ZSS.441.373.2016.EK

<sup>103</sup> ZSS.441.458.2016.KT

or printouts or on electronic storage devices. He pointed also that there were no grounds to collect fees for making the records available for review on site nor for giving out the original. So, in particular cases it is worth asking for the original copies. On the other hand the mother was told that it was always possible to address the manager of a medical facility with a request for exemption from the fees or to local social support centre for financial support.

In another case the Ombudsman for Children received information that the rights of child patient were neglected and violated in a medical and educational facility<sup>104</sup>. The Ombudsman started to investigate the problem and addressed the local division of the National Health Fund, as the facility in question had entered into a contract with the Fund on long term care of children. Upon request of the Ombudsman the NHF division inspected the facility in terms of quality of services provided. The charges concerning neglect and violation of children's right were confirmed. The children were moved to two other facilities – home of social support and hospice – which were much experienced in taking care of minor patients.

Another category comprised cases connected with children staying in psychiatric wards or treating neuroses<sup>105</sup>. They are presented in separate sub-chapter.

- **Availability of modern medical procedures, drugs and nutritional products**

The Ombudsman for Children was address with respect to availability of modern medical procedures and drugs or nutrition products<sup>106</sup>. Limited availability of modern medical services result often from the need to follow strict procedures under which certain requirements have to be met, as for example a child's stay at a hospital.

For example, there was a case concerning treating the Leśniowski-Crohn disease. The Ombudsman, having in mind that the life of children suffering from the disease is difficult, intervened at the Minister of Health<sup>107</sup> supporting in this way the activity of patients' organisations and expert physicians. In result the procedures were modified to the benefit of minor patients, e.g. the biological therapy time was prolonged from the period of one year two two

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<sup>104</sup> ZSS.441.774.2016 .EK

<sup>105</sup> ZSS.441.132.2016.EK

<sup>106</sup> ZSS.441.11.2016.EK; ZSS.442.30.2016.KT; ZSS.441.1406.2016.EK; ZSS.441.288.2016.EK; ZSS.441.1312.2016.EK; ZSS.441.962.2016.EK

<sup>107</sup> ZSS.422.23.2016.EK

years and a drug formerly given only to adults was admitted to be included in the treatment.

In another case the Ombudsman was addressed by parents of children suffering from type 1 diabetes who asked him for help in accelerating the decision regarding reimbursement of costs of the Continuous Glucose Monitoring System<sup>108</sup>. The illness occurs in little children (toddlers) and is therefore difficult to be diagnosed. Such children are too small to communicate meaningful symptoms of health disorders. Reimbursement of the device would allow to secure in a better way the situation of ill children. The Ombudsman addressed the Department of Drug Policy and Pharmacy at the Ministry of Health. The Ombudsman was informed that a draft project of ordinance on qualifying the CGM device as guaranteed service in specialist outpatient care. There are more than 10 thousand children who should use the device as it prevents from further complications. The case is being monitored by the Ombudsman.

- **Safety of medical procedures**

The ombudsman received information on cases regarding medical errors including negligence in performance of medical procedures which could have resulted in complications, prolongation of the treatment or severe health impairment<sup>109</sup>. The notifications referred also to providing insufficient information on child' condition, limited accessibility to health care records, underestimation of the patient's emotions, ignoring comments made by the parents in the course of therapy<sup>110</sup>. In such cases, apart from emergency operations and detailed analyses of each case, the Ombudsman told parents about institutions and bodies that they might bring their claims to and pointed to the proper legal procedures.

For example, there was a case<sup>111</sup> of a boy who was a patient at the paediatric ward

of voivodeship specialist hospital. The mother informed the Ombudsman that upon the admission of the child and the child's stay at the ward many irregularities took place such as abandonment of diagnostic testing and medical procedures and violation of patient's rights. As the hospital manager explained the boy was under specialist care that would guarantee improvement of his condi-

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<sup>108</sup> ZSS.441.1210.2016.EK

<sup>109</sup> ZSS.441.108.2015.EK; ZSS.441.197.2015.EK

<sup>110</sup> ZSS.441.467.2015.EK; ZSS.441.791.2015.EK

<sup>111</sup> ZSS.441.1468.2015.EK

tion. A number of diagnostic tests were carried out and a therapy was started as a result of which the child's condition finally improved. The Ombudsman understands well why parents worry for their child's health and that this anxiety may make them tense which is when even the smallest incident becomes a source of conflict. Yet carers have no specialist medical knowledge hence single symptoms observed in a child or words spoken by the medical staff may be the cause of their stress. Most importantly, however, the child received necessary medical help and he finally got better. Having reviewed the content of the answer submitted by the hotel management the Ombudsman for Children concluded that the child's rights were properly secured.

In another case<sup>112</sup> reported by a mother of a newborn – a premature baby – who, as she had had negative experience with respect to her stay at a neonatology ward, similarly to the opinion of other mothers, addressed the Ombudsman and asked him for intervention. She pointed to continuous neglect in the conduct of the medical staff at the wards where extremely premature babies were patients, that is newborns born between the 26th and 33rd week of pregnancy. The most frequent irregularities were: additional feeding with milk formulas instead of woman's milk, sloppy analysis of children's data shown on vital signs displays which delayed proper modification in their treatment, frequency of procedures done to the newborns. Apart from obvious examples of negligence on the part of the medical staff she also mentioned wrong conduct of the staff who disregarded comments or questions or doubts communicated by the mothers.

The Ombudsman told the woman about legal ways to counteract in case irregularities were observed in care provided to children. Having in mind that the well-being of a child is most important, he started intervention and addressed state consultants in gynaecological nursing and paediatric nursing with a request for relevant reaction, including educational activity addressed to the personnel of the neonatal wards, so that the quality of care provided to premature babies could be improved.

The Ombudsman was informed that the content of his letter was presented and discussed at the 2. session of the consultants in nursing. The consultants committed to arranged for relevant cooperation with District Chamber of Nurses and Midwives with respect to training in interpersonal communication and support for mothers of premature babies.

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<sup>112</sup> ZSS.441.136.2016.EK

Cases concerning vaccination formed quite a large group of cases. Among many notifications, two categories of problem could be distinguished. The first one - connected with the parents' opinion, also their anxiety about application of this type of preventive care<sup>113</sup>. The second one - connected with the need for more detailed knowledge with respect to: the technique of vaccinating, payments for vaccination, storage of vaccines and operational procedures of vaccination facilities<sup>114</sup>.

The Ombudsman informed the parents of the meaning of preventive vaccination both in the context of public health and individual protection against diseases. He also pointed to the sources of information concerning vaccination based on correctly conducted medical research, encouraged the carers to communicate directly with physicians to get specialist advice and information with respect to all doubts.

The Ombudsman was addressed by a parent<sup>115</sup> who informed him that he had been fined by the voivode to force him to get his child vaccinated. The parent asked the Ombudsman for intervention, claiming that the voivode's action was illegal and that he had not vaccinated the child on time only because of fear for the child's life and health.

In response the Ombudsman stressed that vaccination was one of the methods of preventing infectious diseases. Legal solutions connected with the issue provide for epidemiological safety and had to account for widely understood best interest of the public. They also had to be applied on the basis of well-grounded professional knowledge. He explained that it would not be advantageous to introduce such solutions based on which parents could arbitrarily decide whether to get the child vaccinated or not. As far as minors are concerned, it is the parents (carers of the child) who are responsible for getting the vaccination of children done. The statutory obligation to get a child vaccinated does not however mean that the vaccination should be done under coercive measures. A physician would not perform the procedure if the child's carers oppose to it.

The Ombudsman pointed that if the parent failed to fulfil this obligation it may have caused not only a threat to health and life but also certain legal consequences against the person who evaded this obligation like being fined by bodies responsible for securing the performance of vaccination procedures. The parent was also informed that there were regulations regarding the occurrence

<sup>113</sup> ZSS.441.1191.2016.EK; ZSS.441.1177.2016.EK; ZSS.441.1351.2016.EK

<sup>114</sup> ZSS.441.722.2016.EK; ZSS.441.410.2016.EK

<sup>115</sup> ZSS.441.1285.2016.EK

of adverse events following vaccination<sup>116</sup>. Those procedures allow physicians to report the so called postvaccinal complications to institutions responsible for gathering and analysing such information.

Another category of cases were those in which irregularities, negligence or nonfeasance in procedures performed by medical staff led to child's death<sup>117</sup>. The Ombudsman investigated thoroughly each of those cases. He reviewed and analysed medical records he had received from the harmed persons, he asked the prosecuting authorities that led investigation for access to information or watched the activity undertaken by relevant institutions. The Ombudsman addressed also the funding bodies of the facilities and requested information if any changes were intended to be introduced in current procedures so as to eliminate the possible malpractice or nonfeasance in the future.

For example, there was a case of a child who died a couple of days before birth<sup>118</sup>. The child's father was in despair but did not know how to investigate the reasons of the child's death. He also expressed doubts as to the legitimacy of investigative procedures. Having received detailed answers to his questions he decided to file a complaint to prosecutor's office. The Ombudsman was following the case. The proceedings were concluded with filing an indictment against the physician who took care of the mother for neglect and failure to fulfil obligations by unintentionally exposing the child to direct danger of death or grievous bodily injury, that is for act under Article 160 §3 in connection with § 2 of the Penal Code.

- **Psychiatric care**

Considering mental health as the fundamental human good and bearing in mind that protection of rights of minors with mental disorders is one of the Ombudsman's priorities, he took up a number of actions to help this group of children<sup>119</sup>.

For example, there was a case of a teen girl who was the patient of children's psychiatric ward. The minor was referred to mental hospital because of her depressive condition which she manifested by harming herself. The Ombudsman

<sup>116</sup> Rozporządzenie Ministra Zdrowia z dnia 21 December 2010 r. w sprawie niepożądanych odczynów poszczepiennych i kryteriów ich rozpoznawania (Dz. U., Journal of Laws, item 1711).

<sup>117</sup> ZSS.442.6.2016.EK; ZSS.442.7.2015.EK; ZSS.441.394.2016.EK

<sup>118</sup> ZSS.441.153.2014.EK

<sup>119</sup> ZSS.441.588.2016.AT



for Children undertook measures alarmed by information on the girl's condition passed to him by her relatives and, subsequently, by the Ombudsman for Patients.

The Ombudsman learned also that the regional court took measures to investigate the minor's situation at home, as well as the status of her two siblings. The Ombudsman for Children addressed then the court and asked for access to the files of the case pertaining to custody of the girl as well to the medical records kept by the hospital of which she was the patient. Following an analysis of court files and the information given by the head of the psychiatric ward showed that the prosecutor was carrying out preparatory proceedings under the prohibited act set forth in Article 200 of the Penal Code to the detriment of the minor. The proceedings were instigated upon information submitted by the mental hospital that said that during a medical examination the minor told the physician that she was the victim of family violence on the part of her parents, including sexual abuse by the father.

The Ombudsman for Children officially joined the court proceedings and asked for inquiry into execution of parental authority by the minor's parents. By decision of 29 March 2016 the court admitted the evidence of the experts' opinion developed by a team of court specialists who issued an opinion dated 04 July 2016 on the family situation of the minor and her siblings.

In their opinion they stated clearly that the children were exposed to health and life threat due to the fact that their parents had been abusing alcohol for many years and the father had been abusing children both mentally and physically; also the parents did not fulfil other basic parental obligations.

By interim decision issued by the court the minor was to be placed in a non-professional foster family after her treatment. The court obliged also the foster family to provide relevant psychological care of the minor after she left the hospital.

The Ombudsman for Children filed a motion for placing the girl's siblings in the same foster family and for allowing the family to decide about the children's treatment and limiting the parents' parental authority in that matter.

The court considered partially the Ombudsman's motions and gave consent to the foster family obtaining information on the minor's health condition. The court obliged the child's parents to give the medical records of the girl to the foster family.

The court did not place the other two children in the foster family yet he forbade the father to have any contact with them and obliged a guardian ad litem to visit the family at least every two days. The girl, due to her mental condition is still staying at the hospital. The proceedings are in progress.

In another case a 12-year-old girl was regularly a patient of a psychiatric ward for children and youth<sup>120</sup>. The case was reported to the Ombudsman for Children by the Ombudsman for Patients following the custody court's refusal to consent to let the child meet the mother. The Ombudsman for Patients stressed that one of the reasons why the minor was in such bad condition were the continuous court proceedings before the Penal Department of a district court and Family and Minors Department of regional court.

Case files collected by the Ombudsman showed that the minor was placed in a residential institution together with her brother under a decision of court of 2012. The decision was motivated by the parents' failure to perform their parental tasks and duties. Also the minor's father was accused of the act under Article 200 § 1 of the Penal Code, so the prosecutor forbade him to have personal contact with the girl. The mother of the children tried to defend the father and influence the children so that they would say what she wanted.

Unfortunately the Ombudsman was informed by the residential institution that despite great efforts on the part of the educators and psychologists to provide the children with decent conditions of living and care, to let them make up for developmental deficiencies and, last but not least, to give them the feeling of safety, mental condition of the children was still unstable. The minor girl's conduct was especially alarming as her becoming emotionally tense – usually after her mother visited her – were dangerous to her health and the safety of persons surrounding her (she kicked, bit, drew her hair out). Such moments required to be dealt with by medical service and the girl had to be brought to a mental hospital.

The penal case was concluded with a judgement of district court as the first instance, in which the defendant was found guilty of the act under Article 200 § 1 of the Penal Code. He was sentenced altogether to 4 years and 6 months of deprivation of liberty. The judgement was repealed by the judgement of a court of appeal which pointed to a negligence by the the district court when hearing the case, that is the court had heard the minors without informing them of their right to refuse to testify. This negligence resulted finally in cassation

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<sup>120</sup> ZSS.441.834.2015.AT

issued by the court of appeal and the necessity for the district court to hear the case again, which in turn meant that the minors had to be heard again.

Hence the Ombudsman for Children addressed the President of the district court and asked him to take administrative supervision over the penal proceedings. The Ombudsman stressed that under Polish system of Procedural Criminal Law children under 15 could be heard only once, so before entering into hearing the case should have been already reviewed to such extent that it was almost sure that no new circumstances would emerge. The Ombudsman pointed that procedural errors should be avoided especially when they might have negative consequences for the harmed minors.

The Ombudsman stressed that the minors were engaged in long lasting criminal proceedings, in which the accused person was their father, someone very close to them. The president of the district court informed the Ombudsman that the case was subject to administrative supervision.

Contact between the mother and the children was going to be supervised by the employees of the relevant body. At the same time the family court suspended the father's parental authority over the minor.

Another category comprised cases connected with children staying in psychiatric wards or facilities treating neuroses. Here it must be mentioned that carers of minor patients of psychiatric wards did not accept explanations of the physicians and therapists regarding the nature and reasons for disorders observed in their children nor did they take into account that in order for the therapy to be successful the rules and regulation of that facility had to be obeyed. Such perception makes the cooperation between the parents and children difficult and is harmful to the children. In cases concerning irregularities in the conduct against minor patients staying in psychiatric wards the Ombudsman undertook interventions at managers of those facilities, asking for information and relevant reaction.

For example, there was a case<sup>121</sup> in which the Ombudsman received an anonymous information that coercive measures and isolation of patients are applied in the Centre for Therapy of Neuroses against children. The Ombudsman undertook intervention to clarify the situation and addressed the relevant department of the National Health Fund with a request for inspection and submission of information on the number and nature of claims submitted to the National

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<sup>121</sup> ZSS.441.132.2016.EK;

Health Fund in the years 2014-2015. He also asked the manager of the facility to provide explanations.

As a result of the Ombudsman's intervention, the relevant department of the NHF undertook investigation. The information and explanation submitted to the Ombudsman said that there had been no complaints against the facility's activity in the years 2014 and 2015. Both the NHF department and the facility's manager explained that patients were not separated or isolated as they were under constant care of the medical staff. If a patient could not or did not want to obey the established rules, he had to leave the facility as there was no sense in keeping him there.

Other cases of this category referred to refusal to admit a patient to a mental hospital due to lack of any relevant diagnosis<sup>122</sup>. Employees of youth education centres and other residential institutions came to the hospital with the pupils most often because of the minors' expressed intention to commit suicide. Hospitals, however, proved most often that children's conduct was the result of their conflict with the adults or other pupils, not of their mental disorders. Such patients were usually refused to be admitted or were quickly discharged.

In each case the Ombudsman investigated the problem, analysed activity undertaken by relevant bodies or institutions responsible for protection of children's rights, talked to children, their parents and carers. If any irregularities were found, the Ombudsman took measures to secure the best interest of a child.

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<sup>122</sup> ZSS.441.1347.2015.EK; ZSS.441.1461.2015.EK

## 2. THE RIGHT TO BE RAISED IN A FAMILY

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

(Article 18 of the Convention on the Rights of the Child)

In 2016 the total of 23,596 cases were reported to the Ombudsman for Children with respect to the right to be raised in a family.

The Ombudsman for Children referred to other authorities and institutions with a request to initiate actions or provide information in cases pertaining, among other things, to:

- ▶ realisation of the child's right to both parents,
- ▶ realisation of contact between children and parents,
- ▶ realisation of court decisions,
- ▶ little children in the system of foster care,
- ▶ procedures of hearing a minor,
- ▶ representing a child in a trial,
- ▶ the right of the child to know his or her identity,
- ▶ proceedings pertaining to removal of a person subject to parental authority or in care,
- ▶ placed minor mothers,
- ▶ support for biological family who faces difficulties in performing care and education of children,
- ▶ removal of children because of parents' poverty,
- ▶ defining procedures in enforcement proceedings,
- ▶ observance of the rights of little children in the system of foster care,
- ▶ protection of the child's right to privacy,
- ▶ protection of child's rights in the process of adoption,
- ▶ operation of day care facilities,

## 2.1. General addresses with regard to the right to be raised in a family

- **The role of a guardian ad litem in enforcement proceedings in family and custody cases – address of 18 February 2016**

The Ombudsman for Children asked in his address<sup>123</sup> to the Minister of Justice for initiation of legislative work to regulate in terms of law the procedure of enforcement proceedings in family and custody cases, especially with reference to the status of a guardian ad litem who enforced court decisions as a body of enforcement proceedings.

Pursuant to Article 1132 § 1 and § 2 item 3 of the Family and Guardianship Code<sup>124</sup> if the child's well-being requires so, a guardianship court may restrict the scope of contact between parents and child and particularly may give consent to parent-child meeting with the presence of a guardian ad litem.

Pursuant to § 10 item 1 of the Ordinance of the Minister of Justice of 12 June 2003 on details of execution of the mandate and duties of guardians ad litem<sup>125</sup>, a family guardian ad litem who was ordered to be present at meetings between parents and children on terms defined by court, came to a place at a time defined in court's decision and was present for the whole meeting to ensure that the meeting would not last longer than settled by the court. Additionally, a guardian ad litem had to make an official written note to document his presence at the meeting (§ 10 item 2 of the above mentioned ordinance).

Making reference to the above mentioned regulations, the Ombudsman pointed out that under existing legislation a guardian ad litem was obliged to be present at the meeting between parent and child and the obligatory official note and lack of legal regulations concerning enforcement proceedings in family cases limited the role and task of a guardian only to a passive observer whether the contact between the parent and the child started and ended at the right time and whether it was held at the place indicated by court. Also the content of the note was not supposed to cover more information than that.

Insufficient – in opinion of the Ombudsman – regulation of law at the level of enforcement instrument did not indicated *expressis verbis* what was the task appointed to the guardian – was it only to be passively present at the meeting

<sup>123</sup> ZSR.422.9.2016.MK

<sup>124</sup> Dz. U., Journal of Laws of 2015, Item 2082 with later amendments).

<sup>125</sup> Dz. U., Journal of Laws of 2014, Item 989.

or to take part in it more actively and how should the guardian influence the course of the meeting. As the Ombudsman noted, the above mentioned regulations of law did not make it clear when and under what circumstances the guardian could conclude that the contact had to be terminated in order to safeguard the well-being of the child.

The Ombudsman stressed also that a family guardian did not have any legal instruments to use or refer to so he had in fact limited power to take measures to secure correct course of a meeting, protect the well-being and best interest of the child and secure the child's right to be raised by both parents. He then pointed out that lack regulations concerning the authority and duties of a guardian caused many misunderstandings in practice, often made it difficult to enforce court decisions and was the object of high expectations on the part of parents against the guardian, whereas his legal measures – as mentioned before – to enforce a decision were very limited.

Analysis of cases reported to the Ombudsman for Children pertaining to enforcement of court decisions that defined the terms of contact in presence of a guardian ad litem led to a conclusion that it would be necessary to take steps to amend the act in the part regarding enforcement proceedings in family and custody cases and to appoint the guardian ad litem as the court's enforcement body, considering especially special tasks appointed to this person and defining his or her mandate and duties necessary for successful performance of the guardian's tasks.

The Ombudsman then continued that as there were no regulations as to the enforcement proceedings in family and custody cases, the participation and conduct of guardians were the subject of different interpretations and expectations (regarding participation of the guardian in the meetings between parents and children, supervision provided by the guardian over exercising parental authority). He stated that it was necessary to consider such a position of the guardian ad litem in enforcement proceedings that he or she took a supportive role in re-building or reconstructing relations between parents and children.

In response<sup>126</sup> the Minister of Justice informed that the demand of the Ombudsman for Children was worthy of attention. According to the Minister, separate enforcement regulations for family and custody cases should be introduced in wider perspective and refer also to issues connected with court supervision over the guardian's activity.

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<sup>126</sup> DL-I-072-3/16/5, 160330-00162

The Minister of Justice concluded also that the suggested extension of guardian's authority in family cases, interfering much into the sphere of rights and freedoms of citizens by e.g. terminating contacts between them did not deserve to be considered. This would then mean that the role of guardians would change from supportive into intervening.

The Minister admitted that the current regulation regarding enforcement of a decision on contacts with a minor in presence of a guardian ad litem were scarce.

Yet he assured that the problem raised by the Ombudsman in his address would taken into consideration in the course of examination of issues connected with enforcement of decisions in family and custody cases, carried out to assess whether legislative work would be necessary in that field.

- **The right of parents to participate in the child's educational process – addresses of 19 February and 20 June 2016**

In his address<sup>127</sup> to the Minister of Justice, the Ombudsman for Children asked him to take position with respect to the problem of parent whose parental authority was limited under court decision or who did not provide actual care of her or her child and this parent's right to make decisions regarding important matters in the child's life like selection of school, the parent's access to information about the child and the child's progress and conduct at school, the child's activities, excursions, school performances and ceremonies to which parents were invited.

The Ombudsman stressed that he had received many complaints in which parents were refused to be given information about their children by educational facilities – about the child's school life, successes and conduct, in case this parent did not have actual custody of the child. It most often resulted from the fact that the parent who had custody of the child had already filed a request for not informing the other parent.

In the Ombudsman's opinion such actions violated the child's right to be raised by both parents and undermined the parents' trust into schools and kindergartens.

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<sup>127</sup> ZSR.422.4.2016.MK



Pursuant to Article § 1 of the Family and Guardianship Code<sup>128</sup>, if parental authority is granted to both parents, each of them is obliged and entitled to exercise it.

The Ombudsman pointed out that exercising parental authority meant that a parent dealt with child's affairs personally. It was about all obligations which allowed to raise the child in a way that secured the child's correct development. Participating in the child's educational path is one of the responsibilities of the parents. School, on the other hand, should actively cooperate with parents. This cooperation may take various forms among which are: parents' evenings, individual meetings, open lessons, participation in and co-organisation of trips and occasional events.

The Ombudsman stressed that the fact that a child lived with one parent did not automatically deprive the other parent of his or her parental authority nor limited it in any way. This position was consolidated in the judicature of the Supreme Court<sup>129</sup>.

According to the Ombudsman, in case parental authority is limited, the way the parents are to exercise their care of the child should be defined individually in court's decision which should determine the distribution of responsibilities and rights arising from parental authority. On the other hand, a decision that limits parental authority of one of the parents should not be given any extra interpretation. Hence, if there had been no relevant court decision that would deprive a parent of the right to participate in child's education process, this parent has the right to remain in contact with all educational facilities the child attends to, including the right to participate in the school life of his or her child, on equal terms as the other parent.

In the Ombudsman's opinion, the usually practised refusal to give information about a child and his or her school progress and different interpretation of court's decision in case one parent's parental authority is limited is incorrect and leads to difficulties in enforcing courts' decision and in some cases – to disregard of the parent's right to participate in their children's lives.

In response<sup>130</sup> the Minister of Justice agreed with this critical point of view on the practised proceeding of educational facilities which deny one of the parents

<sup>128</sup> Dz. U., Journal of Laws of 2015, Item 2082.

<sup>129</sup> Uchwała Sądu Najwyższego z dnia 20 maja 2011 r., III CZP 20/11; uchwała Sądu Najwyższego z dnia 23 maja 2012 r., III CZP 21/12

<sup>130</sup> DL-I-072-4/16/2

the right to participate in their children's education. According to the Minister neither the facility itself nor any one of the parents have the right to ration the other parent's share in cooperation with the child's school/ kindergarten. Rules of this cooperation should be defined in an agreement concluded by the parents. The Minister referred also to legal regulations concerning the code of conduct in case parents did not reach an agreement and recalled previous legislation which did not fully guarantee enjoyment of the child's right to both parents. According to the Minister, as a result of amendments introduced in June 2015 the number of decisions in which one parent had his or her parental authority limited to precisely defined scope of rights should definitely decrease, as it became a statutory rule to leave parental authority to both parents and limiting it had to be justified by the child's well-being.

He stressed that in their judicial activity the judges should pay attention to formulate the decision in a more precise manner and educational facilities should take into account the child's well-being when executing court decisions.

The Ombudsman for Children, continuing the issue of the child's right to be raised by both parents, sent a copy of this address to the Presidents of Courts of Appeal along with the answer given by the Minister of Justice<sup>131</sup>, asking them to review it and pass it to judges who adjudicated in family and custody cases. He also passed the documents to Education Officers<sup>132</sup> and asked them to distribute their contents to school and kindergarten headmasters.

- **Visual monitoring inside the premises of residential institutions – address of 22 February 2016**

The Ombudsman for Children addressed<sup>133</sup> the Minister of Family, Labour and Social Policy and asked for consideration of the problem of children placed in residential institutions regarding visual monitoring installed inside the premises of the facilities. According to the Ombudsman, such practice raised much doubt as to the need to build safe and friendly environment adequate to children's needs; the Ombudsman mentioned a case when tv screens showing the pictures from rooms were installed in the place of residence of the facility manager and of the president of a society that supervised the facility. The Ombudsman for Children pointed out that the task of a facility is to create proper conditions for the children's free and unlimited development in an atmosphere of mutual trust and respect for the right to privacy. Cameras are in opposition

<sup>131</sup> ZSR.422.4.2016.MK

<sup>132</sup> ZSR.422.4.2016.MK

<sup>133</sup> ZEW.422.6.2016.AS

to this idea. He stressed also that installation of visual monitoring in residential institutions was not regulated by Polish Law. Hence there was no ground to limit the constitutional right of children living in monitored institutions to privacy. So he asked the Ministry to analyse the problem.

In response<sup>134</sup> the Minister of Family, Labour and Social Policy informed that he had not so far received any information that visual monitoring inside buildings was used in improper way. He did not receive any notifications from voivodes who conducted regular inspections with respect to observance of children's rights in foster care facilities.

- **Minor mothers in youth education centres , juvenile detention centres and youth shelters – address of 24 February 2016**

The Ombudsman for Children<sup>135</sup> again addressed the Minister of National Education and the Minister of Justice with a request for analysis of the problem minor mothers staying in youth education centres, shelters for minor and juvenile detention centres who, due to currently binding regulations could not have their children with them and for urgent measures aiming to solve that problem. The Ombudsman expressed his opinion that public authorities should help young mothers build family bonds with her child, assist her in her role of parent and give chance to live a life in dignity. So, relevant regulations of law must be introduced in that field.

The Ombudsman stressed that though by Ordinance of the Minister of National Education of 02 November 2015 on *types and detailed principles of operation of public facilities, conditions of children's and youth's stay in those facilities and the sum and rules of payment of fees by parents for the stay of their children in those facilities*<sup>136</sup> the regulation allowing a minor mother staying in a youth education centre was amended by adding that such a centre was supposed to support the young mother in taking care of the child and in providing education to the child unless a guardianship court decided else, yet there were still no regulations regarding the practical dimension of this support. The Act on the education system was neither amended in the part that allows children under 3 to be placed in educational facilities.

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<sup>134</sup> DSR.I.8302.60.2016.AKU

<sup>135</sup> ZEW.422.7.2016.AR, ZEW.422.8.2016.ZA

<sup>136</sup> Dz. U., Journal of Laws, Item 1872

In response<sup>137</sup> the Minister of Justice informed that the problem was currently subject to detailed analysis. Also a draft act amending the Act on Juvenile Delinquency was being reviewed to add a regulation allowing minor mothers staying at social rehabilitation centres to keep their children with them.

The Minister of National Education informed<sup>138</sup> the Ombudsman that both the specificity of the applied solutions and the scale of the problem did not seem to be substantial enough to construe new regulations of law which would meet the needs of young mothers in detention centres, including the need to build family bond with their children. Yet he assured that he would do his best to provide for optimum convenience both to minor mothers and pregnant women staying in educational facilities in the process of education and social rehabilitation and adjust the conditions of living to their needs and enable them, as far as it is possible to participate in taking care of their children.

- **Enforcement of court decisions on the obligation for persons addicted to alcohol to start an in-patient detoxification treatment – addresses of 23 March and 17 October 2016**

The Ombudsman for Children in his address<sup>139</sup> to the Minister of Health asked for analysis of the problem and undertaking relevant measures to introduce solutions to facilitate the enforcement of court decisions under which persons addicted to alcohol were obliged to start an inpatient detoxification treatment.

Pursuant to Article 26, in connection with Article 24 of the Act of 26 October 1982 on upbringing in sobriety and counteracting alcoholism<sup>140</sup>, persons who abuse alcohol and for this reason disintegrate the family, demoralize minors, evade their work or regularly disturb public order and they are addicted to alcohol may be obliged to be subject to inpatient or outpatient detoxification treatment. This may be ordered by court.

Detoxification treatment for persons addicted to alcohol is provided by inpatient, all day health care facilities and clinics, under the regulations on health care activity<sup>141</sup>. Pursuant to Article 321 of the Act on upbringing in sobriety and counteracting alcoholism, those facilities admit for treatment persons who are obliged to detoxification treatment by court decisions out of turn. The limit of

<sup>137</sup> DWOiP-III-070-21/16

<sup>138</sup> DWKI-WSPE.5015.1.2016.KT

<sup>139</sup> ZSR.422.11.2016.MK

<sup>140</sup> Dz. U., Journal of Laws of 2015, Item 1286 with later amendments).

<sup>141</sup> Dz. U., Journal of Laws of 2015, Item 618

vacancies for persons obliged to undergo such treatment is 20% of all vacancies in a detoxification centre. Enforcement of the court decision is also limited in time (2 years from the moment a decision comes into force).

The Ombudsman for Children analysed the issue and it occurred that the effectiveness of the current system in terms of providing a sufficient number of vacancies in detoxification facilities for persons obliged to start a treatment by court decision was low. It happened that the time a person had to wait for a vacancy exceeded the period of 2 years from a court decision becoming binding.

These conclusions were in conformity with information submitted yearly to the Sejm of the Republic of Poland by the Council of Ministers in their reports on enforcement of the Act of 26 October 1982 on upbringing in sobriety and counteracting alcoholism<sup>142</sup>.

This, in Ombudsman's opinion, proved that the current system was inefficient, which in turn raised doubts whether the rate of enforcement of court decisions (which was very low anyway) increased fast enough to eliminate the couple of months queue of persons waiting for the treatment.

The Ombudsman pointed also out to the close relation between the occurrence of the problem with alcohol and the occurrence of violence in the family. This connection was also mentioned in the Report on realization of the State Pro-

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<sup>142</sup> In the report covering the period from 01 January 2014 to 31 December 2014 it was stated that in 2014 altogether 34,083 applications for decision on the obligation to undergo detoxification treatment had been filed, of which 24,020 had been allowed. On the other hand, statistical data presented in the report covering the period from 01 January 2013 to 31 December 2013 showed that in 2013 the number of applications filed to family courts for issuing such a decision was 39,394 and the number of persons obliged to undergo the treatment waiting to be admitted to a facility was 14,524. Both the report for 2013 and 2014 concluded that the waiting time to be admitted to inpatient all day treatment for persons obliged to do so by court was even a couple of months.

gramme of Counteracting Violence in Family for the years 2014-2020 for the period from 1 January and 31 December 2014<sup>143</sup>.

Mandatory detoxification treatment as set by law is a legal means of protection of society against a qualified group of people addicted to alcohol whose conduct is harmful to their families and poses a threat to children. The Ombudsman stressed that the analysis of cases reported to his Office as well as of reports and statistical data covering last years led to an alarming conclusion that the state was not able to or did not see the need to introduce solutions that would improve the efficiency of enforcement of court decisions on mandatory detoxification treatment.

In response<sup>144</sup> the Minister of Health agreed with the Ombudsman for Children and stated that provision of support to families suffering from domestic violence and protection of their right was a crucial issue. He stressed that conclusions presented by the Ombudsman with respect to prevention and solution of alcoholic problems was an inherent part of the idea of shared responsibility for public health. He also thanked the Ombudsman for his engagement in activity which aimed to improve the quality of counteracting alcoholism and to promote sobriety and healthy lifestyle.

The Minister informed also that the data collected by the State Agency for the Prevention of Alcohol-Related problems showed that authorities of voivode-

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<sup>143</sup> The research revealed that among all answers given by victims of violence, most of them (28,8%) pointed to alcoholic problem as the main circumstance of psychological violence (17,8% of answers given by violence perpetrators). On average, 30% of students who experience violence in their family stated that at least one of their carers abused alcohol. The research revealed also a connection between various types of violence and parents' tendency to abuse alcohol. Children who declared that their parents/ carers abused alcohol more frequently experienced every type of violence than children who claimed that their parents did not abuse alcohol. Children and youth whose parents abused alcohol more often experienced physical violence (47%) than those whose parents did not (29%). Children and youth whose parents abused alcohol were also more often neglected (30%) than those whose parents did not (18%). Children and youth whose parents abused alcohol more often experienced psychological violence (28%) than those whose parents did not (9%).

In 2014 the number of persons under the influence of alcohol suspected to have inflicted violence in their families amounted to 50,073 in total (which means that 63.80% of persons suspected of having inflicted violence in family were under the influence of alcohol) which as compared to 2013 means that this number grew by 33,00% (it was 37,650 in 2013).

<sup>144</sup> ZP-P.073.9.2016

ships did not report any problems connected with lack of vacancies and the need to raise the limit above 20% for enforcement of court decisions on mandatory detoxification treatment. Yet some remarks were presented by managers of local addiction treatment centres when the limits were being set.

The Minister of Health promised to analyse the data on the number of persons obliged to undergo detoxification treatment by court, the number of vacancies in detoxification centres and the average waiting time for admission in all voivodeships and would pass the results of this analysis to the Ombudsman for Children.

The Ombudsman for Children, having in mind the answer given by the Minister of Health, again addressed<sup>145</sup> the Ministry with a request for information on the undertaken measures and conclusions and the what was planned to solve the problem in question.

In response<sup>146</sup> the Minister informed that he had addressed the relevant authorities of voivodeships and asked for data on the number of persons obliged to undergo detoxification treatment under a court decision and the number of vacancies dedicated to the and the average waiting time for admission. He assured that as soon as he received the relevant data he would pass it along with the information on the intended plans in that respect to the Ombudsman for Children.

- **System of identification of families in educational and upbringing crisis – address of 31 March 2016**

The Ombudsman for Children in his address<sup>147</sup> to the Minister of Family, Labour and Social Policy, made a request for improvement of the system that allowed to identify families who needed multi-agency support and guaranteed fast identification of families who found themselves in educational and upbringing crisis which required all legal instruments to be used by social support centres.

The Ombudsman stressed that family was the natural environment for a developing child. For that reason a family should be properly protected and supported so that children are not removed from them. The use of such means of state intervention in parental authority that lead to removing a child from parents should only be deemed as last resort, not sooner than when other less painful

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<sup>145</sup> ZSR.422.11.2016.MK

<sup>146</sup> ZP-P.073.9.2016(2)

<sup>147</sup> ZSR.422.1.2016.MK

measures for a child and family are applied or only in case the well-being of a child requires definite and urgent action.

According to the Ombudsman, support provided by the State should be oriented particularly to children and youth from educationally incapacitated families, families addicted to alcohol and drugs, split, big, poor families or those which suffer from unemployment. Focusing on improvement of this sphere of family life which hinders correct fulfilment of parental responsibilities with respect to children should be the most proper support. This support should not be limited to liquidation of negative outcomes of family problems but be based primarily on prevention.

The Ombudsman had many times pointed this problem out, e.g. in the "Comments on the observance of the rights of the child" which are an integral part of the "Report on the Activity of the Ombudsman of Children" submitted yearly and in the recommendations addressed to the Committee on the Rights of the Child of the UN included in the "Report of the Ombudsman for Children on realization of the recommendations of the Committee on the Rights of the Child of 04 October 2002", submitted to the Committee on the Rights of the Child in July 2015.

Particular units of local self-governments and government administrative bodies responsible for supporting families in crisis should guarantee relevant assistance in solving domestic problems. The Ombudsman pointed also to the role of social support centres in case the child's well-being was under risk. In his opinion, if social support centres monitored the effects of support provided to families in crisis, it would certainly facilitate the healing process in those families. It was very important that identification of families that need help was as fast and comprehensive as possible and that all institutions engaged in provision of support cooperated smoothly.

Pursuant to the Act of 09 June 2011 on family support and foster care system<sup>148</sup>, families in crisis should receive proper support in difficult situations provided by family assistant, assisting families and day support centres.

The Ombudsman for Children underlined that inspection conducted by the Supreme Audit Office<sup>149</sup> confirmed that the institution of family assistant was

<sup>148</sup> Dz. U., Journal of Laws of 2016, Item 575.

<sup>149</sup> „Funkcjonowanie asystentów rodziny w świetle ustawy o wspieraniu rodziny i systemie pieczy zastępczej” (Nr ewid. 35/2015/P/14/048/KPS)



a useful and effective instrument in solving domestic problems in family. The inspection identified also possible threats to the institution of family assistant.

An inspection of the operation of public administration bodies conducted also by SAO <sup>150</sup> confirmed that the efficiency of the system of support for families in crisis was low. Activity undertaken by social support centres were not always aligned with the support offered by other institutions that were part of the family support system (local environment, health care centres and churches and religious circles and social organizations). No centre had any written agreements that would define the rules and regulations of such support. The activity was undertaken not only by family assistants but also by social workers who usually were taking care of couple of tens of families with problems of various types. This caused considerable constraints in provision of assistance. Moreover, social workers assisted their families only in time when the centre was opened. The institution of family assistant was not fully used, and neither was the institution of assisting family; day support facilities were also very rarely asked for help. Social support centred did not enter into social contracts or when they did so, they used wrongly. Also the mechanism and procedures for diagnosing and identifying alarming events in a family failed. According to information given by SAO, in some rural and smaller municipal areas the database listing families in crisis was incomplete and part of families remained unsupported. It happened that children were removed from families which had not been so far identified as needing support. Very often relevant authorities found out about a family in crisis only when dramatic events were published by media. Support provided to families often appeared ineffective which led to removal of children from their biological families to foster families.

In response <sup>151</sup> the Minister of Family, Labour and Social Policy stated that the currently binding regulations of law in Poland obliged local self-governments to support families in difficult life situations and that this activity should be interdisciplinary. He assured that the State, seeing the variety of problems in families that raised children, undertook many actions to improve their situations, from the sphere of family benefits to the sphere of social support and services for families, professional mobilization and the services provided by guardians ad litem.

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<sup>150</sup> „Działania organów administracji publicznej w sytuacji zagrożenia odebrania dzieci rodzicom” (Nr ewid. 45/2015/P/15/075/LKI)

<sup>151</sup> DSR.I.071.1.2016.AKU

According to the Minister, the Act on family support and foster care system offered new instruments of support for families which gave the possibility – depending on the need – to diversify forms of support offered to a family by local authorities. He admitted that the role of family assistant was crucial and that it was then possible to benefit from support of assisting families and day support centres.

The Minister informed that the ministry agreed with the Ombudsman as to the need to further encourage local self-governments to develop instruments that would help families with children and to undertake measures to diagnose and identify families with problems as soon as possible. He stressed that creating an effective system of cooperation among family support providers, including institutions of social support, education, courts, Police and health care service, based on reliable procedures might facilitate the process of diagnosing and identifying problems occurring in families and adjusting relevant forms of support to them.

- **Interim proceedings in cases referring to a child – address of 31 March 2016**

The Ombudsman for Children in his address<sup>152</sup> to the Minister of Justice asked for amendment of regulations on interim proceedings in cases referring to custody of minors and contacts with minors.

Pursuant to Article 7561 of the Code of Civil Procedure in cases referring to custody of minors and contacts with children, court adjudicates interim measures after a hearing unless the case is an emergency. The above mentioned regulation is an exception to the general rule expressed in Article 735 § 1 of the Code of Civil Procedure, pursuant to which the court hears the motion for interim measures at a closed session.

The introduction of necessity to conduct a hearing to consider a motion for interim measures to secure the claims in cases pertaining to custody of children and contacts with children arises from the complex legal and family relations and the need to act with extraordinary caution in hearing motions for interim measures in this type of cases. The legislator had introduced a requirement that before a decision on interim measures is issued, the court hear both parents, so as not to be limited to the testimony of one of them only, as one person could be in conflict with the other.

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<sup>152</sup> ZSR.422.2.2016.MK

Pursuant to Article 737 of the Code of Civil Procedure, if the act provides for considering a motion at a hearing, the hearing must be scheduled not later than within a month from the moment the motion was submitted.

In his address the Ombudsman pointed out that the date defined in Article 737 was only a guideline and was not followed by courts in practice. In any cases pertaining to custody of children and contacts with children, the parties must wait for months for issuance of the decision on interim measures, which violates the minor's well-being and the minor's right to be raised by both parents.

In the opinion of the Ombudsman for Children, it is necessary to seek for solutions that would allow for issuance of the decision on interim measures as soon as possible and, at the same time, safeguard the child's well-being and the right of parents to be heard.

The Ombudsman suggested introduction of interim proceedings to secure the claims under article 207 § 4 of the Code of Civil Procedure, that is hearing the parties at a closed session. That would allow to issue an interim decision without the need to schedule an open hearing and, on the other hand, the parents' right to be heard would be respected too. Other solution could provide for abandonment of the necessity to schedule a hearing before interim decision was issued and adjudicating at a closed session, with the option, to be assessed whether necessary or not by the court, to conduct a regular hearing.

The Minister of Justice did not agree<sup>153</sup> with the Ombudsman and presented his opinion that the currently binding regulations were sufficient, pointing also to legitimacy of hearing motions for interim measures – as a rule – at a hearing.

In the opinion of the Minister, the decision of the court pertaining to parental authority and contacts with a child should be taken after the basic evidence is collected and the regulations under Article 569 § 2 and Article 737 secure well-being of a child well enough.

#### • Legal status of a child placed in foster care – address of 12 April 2016

The Ombudsman for Children, due to the need to conduct a comprehensive diagnosis of problems occurring in the system of foster care, addressed<sup>154</sup> the President of the Supreme Audit Office with a suggestion whether it would be possible to extend the scope of inspection of realisation of obligations imposed

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<sup>153</sup> DL-I-072-6/16/2

<sup>154</sup> ZSR.422.14.2016.MK

on foster care providers by force of the Act on family support and foster care system.

Pursuant to this regulation, if the information that a child may return to his or her family is not submitted to court within 18 months from placement, in case the reason why a child was placed ceases to exist, foster care provider submits to local court a grounded motion for instigation ex officio proceedings to issue decisions to settle the child's legal status. Foster care provider must attach an opinion issued by local authorities or by an institutions that takes care of the family and the opinion of coordinator of family foster care. The purpose of the regulation is to facilitate the decision on parental authority over a child who is staying with a foster family.

In response<sup>155</sup> the President of SAO informed that all issues raised by the Ombudsman for Children were included in a programme of coordinated audit entitled "Selection of persons for the role of foster carer". After the operations connected with the process of inspection the Ombudsman for Children would be informed of its results.

- **Protection of the best interest of a child in court proceedings – address of 27 June 2016**

The Ombudsman for Children and the Human Rights Defender joined forces in an address<sup>156</sup> to the Minister of Justice in which they asked for correct security of representation of a child in court trial. They stressed that in court cases in which family issues -especially the way parental authority was to be exercised, the child's place of residence or the child's contact with parents – were settled, a deep conflict between parents was a very common phenomenon. The parents are absolutely against each other and give proposals as to the child's arrangements which exclude each other. In the opinion of the Ombudsmen, this did not allow to properly represent the child's interest in court proceedings.

Pursuant to Article 98 of the Family and Guardianship Code, parents are statutory representatives of children under their parental authority. If both parents have parental authority over the child, each of them may act independently as a statutory representative of the child. In case the child cannot be represented by the parent, pursuant to Article 99 of the Code the child should be represented by a guardian appointed by guardianship court (guardian ad litem).

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<sup>155</sup> BOE-BOS.0511.0736.2016.IP.2

<sup>156</sup> ZSR.422.23.2016.MD; IV.7021.72.2016.BB

This rule is also applicable in criminal proceedings, in which the rights of minor are represented by a statutory representative or a person who has custody of the harmed minor (Article 51 § 2 of the Code of Criminal Procedure). A guardian ad litem is appointed for a child harmed by crime in case one of the parents is charged with the offence or crime<sup>157</sup>.

Legal arrangements for a child in civil proceedings is similar (Article 98 § 3 of the Family and Guardianship Code, Article 66 of the Code of Civil Procedure). The Ombudsmen stressed that it was the proper application of Article 98 § 2 of the Family and Guardianship Code resulted in excluding parental representation of the child in the widest sense. In the light of judicature of civil courts both in trial and non-trial proceedings none of the parents may represent the child if in the case they are parties to there may be a conflict of interest between them. In such case the best interest of the child excludes the option to admit one of the parents as the child's representative. In each case which parents and children are parties to the court is obliged to examine whether occurrence of conflict of interest between them is likely. If so, none of the parents is allowed to represent the child before the court<sup>158</sup>. The Supreme Court many times underlined that it was enough for the conflict of interest to be only potential, theoretical or even hypothetical and might even never take place or "materialize" in the position of a parent against the interest of the child<sup>159</sup>.

According to the judicature of the Supreme Court, if such circumstances arise, the child must be represented by a guardian ad litem<sup>160</sup>.

The Ombudsmen stressed that wide scope of participation of the guardian ad litem is grounded in the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice system. According to the comment no. 42, in case there is a conflict of interest between the parents and the child, relevant body should appoint a *guardian ad litem* or other independent representative

<sup>157</sup> Resolution of the Supreme Court of 30 September 2010, ref. no. I KZP 10/10, publ. OSNKW 2010, no. 10, item 84

<sup>158</sup> Resolution of the Supreme Court of 05 June 2014, ref. no. IV CZ 32/14, LEX no 1493926, of 3 June 2011, III CSK 259/10, LEX no 1129120

<sup>159</sup> Resolution of the Supreme Court of 09 September 1997, ref. no. I CKU 13/97, resolution of 13 March 2008, III CZP 1/08

<sup>160</sup> Decision of the Supreme Court of 04 October 1966, ref. no. II CZ 117/66); judgement of the Supreme Court of 20 January 1970, II CR 530/69, OSPiKA 1970, z. 12, poz. 251; judgement of the Supreme Court of 17 September 1982, II CR 340/82, OSNCP 1983, nr 7, poz. 89; decision of the Supreme Court of 19 May 2005, ref. no. V CK 669/04; decision of the Supreme Court of 25 February 2015, ref. no. IV CSK 304/14

for the child. The guardian should support the court in finding solutions that would be best for the child<sup>161</sup>.

The Ombudsmen pointed also that there was a category of cases in which children were not secured with representation before court. This concerned cases pertaining to parental authority. Those cases are crucial to settle and shape the minor's further course of life and the child is not the participant of such proceedings under Article 510 of the Code of Civil Procedure. It is then obvious that there is no guardian participating in the proceedings to represent the interest of the minor. A guardian represents only a party (in trials) or a participant (in non-trial proceedings), not the actors who do not have entitlement to participate in court proceedings.

According to the Ombudsmen it was reasonable to state that as a rule there were no family proceedings pertaining to relation between parents and child in which the interest of a child would be represented – neither by a parent, nor by a guardian ad litem. Although family or guardianship court is obliged to care for the well-being of a child yet this obligation is not enough to secure and guarantee representation of a child in court proceedings.

The Ombudsmen stressed then that only trial representation of interest of all participants of the proceedings provides unbiased and objective examination of the state of affairs. Hence, the sole requirement of due care of the child's well-being ex officio cannot substitute proper representation of a minor.

Analysis of cases reported to the Ombudsman and to the Human Rights Defender led to a conclusion that parents in conflict were very often incapable of choosing the best form of care of their child nor they could separate the child's needs from their own and forgot that it was the child's needs that had to be the priority.

The Ombudsmen pointed out that the Republic of Poland is party to the European Convention on the Exercise of Children's Rights<sup>162</sup> which guaranteed many procedural rights to children participating in family cases, e.g. in Article 4 and 9 it settled the child's right to have a special representative appointed by court to have his or her interest represented in case it could not be represented by parents due to a conflict existing between them and the child.

<sup>161</sup> Comment no. 105 of the Guidelines

<sup>162</sup> Dz. of Laws, Dz. U. of 2000, Item 1128 with amendments).

In opinion of the Ombudsmen the most proper realisation of procedural rights of the child would be granting the child the status of participant of proceedings pursuant to Article 510 of the Code of Civil Procedure, as it was the basic form of representing legal interest – which did not exclude limitation of particular rights of the child (for the child's well-being), as provided in Article 573 § 2 of the Code of Civil Procedure.

The also stated that it would be advantageous to introduce the institution of a guardian ad litem who would represent the child's interest in court proceedings into guardianship proceedings pertaining to parental authority and relation between parents and children. A guardian represents the interest of the person whose interest requires protection – and such undoubtedly is the interest of a child. It is important that the guardian guarantee professional service to the child. It must be then defined what qualifications must such a person meet. Such professional status of a guardian was provided by the legislative initiative of the Senate of 7th term by which Article 99 of the Family and Guardianship Code was to be amended. The initiative was the implementation of guidelines issued by the Constitutional Tribunal, included in signalling decision of 11 February 2014<sup>163</sup>

The Ombudsman for Children had many times addressed the Minister of Justice with a request for proper settlement of representation of children in court by guardians ad litem. Already in his address<sup>164</sup> of 2012 he pointed to improper fulfilment of obligations appointed to guardians ad litem. The problem was also raised in the address of 2015<sup>165</sup>.

In response<sup>166</sup> the Minister of Justice assured that the problem raised by the Ombudsmen was under his scrutiny and the Ombudsman's demands should be taken into account at the nearest amendment of the Family and Guardianship Code.

Having this in mind, the Ombudsmen in their address of 27 June 2016 asked additionally for information whether the Minister of Justice was working already on settlement of the institution of court guardian for a child.

They also pointed out that a solution recommended by the Committee of Ministers of the Council of Europe in the Guidelines for child friendly justice might

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<sup>163</sup> Ref. no. S 2/14

<sup>164</sup> ZSR/500/9/2012/AT

<sup>165</sup> ZSR.422.17.2015.MS

<sup>166</sup> DL-I-072-9/15/4

be useful. This solutions assumed that children had to have the right to legal counselling and to legal representation in proceedings in which there might be a conflict between the interest of the child and the interest of the parents or other parties to it. This referred mostly to legal counselling for a child and the child's professional representation in trials.

The Ombudsmen pointed out that according to those guidelines, the role of an advocate was different from that of a guardian, as the guardian was appointed by court not by the client himself and should support the court in determining what was the best solution for the child. An advocate, on the other hand, was limited by the child's requests and orders.

In conclusion, they stressed that in court cases that settled the most important and vivid interest of the child there were no mechanisms of representation. The child is not represented by a guardian ad litem who is required in other types of proceedings to support the court in determining what is best for the child's well-being. Also, trial representation of the child in the person of professional plenipotentiary, who would act in line with the child's orders and wishes, is excluded. The Ombudsmen appealed for:

- 1) extension of the catalogue of cases in which a guardian ad litem was appointed, to cases pertaining to deprivation, limitation or suspension of parental authority as well as to cases pertaining to contacts (at least to cases in which it was likely that activity of the parent would be a threat to the child's well-being – especially in trials);
- 2) proper qualifications of the guardian ad litem, pursuant to recommendation included in the signalling decision issued by the Constitutional Tribunal<sup>167</sup>;
- 3) guarantee that the child would be able to be supported by a professional plenipotentiary in guardianship proceedings who would act in line with the child's wish.

Such procedural instrument would allow to increase the level of legal protection of children in court proceedings which would be consistent with the principles established in the Constitution of the Republic of Poland, the Convention on the Rights of the Child and other instruments of international law as well as the recommendations of bodies of the Council of Europe.

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<sup>167</sup> Ref. no. S 2/14



In response<sup>168</sup> the Minister of Justice informed that the problem of child representation and the requirement of professional qualifications of guardians did not require any act to be amended. The Ombudsmen's demands were, in opinion of the Minister, groundless, especially with respect to lack of child representation in parental authority cases or cases pertaining to establishment of contacts. He concluded that the currently binding regulations provided for sufficient protection of minors' interests in cases connected with establishment of parental authority and contact. There were also no reasons to undertake legislative work to extend the catalogue of cases in which a child had to be represented by a guardian ad litem and provided with professional plenipotentiary in guardianship cases. Purposes which would be accomplished by the demanded solutions did not require any amendments of law, only different interpretation of law, in particular Article 573 of the Code of Civil Procedure in connection with Article 510 of the Code of Civil Procedure.

Yet with respect to the suggestion to determine the requirement of professional qualifications of a guardian ad litem, the Minister of Justice informed that the answer<sup>169</sup> given to the Ombudsman for Children in the letter of 18 December 2015 was still valid and the ministry did see the need to introduce such regulation. He assured then that analytic works were in course to define the scope of suggested changes to enforce the signalling decision of the Constitutional Tribunal in case ref. no. S 2/14.

- **Removing children because of parents' difficult financial condition-address of 06 July 2016**

The Ombudsman for Children informed<sup>170</sup> the Minister of Justice of his negative opinion on the publication entitled *Preventing children from being removed because of poverty – a draft adopted by the Council of Ministers*, which was published on the internet site of the Ministry of Justice. The publication described 61 cases in which children were removed from their biological families and placed in foster care under a court decision. It was said that in such situations, "poor economic and living conditions were the only reason why courts issued decisions on placing children".

According to the information<sup>171</sup> submitted on 18 January 2016 by the Minister of Justice, in the period from 01 January 2015 to 30 June 2015 15 regional court

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<sup>168</sup> DL-I-072-11/16

<sup>169</sup> DL-I-072-9/15

<sup>170</sup> ZSR.422.28.2015.MK

<sup>171</sup> nr DSO-I-070-2/16

issued altogether 61 decision on placing a minor out of biological family purely because of bad economic conditions of living.

Having in mind not only the number of the decisions but also poverty as the only reason of child placement, the Ombudsman decided to review all cases that had been concluded with such decision.

Courts mentioned by the ministry sent the files of 43 cases to the Ombudsman for Children. In 18 cases, the courts informed that they had been mentioned by mistake because of an incorrectly filled statistical forms by court employees or mistakes arising from failures of the electronic database.

Analysis of the remaining 43 case files conducted by the Ombudsman for Children did not confirm in any of them that financial condition and living standards were the only reason of child placement. In only 8 cases financial problems of a family were slightly mentioned but this information came together with other reasons for placing a child in foster care, among which were gross negligence of parental responsibilities.

In Ombudsman's opinion the rights of children or the well-being of children had not been violated or offended by placing a child in foster care solely for the reason of poverty in any of the analysed cases. These conclusions were also confirmed by the survey conducted by the Institute of Justice<sup>172</sup>.

Appendix no. 12 to this Report presents "The results of review of the case files indicated by the the Minister of Justice regarding placing a child in foster care only for the reason of ad economic condition of the parents", conducted by the Ombudsman for Children.

- **Financing adoption agencies – addresses of 20 July and 27 September 2016**

The Ombudsman for Children, having in mind the well-being of children who wait to be adopted, addressed<sup>173</sup> the Minister of Family, Labour and Social Policy with a request for provision of continuity of adoption procedures, following alarming news about the ways of financing adoption agencies.

<sup>172</sup> *Selected issues of adjudicating on placing a child in foster care*, Marek Domański Ph. D., Warsaw 2016

<sup>173</sup> ZSR.422.28.2016.MS

The Ombudsman pointed out that pursuant to Article 184 of the Act on family support and foster care system, organisation and management of adoption agencies remains the responsibility of government.

Pursuant to Article 127 of the Act of 27 August 2009 on public finances<sup>174</sup> as well as pursuant to Article 49 of the Act of 13 November 2003 on incomes of local self-government units<sup>175</sup>, earmarked subsidies from the state budget are the financial source for this task, and their level guarantees that these tasks will be performed. The subsidies should be given by voivodes in a way that allows to accomplish the appointed tasks in full scope and on time, and amounts are defined according to the rules adopted in the state budget to define expenses of similar category. Pursuant to Article 49 item 6 of the Act on incomes of local self-government units, such a unit that performs central administration delegated to local governments and other tasks delegated under law is entitled to claim the due subsidy in case the central administration does not fulfil the obligation to submit a purpose-related (earmarked) subsidy in amount that allows to accomplish the delegated tasks fully and on time, along with the interest rate in amount as defined for tax arrears in court proceedings.

With respect to the due date of subsidy transfer it is about regular over the year provision of payment of purpose-related (earmarked) subsidies. As the most important part of current expenses are the expenses for remuneration paid monthly, purpose-related (earmarked) subsidies should also be paid monthly. Adjusting the due dates of transferring the subsidies to the type of tasks delegated by central administration, allowing the local government units to perform their tasks fully and on time, does not require central administration to release the resources earlier than in case of performing tasks by the bodies of central administration<sup>176</sup>

Yet the information obtained by the Ombudsman for Children told that earmarked subsidies were released in several portions, each time after an analysis of the demand reported by voivodeship offices in agreement with local government units. This situation was additionally made more difficult by lack of information on the amounts and specific fixed dates of transferring subsequent portions of subsidies.

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<sup>174</sup> Dz. U., Journal of Laws of 2016, Item 1870.

<sup>175</sup> Dz. U., Journal of Laws of 2016, Item 198

<sup>176</sup> A. Niezgoda, *Podział zasobów publicznych między administracją rządową i samorządową*, LEX 2012 – Monografia.

Such system of financing – according to the Ombudsman – was a serious impediment in scheduling and planning the work of adoption agencies and in performance of particular tasks defined in the act on family support and foster care system, including management of HR policies.

The Ombudsman pointed also out that it raised doubts as to whether adoption agencies would be able to continue their functioning in correct way. He stressed the weight of the role of adoption agencies in the system of family support and foster care. Adoption agencies should be highly estimated and properly safeguarded also in economic sense, in such way that tasks they perform allow for full realisation of rights of children who wait to for a new home.

The Ombudsman stressed that a situation when voivodeship marshals were forced to liquidate this institution because of lack of financial resources or untimely transfer was not acceptable. He also pointed out that currently the number adoption agencies is lower than compared to the number of agencies that operated before the act on family support and foster care system came into force. When this law was being introduced, the society was being assured that new regulations would secure high quality of work of the agencies and their number would be relevant to the needs and would allow for accomplishment of statutory tasks, which would guarantee the children that their right to be raised in a family would be respected.

As the Ombudsman received no answer, he addressed<sup>177</sup> the Minister of Family, Labour and Social Policy with a request for urgent answer to the presented problem and for information on the arrangements made and activity undertaken in that matter. He also informed that he still received alarming information that adoption agencies were not secured financially. For example, he presented the situation of agencies in wielkopolskie voivodeship, which required immediate intervention – at the end of September 2016, performance of the plan of expenses dedicated to realization of the delegated task would amount to 95% of the granted subsidy. This could result in lack of further finances for qualifying children, training parents and operation of the agencies.

In response<sup>178</sup> the Minister of Family, Labour and Social Policy assured the Ombudsman that in general the amount of 26,086 thousand zlotys was allocated in the budget act for 2016 for realization of tasks delegated by central authorities with respect to organization and management of adoption agencies pursuant to the act of family support and foster care system. He also informed that the

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<sup>177</sup> ZSR.422.28.2016.MS

<sup>178</sup> DSR.III.811.15.2.2016.AJ

state budget had a purpose-related reserve in amount of 86,300 thousand zlotys. Part of those financial resources in amount of 5,027 thousand zlotys was given, following a special analysis done by the ministry, to voivodes as a supplement to their deficiencies for realization of the above discussed task.

The Minister assured also that after the reserve was released, financial resources for realization of tasks delegated by central authorities to local self-governments with respect to organization and management of adoption agencies amounted altogether to 31,113 thousand zlotys, which would be enough to secure correct performance by adoption agencies.

- **Little children in institutional foster care against the regulations of law – address of 15 September 2016**

The Ombudsman for Children has been monitoring the situation of children in foster care for many years. Pursuant to the Act on family support and foster care system, no children under 10 years of age may be placed in an institution unless it is an exception as provided by law. The Ombudsman for Children addressed all voivodes<sup>179</sup> with a request for data on the number of children in the age from 0 to 10 that were staying in institutional foster care and the number of foster families in particular voivodeships.

Data collected from the voivodes were the basis of the Report of the Ombudsman for Children on the survey in the educational, upbringing and legal status of children from 0 to 10 staying in institutional foster care. More details are to be found in the Chapter entitled “Monitoring Activity”.

- **Hearing a child in civil proceedings – address of 28 October 2016**

The Ombudsman for Children again addressed<sup>180</sup> the Minister of Justice and asked for legislative measures to reinforce protection of the rights of the child in civil court proceedings.

The Ombudsman stressed that the Constitution of the Republic of Poland, the Convention on the Rights of the Child and the regulations of the Code of Civil Procedure and the Act on family support and foster care system guaranteed minors the right to be heard in cases that concerned him/her.

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<sup>179</sup> ZEW.422.33.2016.AS

<sup>180</sup> ZSR.422.19.2015.MK

Operations connected with hearing a child should be carried out with due respect of his or her rights, that is in conditions that were safe and allowed for freedom of expression.

The Ombudsman stressed that on 01 January 2016, § 154 of the ordinance of the Minister of Justice of 23 December 2015 came into force – the Rules and regulations of common courts<sup>181</sup>, according to which hearing a minor child was held, as far as possible, in a friendly and properly adjusted room. If there is no such room at the court's premises a hearing may be held also in a room that meets the requirements out of the court premises, also in cooperation with NGOs that deal with protection of children's rights.

According to the Ombudsman, determining the conditions and circumstances of hearing a child at the level of executive act was insufficient and the vagueness of the regulation did not guarantee protection of the child's rights in proceedings. He stressed that there were no regulation that would define the manner, form and conditions of the procedure of hearing a child. A minor heard in civil proceedings, as opposed to a child testifying as a witness in criminal proceedings, has no clearly defined rights and obligations.

The Minister of Justice informed<sup>182</sup> that the ministry was analysing the problem to develop a concept for amendment of the Code of Civil Procedure in the scope that referred to regulations on hearing a child. In case legislative work was undertaken, the draft would be presented for review also to the Ombudsman.

- **Standards of performance of tasks appointed to adoption agencies – address of 02 November 2016**

The Ombudsman for Children addressed<sup>183</sup> the Minister of Family, Labour and Social Policy with a request for review of the paper elaborated by the Ombudsman entitled “Standards of performance of tasks appointed to adoption agencies” and for its distribution to implement those standards to everyday practice in adoption agencies. He also suggested amendments to:

- ▶ Ordinance of the Ordinance of the Minister of Labour and Social Policy of 20 August 2015 on the specimen of adoption interview questionnaire and the specimen of the chart of the child, including the records of the case<sup>184</sup>;

<sup>181</sup> Dz. U., Journal of Laws of 2015, Item 2316.

<sup>182</sup> DL-I-072-10/5

<sup>183</sup> ZSR.422.31.2016.MS

<sup>184</sup> Dz. U., Journal of Laws of 2015, Item 1303.

- ▶ Ordinance of the Minister of Family, Labour and Social Policy of 18 February 2016 on financial reports on performance of tasks in the field of family support and foster care system<sup>185</sup>;
- ▶ Ordinance of the Minister of Labour and Social Policy of 09 December 2011 on trainings for candidates for the role of foster carer<sup>186</sup>;
- ▶ and submitted a draft amendment to the existing regulations.

In his address the Ombudsman stressed that he had received messages about problems in operation of adoption agencies and that they had been improperly performing their tasks under the act on family support and foster care system.

Appreciating the weight of the problem, the Ombudsman for Children took the initiative to develop a project entitled “Standards of performance of tasks appointed to adoption agencies”. The main aim of the project was to place the child in the centre of the adoption process to reinforce the child’s subjectivity and develop uniform principles – a model of operation for adoption agencies – to secure correctness and quality of tasks appointed to them.

The standards are guidelines and hints for adoption procedures. They may be supportive in the course of adoption procedure.

In the Ombudsman’s opinion, implementation of uniform standards of operation of adoption agencies would be useful to a child placed in foster care, enlisted as a candidate for adoption, in finding a family for him or her, providing conditions of living in a correctly functioning adoptive family that would satisfy the child’s emotional, physical, social, moral and spiritual needs, shape the child’s personality and guarantee the child’s correct development by proper selection of adoptive parents. The standards are also helpful to candidates for adoptive parents in taking a well-informed decision to adopt a child and are supportive in the post-adoptive period. They increase social trust in adoption as one of the forms of protection of child’s rights and well-being.

To develop the standards, the Ombudsman for Children appointed a special Team for elaboration of adoption procedures, consisting of persons who had dealt with issues connected with adoption professionally. The knowledge and experience of the Team allowed for in-depth analysis of the existing regulations also with respect to executive acts on operation of adoption procedures. The analysis resulted in development of amendments suggested to be introduced in the above mentioned ordinances.

<sup>185</sup> Dz. U., Journal of Laws of 2016, Item 213.

<sup>186</sup> Dz. U., Journal of Laws, Item 1620

In response<sup>187</sup> the Minister of Family, Labour and Social Policy thanked the Ombudsman for Children for the comments and proposed solutions included in the “Standards”. He assured that they would be analysed in the course of works over the next amendment of the act on family support and foster care system.

The Ombudsman had also developed project of amendment to the act of family support and foster care system in the field of activity of adoption agencies, which are described in detail in subsequent part of the Report.

Standards of performance of tasks appointed to adoption agencies are attached as Appendix no. 14 to this Report.

- **Assessment of the draft act amending the act – Code of Civil Procedure and some other acts – address of 05 November 2016**

The Ombudsman for Children analysed the regulations of the draft act amending the act – Code of Civil Procedure and some other acts (UD 104). The drafted regulation referred to environmental inquiry conducted by a court guardian, particularly in enforcement proceedings in family and guardianship cases.

In the Ombudsman for Children’s opinion the draft act was well grounded, as it would be an important instrument for a guardian securing the rights and interest of a child in enforcement proceedings. For that reasons, the Ombudsman backed up the proposed amendments<sup>188</sup>.

- **Lack of regulations concerning the profession of psychologist – address of 24 November 2016**

The Ombudsman for Children in his address<sup>189</sup> to the Minister of Family, Labour and Social Policy asked for detailed information on works that were being currently carried out in the Ministry to introduce comprehensive regulation regarding the profession of psychologist.

The Ombudsman for Children pointed out that as there was no self-government body of psychologist and the regulations of the currently binding act were vague, it was not possible to be authorised to perform the profession of psychologist. The problem exists despite the fact that many acts of law imposes the requirement of having relevant certification to perform this profession.

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<sup>187</sup> DSR.I.071.7.2016.AK

<sup>188</sup> ZSR.422.34.2016.MK

<sup>189</sup> DTZ.422.1.2016.RR



Additionally the Ombudsman pointed out that the current state of law made it impossible to hold liable persons who provide services like psychological counselling. He stressed that persons who practised the profession of psychologist had to have the rules of their profession clearly defined and the patients had to be assured that help they were provided with would be professional and in case a psychologist did something against the best practice or professional ethics, that it was possible to claim one's rights.

In response<sup>190</sup> the Minister of Family, Labour and Social Policy assured that the ministry should start working on the regulation of the profession of psychologist as soon as the European Commission presented final conclusions regarding the review of regulated professions according to the directive 2005/36/WE of the European Parliament and European Council of 07 September 2005 on the recognition of professional qualifications<sup>191</sup>.

- **Suggestion to amend the regulations of the Act on family support and foster care system – address of 25 November 2016**

The Ombudsman for Children presented<sup>192</sup> to the President of the Republic of Poland a proposal concerning amendment of the Act on family support and foster care system with a request to consider the option to take legislative initiative according to Ombudsman's suggestion.

This proposal had been already presented to the Minister of Family, Labour and Social Policy with respect to changes to the executive acts to the above mentioned Act and "Standards of performance of tasks appointed to adoption agencies".

The reason why the Ombudsman for Children took up work on development of these standards and on amendment of the Act on family support and foster care system was that he had been receiving information on irregularities in operation of these agencies which could influence the efficiency of adoption process and be a threat to child's well-being.

To 31 December 2011, management of adoption procedures was the sole responsibility of care and adoption agencies, supervised by poviats authorities. These centres were independent organizational units in terms of structure and financing. Since 01 January 2012 these tasks were taken over by the voivode-

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<sup>190</sup> DDPI.4351.57.2016.KB

<sup>191</sup> Journal of the European Union L 255 as amended

<sup>192</sup> ZSR.422.31.2016.MS

ship self-government. For that reason the voivodeship marshal was obliged to establish adoption agencies in place of the care and adoption agencies.

After nearly 5 years from the moment the new regulations entered into force and new adoption agencies started operating, the Ombudsman for Children believes that solutions adopted in some regions with respect to location of adoption agencies failed which impedes operation of the centres and correctness of procedures. This refers to solutions in which adoption agencies were made part of the structure of regional centres of social policy.

The Ombudsman for Children stressed that the changes he suggested would facilitate the work of the agencies and make it more effective in terms of protection of children's rights as well as secure the regularity of procedures.

The Secretary of State in the Chancellery of the President of the Republic of Poland informed the Ombudsman for Children at a meeting that the Ombudsman's proposal was being analysed.

- **Lengthiness of adoption procedures – address of 06 December 2016**

In his address to Presidents of Courts of Appeal<sup>193</sup>, the Ombudsman asked for action to eliminate the phenomenon of lengthiness in court adoption procedures and to make all judges in family cases sensitive to the problem of children waiting to be placed in a new family environment.

The Ombudsman stressed that the regulation of the Act on family support and foster care system provided that each child who was qualified for adoption should be registered in an adoption agency so that an adoption family could sought for him/her.

Pursuant to Article 578 § 2 of the Code of Civil Procedure, a decision on deprivation of parental authority should be sent by the court to relevant local adoption agency which kept a regional database of children awaiting adoption within 7 days from the day the decision became legally valid.

Though this period is only instructional, the Ombudsman believes that a decision on deprivation of parental authority should be sent as soon as possible so that the rights and well-being of a child are duly protected, including the right to be raised in a family. The Ombudsman for Children pointed that he had received information that the courts did not apply the regulation under Article 578 § 2 of the Code of Civil Procedure.

<sup>193</sup> ZSR.422.35.2016.MK

The Ombudsman received cases in which legally binding decisions on deprivation of parental authority were not sent to an adoption agency for many weeks or even months. This delayed much the commencement of adoption procedure.

The Ombudsman stressed that this was a serious negligence which resulted in unnecessary prolongation of the adoption procedure and, in consequence, delayed the provision of proper family environment to a child.

## 2.2. Individual cases connected with the right to be raised in a family

### • Parental authority and care for children

Parental authority comprises rights and duties of the parents against their children. It is the right of both parents. It arises at the moment of child's birth and terminates when the child reaches the age of majority. Parents are obliged to take care of the physical and mental development of their child and prepare the child for adult life. Parental authority covers the entirety of child-related issues: care of the child, management of the child's property and representation of the child. Parents, before they make a decision on important affairs concerning the person or property of the child should hear the child and take into account, as much as possible, the child's reasonable wish, if the level of mental development, health condition and level of maturity of the child allows.

If parental authority is granted to both parents, each of them is obliged and entitled to exercise it. Important affairs of the child should be jointly settled by the parents. If they cannot reach an agreement, a settlement by a guardianship court may be necessary.

The Ombudsman for Children received many cases concerning parental authority in the context of court proceedings in course. Parents of minors addressed the Ombudsman with requests for measures defined in the Act on the Ombudsman for Children. The Ombudsman considered also many cases pertaining to parental authority over minors *ex officio*.

For example, there was a case<sup>194</sup> taken by the Ombudsman for Children *ex officio*. It involved 6 children who – by power of a court decision issued as interim measure – were to be placed in a residential institution.

<sup>194</sup> ZSR.442.167.2016.SU

The information obtained by the Ombudsman for Children said that the Municipal Social Service Centre initiated proceedings pertaining to custody decision. There were numerous fights and alcohol was abused in the family. For that reason the procedure of "Blue Cards" was opened. The mother of the minors left home in June 2016, leaving the children under care of their father and her mother. The family got a family assistant who supported the minors' father in taking care of the children and in formalities in local authorities offices.

The Ombudsman for Children, having analysed the case, found out that the father of the minors tried to improve their situation, that is he registered himself in an addiction therapy centre, cooperated with the assistant, was interested in his children's school progress, took steps to improve their living conditions. With this in mind, the Ombudsman immediately joined officially the proceedings before the regional court and applied for changing the interim decision of the court issued to secure the claims for the time of the proceedings by appointing a guardian ad litem for the participants of the proceedings and obliging the guardian to make written reports once in two weeks.

The court agreed with the Ombudsman and changed the decision issued to secure the claims.

Also in the final decision the guardianship court acceded to Ombudsman's motions and limited the parental authority of the father over his 5 biological children by appointing a guardian ad litem and the parental authority of the mother by limiting her right to co-decide in important affairs of the children. Proceedings involving the sixth child are in course – it includes hearing of evidence. Having reviewed the opinion of experts, the Ombudsman wil present his position.

In another case<sup>195</sup>, a 1,5 year old girl was left by her mother in the so called "window of life". She also left a note in which she declared that she waived her parental rights.

The information obtained by the Ombudsman said that both the mother and the father did not have proper predispositions to take care and bring up their daughter. The Ombudsman for Children reported officially his participation in court proceedings. Having reviewed the body of evidence collected in case files he submitted a written statement of claim to the court in which he applied for regulation of the legal status of the girl by depriving both parents of parental authority.

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<sup>195</sup> ZSR.442.4.32016.SU

The Court accounted for the Ombudsman's motions.

In another case taken by the Ombudsman ex officio was the case<sup>196</sup> of a boy whose mother was under influence of alcohol at the moment of birth. It appeared that the mother abused alcohol during the whole period of pregnancy. The minor was born with numerous birth defects and was diagnosed with FAS syndrome. In the course of the investigation the Ombudsman for Children found out that both parents of the child did not have proper predispositions to take care of the child, are deeply addicted to alcohol and did not have their habitual place of residence – they were living in a night shelter.

Motivated by the need to settle the child's legal situation and health condition, the Ombudsman officially joined the court proceedings instigated ex officio pertaining to custody decision and applied for settlement of the legal status of the minor.

The court allowed the motion and deprived the parents of their parental authority over the boy. The child was placed in a professional foster family, who was also granted the right to decide about the boy's health matters by power of decision issued by the court.

The Ombudsman for Children took also ex officio a case<sup>197</sup> of minor siblings whose mother abused alcohol when pregnant with the third child. She was also under influence of alcohol during labour. The child was born with the blood alcohol level of 0,3 per cent.

A regional court instituted the proceedings ex officio pertaining to parental authority and to decisions on custody of the youngest son. There had been already a decision issued with respect to the elder children that limited the parents' authority over the children by establishing supervision of a guardian ad litem.

Under the proceedings in course the court issued only a decision in which it decided to inform the manager of the hospital that the child could be discharged to his parents. The court did not do anything else to secure the well-being of the child.

The Ombudsman for Children immediately joined the proceedings and filed a motion for admitting evidence of the opinion of teams of court experts to determine emotional bonds between the minors and the parents, their mutual relations, predispositions as parents, correctness of their attitudes and person-

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<sup>196</sup> ZSR.442.593.2016.SU

<sup>197</sup> ZSR.442.159.2016.MA

alities as parents and to indicate whether their parental attitude guaranteed correct care of the children; what was the reasonable form of securing the situation of children and what forms of family assistance should be applied to improve their situation.

Also the Ombudsman requested the President of the court for internal administrative supervision over the proceedings.

So the President did. The court allowed the Ombudsman's motion and admitted the evidence of the experts to determine the circumstances of the case. The Court, by a decision to secure the claims, subjected the exercise of parental authority over the minor to supervision of a court-appointed guardian. It obliged also the participant of the proceedings to continue the detoxification treatment in a clinic and regular psychiatric therapy and obliged all participants of the proceedings to continue their shared psychotherapy.

Further observations revealed that the woman fulfilled those obligations only at the beginning. Soon she again took care of minors being under influence of alcohol (0,272 per cent of alcohol in the exhausted air).

The court concluded that despite the guardian's supervision, the carers still did not guarantee correct care of the children and placed the children in foster care by means of an interim decision. The Ombudsman for Children is monitoring the situation of the children and after the court experts issue their opinion, he will present his position. The case is in progress.

Another case<sup>198</sup> was undertaken upon notification by a minor's father, who needed support in taking over care of the child. He stated that the girl had been taken away from her family home and her mother isolated her from any contact with relatives. The father informed also that the child was being given drugs each time she was to meet him, which made her fall into the state of stupor. The father was sure that the girl was given the drugs though she did not show any symptoms of relevant disease.

Due to the threat to minor's health and improper situation at home, the Ombudsman officially joined the proceedings pertaining to parental authority before the local regional court. He filed a motion for determining the child's place of residence at the father's place for the time of the proceedings as interim measures.

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<sup>198</sup> ZSR.441.607.2015.MG

The regional court allowed the motion and specified the place of residence of the minors as every single place of residence of the father. By power of final decision concluding the proceedings the court entrusted parental authority to the father and limited parental authority of the mother in joint decision making with respect to important matters of the child. The court subjected also parental authority of the father to supervision of a court-appointed guardian.

The case of minor siblings<sup>199</sup> was taken by the Ombudsman for Children upon request of their other who asked him for support in the proceedings ongoing before regional court regarding custody of children and establishing their place of residence. The mother claimed that the father had been hindering her contact with children. The situation was complicated as the family was living in one building. The father together with the children and the grandparents (his parents) occupied the ground floor and the mother lived on the first floor. The woman claimed also that the children were subject to constant manipulation both on the part of the father and the paternal grandparents and that in this way they wanted to depreciate her in her children's eyes. Every time the mother tried to approach her children, the carers became verbally aggressive. So she gave up so as not to expose children to such stress.

The Ombudsman analysed the case files collected by the guardianship court which carried the proceedings pertaining the minors. He also addressed the relevant social support centre with a request for inquiry into the situation of the family in terms of their health and living conditions. He also checked the situation at school, asking for relevant information about the children. In his letter he also asked for submission of data regarding the conduct of minors and their peer relations and assessment of the cooperation with the father.

The analysis conducted by the Ombudsman confirmed the charges laid by the mother against the father. It also appeared that one of the girls was disabled and required specialist support in her everyday existence. It also appeared that despite limited contact with her children the mother realized well what were the children's needs. In the time of the proceedings she tried to provide them with specialist assistance – for example, she arranged for physical therapy at home and visited her son regularly at school, asking teachers of his conduct and progress.

The regional court issued an interim decision which defined the children's place of residence at the place of residence of the father. The court did not is-

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<sup>199</sup> ZSR.441.2469.2015.LJ

sue any other substantial decision as the father filed a divorce petition which resulted in the guardianship proceedings being suspended.

The Ombudsman for Children joined officially the divorce proceedings and applied for interim decision to secure the claims in that the defendant and the plaintiff be obliged to participate in trainings in educational and upbringing skills for parents and start a psychotherapy within 14 days from the day the decision is issued, and oblige them to submit written reports to the court every two weeks. The Ombudsman also backed up in total the application of the mother (the defendant) filed as an answer to the claim for securing contacts with children.

The Ombudsman argued that the conduct of the father that hindered the mother's contact with her children constituted in fact a violation of their right to be raised by both parents and it was necessary to immediately allow them to see their mother and secure the children's interest. The Ombudsman stressed also that a child had inherent right to contact both parents and any act of limiting this rights might never be a result of unilateral decision of one of them. He pointed then that it was necessary to make the parents aware of the real needs of the children by making them start a specialist therapy.

The court allowed the Ombudsman's motion in all parts. The mother has now contact with her children and she and the father participate in a therapy.

After hearing of evidence the district court issued a judgement in which it entrusted parental authority to the father, established the children's place of residence at the father's place of residence and defined the schedule of contacts with the mother. The court also limited the mother's parental authority to shared decision making in matters important to children, under the supervision of a court-appointed guardian. Furthermore the court settled the question of child maintenance, imposing the maintenance obligation on the mother.

The Ombudsman, finding the judgement not in line with the best interest of the siblings nor securing children's right to be raised by both parents, appealed against it and filed a motion for alternating custody. The case is now being heard by a court of appeal.

In another case<sup>200</sup> of this category, a father of a minor was turning the girl against her mother, hindered their contacts and involved the girl in conflicts

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<sup>200</sup> ZSR.441.1986.2015.PP



of adults. The mother informed also that the court did not account for her motions filed under divorce proceedings.

Following an analysis of the case, especially after reviewing the opinion issued by team of court experts which said that the minor did not want to meet her mother because of the conduct of both parents and lack of any cooperation between them, the Ombudsman for Children officially joined the ongoing proceedings before the district court and filed relevant motions. He applied for interim measures for the time of the proceedings by obliging both parents and the minor to start a family therapy in a specialist facility that dealt with families in divorce conflict, obliging the parents to start and participate in individual therapy to tackle emotions connected with their problems in marriage that had a negative impact on their parenting roles and referring the minor and her mother to a purpose-related therapy to rebuild the daughter-mother relation and obliging the father to bring the child for each therapy session.

The Ombudsman's motions were allowed.

Another case<sup>201</sup> was taken upon notification of a mother of a minor who charged his father with physical and psychical maltreatment of the family as well as with sexual abuse against the child. The minor's parents got divorced and lived in deep conflict, charging one another with inducing fear in the child and turning the child against one another.

The prosecutor dismissed the investigation against the father. By a legally invalid judgement the district court announced divorce at fault of both parties and entrusted parental authority to the father, defining the minor's place residence as every place of residence of the father. The court limited the mother's parental authority over the minor in shared decision-making in important matters concerning the child's education and treatment. The court did not determine the contact between the child and the mother. As a result of appeal filed by the mother of the minor, further proceedings are being carried out before court of appeal.

In connection with the ongoing proceedings, the district court, upon the father's request, issued a decision to secure the claims for the time of the proceedings and entrusted personal custody of the child to the father. The court also dismissed the petition of the mother to change the decision with respect to the child's place of residence and the petition of the father to change the decision regarding the contact of their son with the mother.

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<sup>201</sup> ZSR.441.1304.2015.LP

Bearing in mind that the child was in very difficult situation, the Ombudsman joined the proceedings. In a written statement of claim he applied for hearing the minor pursuant to Article 576 § 2 of the Code of Civil Procedure in presence of an expert psychologist to define the relation and bonds between the minor and the parents and to learn the opinion of the minor and his will how the situation should be settled. The proceeding is in progress.

Another category comprised cases in which the Ombudsman for Children observed irregularities in procedures carried by courts in connection with regulating a child's situation.

For example, there was a case involving minors<sup>202</sup> in which the Ombudsman for Children, following an analysis of the case files, found that the court had failed to fulfil the obligation arising from Article 578 § 2 of the Cod of Civil Procedure, that is the obligation to send the decision on deprivation of parental authority to an adoption agency which kept a regional database of children awaiting adoption within 7 days from the moment the decision became legally binding.

In the face of the serious procedural negligence resulting in prolongation of the time the child was waiting for adoption, the Ombudsman for Children addressed the President of the Court with a request for inspection under internal administrative supervision and for measures that would prevent such failures from taking place in the future. Additionally the Ombudsman asked the President to make judges more aware and sensitive to the problem of children who waited for adoption and effective supervision over the fulfilment of the obligation under Article 578 § 2 of the Code of Civil Procedure.

In response the President informed the Ombudsman that he had obliged the judges to issue decisions in individual cases to fulfil the obligation in question and the employees of the office – to execute the decision in duly and timely manner.

In another case<sup>203</sup>, a 14 year old boy was placed in psychiatric ward of a mental hospital of high security under a decision of regional court.

In the statement of reasons the court stated that the child's stay in a mental hospital of increased security is necessary and grounded – due to unstable psychological condition of the minor connected with his lower mental capability. The

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<sup>202</sup> ZSR.441.51.2016.MS

<sup>203</sup> ZSR.441.820.2016.MA

boy had a legal guardian in the person of children's home employee with whom they had been staying earlier.

The information given to the Ombudsman showed that there was no emotional bond between the minor and the guardian. He was not interested in the boy's fate nor visited him in the hospital, he did not contact the hospital staff to know what was the condition of the boy.

The Ombudsman for Children informed the court that the guardian had not cared for the boy at all and applied for consideration whether it would be reasonable to oblige the legal guardian to submit regular reports on the care he provided to the boy.

As a result of the Ombudsman's requests, the court undertook measures to change the previous legal guardian and ordered an inquiry to state whether the boy's sister were capable of taking the role of his legal guardian. The proceeding is in progress.

- **The child's contact with parents**

Cases connected with realization of the child's right to have contact and be raised by both parents were still one of the largest categories of cases reported to the Ombudsman for Children. In case parents could not reach an agreement it was necessary to have the dispute settled by a court. Lack of agreement between parents often led to a situation when the child was isolated from one of the parents, emotional bonds vanished, the child's sense of safety was disturbed and his or her emotional state was destabilized.

To give an example, there was a case<sup>204</sup> in which a court applied the most severe legal measure in the form of deprivation of parental authority over a child for the reason that it was grossly abused. The case was reported by the minor's father.

The proceedings were being carried out before the regional court, first upon the father's petition to define the child's place of residence, then it was connected with proceedings initiated upon the petition of the mother to deprive the father of his parental authority over the child.

The father claimed in his petition that we feared that the child would leave the country with his mother. In the course of the proceedings it appeared that though the mother often took her son abroad, it was to visit her husband who

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<sup>204</sup> ZSR.441.138.2014.LJ

worked abroad. After one of such trips the mother took the boy to his father and was supposed to take him back in the evening yet she was informed that the child would not be given to her. The child's difficult situation caused by the fact that he had no contact with his mother who used to be his primary carer continued for a year. The regional court issued an interim decision in which it defined the child's place of residence as the mother's place of residence. Both this decision and the decision on immediate return of the child, despite the intervention of guardians and the police, had not been enforced for more than a year's time. The child was completely separated from the mother which grossly violated the child's fundamental right to have contact with both parents, to keep his or her identity and to be able to develop correctly mentally and emotionally.

The court, in its assessment of the conduct of the father, stressed that not only did he grossly abuse his parental authority but also stood clearly against the rule of law by failing to follow legally binding decisions of guardianship court.

The court deprived the father of his parental authority. In this case the Ombudsman monitored the course of events and actions undertaken by the court and other services. The Ombudsman many times inspected the current state of affairs and the child situation. Each time it appeared that the way the mother provided care of the boy and exercised her parental authority did not raise any reservations.

The Ombudsman for Children took also a case<sup>205</sup> reported by a minor who informed him in a letter that the court hearing the case of her parents' divorce ordered her to have contact with her mother though the girl did not have good relationship with her, as the mother did not understand her, her needs and emotionally harmed her.

Analysis of the divorce case files revealed that the mother of the girl moved out a couple of years ago and from then on the girl was living with her father. From that moment the relationship with her mother started to deteriorate.

The mother and the daughter determined a procedure for their contact as part of the inspection carried out by a Family Diagnostic and Consultation Centre for the purpose of divorce proceedings. Based on conclusions presented by experts the court issued a decision to secure contacts between the mother and the girl yet it was different than the agreement mentioned above. Additionally the court appointed a guardian who supervised the exercise of parental author-

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<sup>205</sup> ZSR.441.2935.2015.KT

ity by the father, claiming that it was necessary to observe further evolution of relationships in the family and to support the father in his parenting activity.

The family tried to improve the girl's relation with the mother, for example they started a family therapy, which finally did not succeed. The guardian wrote in his reports that the agreed procedure of contact did not follow in accordance to the issued decision. The meetings were often short and ineffective. The minor explained that she still found the mother insincere and her conduct – artificial. Only some of the meetings were pleasant and satisfactory for the girl.

Following the analysis of evidence collected in the case the Ombudsman for Children officially joined the proceedings and applied i.a. for hearing the minor to define the nature of relationship between her and her parents, the way she spent free time with them, the parents' involvement in her school affairs and problems, if she could freely talk to her parents and whether they took her opinion into account, previous course of her contacts with the mother and the child's will regarding regulation of her living situation including contacts with her mother and her expectations as to how the relationship should be maintained.

The Ombudsman's motion was allowed and the minor was heard. The proceeding is in progress.

Another case<sup>206</sup> involved minor siblings. Their father was legally sentenced for abusing them and their mother. As a result of inflicted violence, the eldest son sustained severe bodily injury.

Although the children were reluctant to see the father, conclusions presented in the opinion of the Family Diagnostic and Consultation Centre attached to case files implied necessity to define personal contact between father and children. In the face of such formulated conclusions, the Ombudsman for Children joined officially the divorce proceedings and applied for admission of evidence of supplementary opinion of Family Diagnostic and Consultation Centre which would indicate how the family should be prepared for meeting the father. In the conclusions it was stated that it was too early for traditional contact but contacts of therapeutic nature e.g. under control of specialists in the psychological and pedagogical clinic were recommended.

The Ombudsman for Children filed a motion for hearing the experts – and so the court did. They stressed that the eldest son should decide about his contact

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<sup>206</sup> ZSR.441.2935.2015.KT

with the father on his own and the three younger children should meet the father in therapeutic conditions.

Additionally the Ombudsman for Children ordered elaboration of an opinion by an expert psychologist specializing in violence against children. This opinion was contrary to the conclusions presented so far regarding contact between the father and the children and presented a comprehensive process of rebuilding their relationship. It indicated that eventual meetings with the father should be preceded with positive opinions issued by therapists of the mother, children and father which confirmed their readiness to see each other in person and with cooperation and communication between the therapists.

The court, in the judgement of divorce defined the procedure of phone and personal contact of all children with their father – twice a month in the regional psychological and pedagogical clinic. Moreover, upon request of the father, the court of first instance issued a decision to secure the claims for the time of the proceedings which defined contact in the same manner as in the judgement of divorce.

In the face of this, the Ombudsman filed a complaint against the above mentioned decision and an appeal against the judgement of divorce, claiming that the court of first instance offended the regulations of civil procedure and the regulations of substantive law and filed a motion for limiting the contacts of the children with the father to defined means of communication from a distance and suspension of personal contact until therapist of the children, mother and father gave positive opinions as to the emotional readiness of each of these persons to hold a meeting that would be safe and constructive for the children.

At the same time the Ombudsman for Children applied for obliging the mother to continue the therapy dedicated to victims of violence and to present a monthly report on the children continuing the therapy including information issued by the therapist regarding the minor's readiness to meet their father as well as for obliging the father to continue his therapy dedicated to violence perpetrators.

As the court of second instance did not change the interim decision the mother was still obliged to take the children for meetings with their father. Yet, as they were still unwilling to see him, they consistently refused to meet him.

At the stage of proceedings of appeal the court admitted the evidence of the team of court experts who concluded in their opinion that the terms of contacts between the father and the minors were not met, both due to children's reluc-

tance and the father's attitude who did not reach the required level of emotional readiness and did not assume full responsibility for violence he had inflicted.

For that reason, the court of appeal changed the judgement of divorce issued by court of first instance by a legally binding judgement in the part referring to determination of contacts and adjudicated maintenance of contact between the father and the children by phone or by internet communicator only, which was in line with the demands of the Ombudsman for Children.

The Ombudsman for Children intervened also to secure contacts between children and persons in detention or in prison if such contact did not pose any threat to a child. In October 2016 the Ombudsman was addressed by a prisoner. He told the Ombudsman that prior to his detention he maintained very good relationship with his 3 year old daughter<sup>207</sup>. After he was taken to prison, his partner refused to let the girl maintain any contact with the father. So, the prisoner addressed the regional court with a request for determination of contacts, yet though a couple of months passed, he did not receive any answer.

The Ombudsman for Children addressed the President of the court with a request for information and explanation as to the manner of hearing the father's motion. The President of the court admitted that hearing of the motion was much delayed and ordered immediate action in that matter.

- **The rights of minors in court proceedings**

The Ombudsman for Children was addressed by a mother of a minor<sup>208</sup> against whom proceeding were being carried out before a court pertaining to change of the punitive measure and criminal acts. Under a decision, the minor was placed in a mental hospital at forensic psychiatry ward with increased security. His mother did not agree with such settlement and file a complaint against it. The district court repealed the decision of the regional court and referred the case for judicial review. The court admitted the evidence of opinion of expert psychiatrist to determine the minor's mental condition. Pursuant to Article 25 a § 1 of the Act on juvenile delinquency, in case such opinion is obtained, family court shall order medical examination of the minor by at least two expert psychiatrists.

Yet this requirement was not met, so the Ombudsman for Children addressed the President of the district court with a request for inspection of the case un-

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<sup>207</sup> DTZ.441.284.2016.RR

<sup>208</sup> ZSR.441.2607.2015.AO

der internal administrative supervision and for referring the case to inspecting judge for family and juvenile affair to inspect whether the regional court had correctly applied the regulations of the Act on juvenile delinquency. And so the President of the district court ordered the President of the regional court to turn the reporting judge's attention to the absolute necessity to follow the content of Article 25 a § 1 of the Act on juvenile delinquency.

The Ombudsman for Children took also a case<sup>209</sup> which was reported by a physician from a psychiatric clinic for children and youth. The doctor asked for access to information on living situation of a minor. He stated that the child was the patient of the clinic because of depression disorders. Her mood was depressed because of her unstable life. He continued that the minor had been living in a youth education centre for three years where she had been placed upon request of her mother who claimed that the girl had inflicted physical violence to her.

The staff of the centre reported that the girl had never shown any violent behaviour against them or any other pupils nor she caused any educational problems. The minor fulfilled the obligation of school attendance with very good results and she accomplished the III grade of the lower secondary school (gymnasium) with distinction. Unfortunately, there was no upper secondary school established in the centre, only a vocational school, which was not adequate to the child's aspirations.

Analysis of available material of evidence collected in the case revealed great procedural negligence. The files included motions filed by the mother to change the educational measure which had never been heard. The Ombudsman pointed also out that one of the motions filed by the centre manager was heard under a wrong procedure. The court issued an order instead of a decision which may be appealed.

Hence, the Ombudsman for Children addressed the President of the district court with a request for urgent inspection of the case under internal administrative supervision and hearing motions filed in the case.

The President of the court agreed with the Ombudsman that the decision issued by the court did not have the right procedural form and it was issued with much delay. He also stated that motions filed by the mother of the minor were left unheard, so he took relevant measures.

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<sup>209</sup> ZSR.441.900.2016.SU



The court finally heard the motions and changed the educational measure in the form of placement in youth education centre into a guardian's supervision. The girl came back to custody of her mother.

Another case<sup>210</sup> of this category was taken upon notification by a mother of a minor who informed the Ombudsman of irregularities in the ongoing criminal proceedings. When the Ombudsman was analysing the case, he found out that the child was not correctly represented in the proceedings. Pursuant to Article 99 of the Family and Guardianship Code in connection with Article 52 § 2 of the Code of Criminal Procedure, a harmed minor must be represented by a guardian ad litem.

The Ombudsman for Children officially joined the ongoing proceedings before the regional court pertaining to appointment of a guardian ad litem for the minor harmed in criminal proceedings. The Ombudsman applied for appointment of a guardian registered in the district bar association or the list of legal advisers. The Ombudsman's motions were allowed. The minor was granted a professional guardian – an advocate.

The Ombudsman for Children was also addressed by a minor<sup>211</sup> who claimed that proceedings were in course before regional court instituted upon a guardian's claim pertaining to demoralisation. She informed that the court under interim measures placed her in a youth education centre for no reason as she was not a demoralised person.

Analysis of case files and other information made available to the Ombudsman by the municipal social service centre led to a conclusion that the minor was not demoralised nor committed a criminal act. The reason why she was placed in the centre was that she did not attend lessons at school and she did not submit any excuse notes for it. The child's situation at home was complicated. Her mother was strongly addicted to alcohol and did not actually exercise parental authority over the child. The girl moved to her maternal grandmother.

The Ombudsman for Children officially joined the ongoing proceedings and filed a motion for changing the decision in force by establishing supervision of a court-appointed guardian as well as by obliging the minor to regularly attend school lessons.

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<sup>210</sup> ZSR.441.70.2016.AMIK

<sup>211</sup> ZSR.441.2156.2015.SU

The court agreed with the minor and changed the formerly issued decision and changed the applied measure into supervision of a court-appointed guardian.

- **Family foster care**

The Ombudsman for Children was informed<sup>212</sup> by a minor (against whom also proceedings pertaining to juvenile delinquency were in course – see the description above) that her mother was an alcoholic and did not provide the girl with proper care. The girl said that she was living with her maternal grandmother who actually took care of her. The Ombudsman for Children contacted the grandmother and informed her that she could apply for the status of foster family for the girl, which she did.

The Ombudsman for Children officially joined the proceedings pertaining to settlement of custody of the minor and backed up the grandmother's application for the status of foster family for the girl. Upon the Ombudsman's request the regional court entrusted the grandmother with custody of the child for the time of the proceedings.

The Ombudsman for Children took also a case<sup>213</sup> which was reported by a mother of a minor. She informed that her daughter was placed in a related foster family in the person of paternal grandparents because of the mother's problem with alcohol. She also informed that proceedings were in course for two years pertaining to restoration of her parental authority over the girl. She stressed that she regularly attended detoxification therapy.

The Ombudsman for Children, having reviewed the case files, officially joined the ongoing proceedings.

The material of evidence collected in the case implied that the girl wanted to live with her mother and that there was an emotional bond between them. The Ombudsman for Children filed a motion for changing the scope of limitation in parental authority by establishing supervision of a court-appointed guardian over the exercise of the parental authority and obliging the participant to cooperate with the guardian.

The Court fully allowed the Ombudsman's motion. The girl moved to her mother's place. The decision is not yet legally binding because the foster family appealed against it. The proceedings before the court of II instance are in course and are being monitored by the Ombudsman.

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<sup>212</sup> ZSR.441.2156.2015.SU

<sup>213</sup> ZSR.441.419.2016.SU

In another case<sup>214</sup> a foster family informed the Ombudsman that although they had been duly fulfilling their duties with respect to children that required increased effort in education and upbringing, they had not been granted the status of professional foster family.

To verify the content of the notification the Ombudsman for Children addressed the local foster care provider with a request for detailed information. He asked for details of the opinion regarding the foster family as candidates for professional foster family and for reasons why they, if at all, had not been accepted. At the same time the Ombudsman asked for information whether the family met the requirements to be met before entering into contract for provision of professional foster care.

As a result of the Ombudsman's activity, a comprehensive analysis of the family was conducted and necessary opinions were collected, and the family was offered a training for candidates for professional foster family. The family entered into contract for provision of professional foster care.

### 2.3. Individual cases connected with the right to be raised in a family and the conditions of residence in institutions

- **Minor mothers in facilities**

Still the Ombudsman for Children received cases regarding separation of minor mothers and their children.

For example, there was a case<sup>215</sup> reported by a pupil of a residential institution. The girl asked the Ombudsman for support as she feared that her child would be removed from her. She was alarmed by strange conduct of the carers – they wrongfully accused her of using smarties and of improper care of her child. She also complained about groundless reduction of her pocket money, giving her second-hand clothes, delayed provision of cleaning agents and limiting her walks with the child within the facility area to half an hour a day. She also reported that she was forbidden to talk to other parents staying in the facility and was placed with the child in an inconvenient walkthrough room.

<sup>214</sup> ZSR.441.1443.2016.MS

<sup>215</sup> ZEW.441.1155.2015.ZA

Due to the reported irregularities, the Ombudsman for Children intervened at the local voivodeship office and asked for inspection of the facility. The inspection confirmed most of the charges laid by the minor mother. The manager was given post-inspection recommendations.

Yet the problem was still not fully solved as the girl was discharged from the facility as soon as she reached the age of majority and the child remained in it. The Ombudsman intervened immediately. As a result the facility started to provide the girl with support, namely with formalities connected with application for allotment of a council flat. The young mother continues now her vocational education and regularly takes care of her son when he is on pass.

In another case, the Human Rights Defender addressed the Ombudsman for Children with a request for support for a minor mother<sup>216</sup>. He informed him on the difficult situation of a pupil of a residential institution who was staying in a youth education centre.

At first the girl was being brought up in a foster family but when she got pregnant, the family waived care of her. After her child was born the girl was taken to a residential institution together with her son. As the new school year began, the court decided to terminate her leave and to oblige her to come back to an educational centre. Yet her child remained in the residential institution. The centre – in the pupil's opinion – approved of her contacts with the child. Unfortunately, the staff of the residential institution discouraged her to take care of the child, criticized her and did not want to give her advice how to take care of a child.

The girl was determined to make every effort to have her child back after leaving the centre. At the end of the 2015/2016 school year the residential institution addressed the family court with a motion of deprivation of parental authority against the girl. In the statement of reasons it was said that she was a *bad mother*.

The Ombudsman for Children immediately started intervention in the case. The staff of the residential institution changed their attitude against her, started to give her relevant support and declared that they would not uphold their previous motion for deprivation of parental authority at the hearing.

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<sup>216</sup> ZEW.441.541.2016.ZA

After hearing the parties and witnesses the court decided to place the minor mother and her son under custody of the girl's biological mother. The girl came back home with her son the same day.

- **Realisation of the child's right to contact relatives and close friends**

There is still a great number of cases in which contact and visitations of children by their relatives and persons important for them was impeded. A residential institution substitutes family home for a child, so when its pupil is temporarily staying in different type of facility (e.g. youth education centre), it is the obligation of the residential institution to maintain contact with this pupil, meet his or her emotional and housing needs and support him or her in difficult moments. A refusal to grant a leave to a residential institution is a sign of violation of child's right to be raised in a family.

Such was the case<sup>217</sup> in which the Ombudsman for Children had to intervene because a pupil of a youth education centre was refused to be granted leave to his place of residence – a residential institution – during summer holidays. An educator from the youth education centre applied for the boy's leave to his regular educational environment.

After the Ombudsman for Children intervened, the manager of the residential institution agreed to his leave during summer holidays and declared to provide him with relevant support and to cooperate with the youth education centre.

The Ombudsman for Children notified<sup>218</sup> the Human Rights Defender on the difficult situation of two minors staying in a youth education centre who at the same time were the pupils of a residential institution. The home institutions refused to receive the pupils for the time of summer holidays. What is more the residential institution did not care to equip the pupils with necessary clothes and personal hygiene products. It was argued that one of the pupils often harmed herself and that was the reason for the refusal. The girl excused herself with distress she suffered as she was refused to be granted leave to the residential institution.

As a result of the Ombudsman for Children's intervention the minor received necessary clothes and was provided with hygienic products on a regular basis. The facility agreed to grant her leave for the time of summer holidays. And so was the other pupil, after the Ombudsman's intervention.

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<sup>217</sup> ZEW.441.529.2016.AS

<sup>218</sup> ZEW.441.539.2016.ZA, ZEW.441.564.2016.ZA

The Ombudsman for Children took also a case<sup>219</sup> that involved irregularities in care provided for children in a family children's home. The irregularities included suggesting the biological parents that they should terminate contact with the child and improper housing conditions.

As part of the intervention in the case the Ombudsman addressed the local family support centre with a request for inspection in the facility. The centre informed the Ombudsman that inspection did not reveal any irregularities.

In order to verify this, the Ombudsman for Children addressed the local voivodeship office and asked for a diagnosis of the children's situation with respect to irregularities mentioned in the complaint and for inspection of quality of the performance of foster care tasks by relevant units in the area.

The voivodeship office, in the course of the inspection, concluded that the protocol of inspection conducted by the employees of the support centre did not fully reflect the actual housing and living conditions of the children's home or the educational activity of that institution. In the face of those irregularities the manager of the facility was given post-inspection recommendations. One of them provided post-inspection control of the children's home. The Ombudsman for Children is monitoring its activity and enforcement of the recommendations.

- **Staying in facilities located far away from the place of residence of biological family**

The Ombudsman for Children was addressed<sup>220</sup> by a mother of a girl placed in a residential institution who asked him for help in moving the girl nearer her family home. The residential institution was located more than 300 km away from her place of residence which did not facilitate maintenance of family bonds and cooperation with the family to bring about to the girl's return to custody of her parents.

The intervention undertaken by the Ombudsman for Children solved the problem in the end. The girl moved to a facility located in the same town as the place of residence of her family.

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<sup>219</sup> ZEW.441.852.2015.JK

<sup>220</sup> ZEW.441.1779.2015.ZA

- **Not placing in foster care or crossing off the lists of pupils of residential institutions as the problem of children staying in social rehabilitation facilities**

The Ombudsman for Children still received cases in which the rights of children to be raised in a family were violated in case of children who were staying in residential institutions and social rehabilitation facilities. Upon request of the Ombudsman for Children the Minister of Justice had instructed the presidents of district court already in 2013 that *changing the decisions regarding parental authority only because of application of an educational measure against a minor in the form of placement in an educational centre or social rehabilitation facility, without and substantiation arising from the Family and Guardianship Code is against the law and well-being of the minor.*

Yet irregularities of this kind were still observed. For example, in one of the cases, a President of regional court informed the Ombudsman that: *Not all judges of this Court agree with the Ministry (...). This issue belongs to the sphere of judicature in which a judge remains independent, hence any interference in that matter seems to be unacceptable.* In the face of the above, the Ombudsman concluded that it was necessary for the ministry to undertake further activity so that the right of the child to be raised in a family was respected with regard to all minors.

For example the Ombudsman had to intervene in case<sup>221</sup> of a boy who was staying in a youth education centre and whose mother had been deprived of parental authority. The court issued the decision on establishing foster care only with regard to the boy's brother. At that time the child was staying in a youth education centre located in a different voivodeship than the town where he habitually resided. As it was necessary to appoint an educator from this centre who would be the legal carer of the child, case files were sent to the court which decided, upon request of the centre, to place the child in foster care. None of the poviats (of the registered place of boy's residence nor his actual place of residence), however, wanted to issue a referral to a residential institution, arguing that they had no mandate to do so.

As a result of the Ombudsman for Children's intervention the problem was finally solved – the boy was placed in residential institution, to which he was granted leave for the first weekend after being entered in to the list of pupils.

<sup>221</sup> ZEW.441.745.2016.ZA

In another case<sup>222</sup> of this kind was crossing off the list of pupils of residential institution of a juvenile detention centre.

The Ombudsman for Children was informed by an educator from the juvenile detention centre that a minor had been deprived of permanent educational environment. The regional court repealed the decision on placing the minor in a residential institution. Such decision was substantiated by the president of the court by the fact that *the minor was taken care of in the all-year and all-day facility in the form of a juvenile detention centre*. This led to a situation in which the boy – deprived of care of his parents (parental authority of the father was suspended, and the mother was deprived of it) – was currently existing out of the foster care system, the tasks of which was also to cooperate with the minor's family for the purpose of the minor's return to this family (this task was not the duty of juvenile detention centres).

The Ombudsman for Children intervened with the president of the court, indicating that in his opinion the social rehabilitation process would successful only when subject to cooperation with the permanent educational environment of the boy. Such environment for him was the residential institution. He stressed that one of conditions of effectiveness of undertaken educational and social rehabilitation activity was the promise of returning to the permanent educational facility. Crossing a minor off the list of its pupils meant that the minor was deprived of the possibility to stay there, especially during public festivals or summer holidays, showed that carers and experts of the detention centre did not in fact believe in success of the measures taken against the boy and in that he could improve his conduct, which in turn could be a factor discouraging from further self-improvement.

The Ombudsman asked also the president of the court to make the judges aware – in the course of regular trainings – that it was necessary to take into account the living needs of minors who stayed in juvenile detention centres who were also the pupils of residential institutions.

This intervention stimulated the Ombudsman for Children to make a decision to generally inspect the legal situation of all minors who were charges of juvenile detention centres in Poland. The case is in progress.

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<sup>222</sup> ZEW.441.1227.2016.JK



- **The operation of day care facilities**

In 2016 the Ombudsman for Children still received complaints about intended liquidation of day care facilities<sup>223</sup>. In opinion of the Ombudsman, activity of such centres is an important part of the system that allows the child to stay in biological family who faces different problems. Such a centre provides the child with professional support, gives the child the possibility to do his or her homework and eat a hot meal.

A case<sup>224</sup> of this category, taken by the Ombudsman for Children, was initiated by a question asked by an educator of a day care centre about the option to appeal against a decision of President on liquidating the facility.

The Ombudsman for Children answered and immediately intervened at the President. As a result, the local self-government authorities decided not to liquidate the facility.

- **Improper organisation of foster care by poviats**

Interventions undertaken by the Ombudsman for Children in 2016 referred also to the quality of performance by poviats in the field of foster care.

The Ombudsman was addressed by a maternal grandmother (legal carer) of a minor who caused educational trouble, and she, an elder person, could not handle it<sup>225</sup>. The boy's parents had died. The woman filed a motion for dissolution of foster family. From that moment the local social support centre deprived her of financial support for education of the boy so that she could not then buy him necessary school equipment (the boy was to be placed in a youth education centre).

As a result of the Ombudsman's intervention the boy was immediately placed in a family children's home and the woman received a compensation of expenses for the time the boy stayed with her under foster care. The court also gave the boy a chance to improve his conduct and suspended the enforcement of the educational measure. The grandmother maintains regular contact with her grandson.

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<sup>223</sup> ZEW.441.1749.2015.ZA, ZEW.441.199.2016.ZA, ZEW.441.903.2016.ZA

<sup>224</sup> ZEW.441.140.2016.ZA

<sup>225</sup> ZEW.441.901.2016.ZA

- **Improper housing conditions in foster care facilities**

The Ombudsman for Children received also complaints about irregularities in operation of family children's homes, emergency children's shelters and residential institutions.

For example, the Ombudsman for Children received information that rights of children were not being respected in a residential institution. In the course of the investigation<sup>226</sup>, the Ombudsman charged the relevant voivodeship office to conduct an inspection in the case. Its results confirmed serious irregularities in the facility's operation, i.a. non-observance of the child's right to protection against humiliating treatment and punishment, no arrangements as to regular extra classes and recreational and sports activities for the pupils. Not all of them fulfilled the school attendance obligation in the school year 2015/2016 and the facility did not cooperate with schools on a current basis; improper system of servicing meals in the afternoon hours resulted in limited access to meals for some of the pupils. Relevant recommendations were issued with respect thereto. The Ombudsman for Children monitored realization of those recommendations.

Another case<sup>227</sup> was taken upon information passed by the Police that a pupil of a residential institution decided on his own to come back to his family home. The Ombudsman decided to immediately inspect the case on site.

Based on the comments, conclusions and post-inspection recommendations formulated by the Ombudsman for Children, the poviast family support centre developed a recovery plan (implemented from July 2016 to March 2017). It covered the following areas: provision of all day care and education (including health care of pupils, therapies, support in education at school, application of desired educational methods, work with biological family, organisation of free time and leisure), adjustment of facility records to the currently binding regulations and keeping children's records in line with the requirements of the Act on family support and foster care system.

The Ombudsman for Children is still monitoring the operation of the facility and the activity of the local family support centre in its implementation of the plan.

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<sup>226</sup> ZEW.441.429.2016.AS

<sup>227</sup> ZEW.43.4.2016.ZA

In another case, the Ombudsman was notified that the rights of the child were not respected in an emergency children's shelter<sup>228</sup>. The irregularities included i.a. application of improper punitive measures, limited contact with children's siblings and lack of needed psychological and pedagogical assistance.

The Ombudsman addressed the local voivodeship office with a request for inspection of the observance of children's rights in the facility and educational methods used by it. As a result of the inspection, voivodeships issued 15 recommendations to the manager of the facility, which included the requirement to follow the rules governing visitations and arranging for places where the pupils could keep their privacy during meetings with their families, respecting the rule of equal and subjective treatment, individual attitude towards all pupils, not resorting to the rule of shared responsibility, following the regulations concerning providing children with their own sums of money and provision of necessary clothes. The Ombudsman for Children is monitoring the process of implementing the remaining recommendations.

The Ombudsman for Children was also addressed<sup>229</sup> by a mother of a girl who was the pupil of a children's home. She complained that the right to privacy and freedom of expression was not respected and the pupils were punished by not being allowed to go home on leave which meant that the contact with biological families was impeded.

In the course of the investigation, the Ombudsman charged the relevant voivodeship office to conduct an inspection in the case. Inspection results confirmed the claimed irregularities including application of punitive measures that violated the child's rights and failure to implement recommendations included in psychological and pedagogical opinions and psychophysical diagnoses. Due to the gravity of the irregularities the Ombudsman charged the voivodeship office to inspect how the post-inspection recommendations were implemented. In response he was informed that the team of inspectors did not have any reservations as to the implementation of the recommended improvements.

- **Operation of the youth education centres**

Interventions undertaken by the Ombudsman in previous years with regard to incorrect functioning of youth education centres and inspections conducted in situ clearly showed that some of those facilities required reorganisation changes so that it could be deemed that the rights of children who were stay-

<sup>228</sup> ZEW.442.3.2016.JK

<sup>229</sup> ZEW.441.1643.2015.JK

ing there were being respected. Out of concern for quality of the operation of those facilities the Ombudsman appointed a Team for Standardization of the Children's Stay in Youth Educational Centres and Youth Social Therapy Centres in the Field of Education and Care composed of representatives of the world of science, the ministry of education and practitioners – managers of youth education centres. In result, the Team developed a document entitled: Standards of stay of children and youth in social therapy centres and youth educational centres in the field of education, upbringing and care which was submitted to the Minister of National Education. The document became the basis of the Ordinance of the Minister of National Education of 2 November 2015 *regarding types and specific rules of operation of state facilities, the conditions of children's and youth's stay in those facilities* and the amount and rules of payments made by the parents for the stay of their children in those facilities<sup>230</sup> (the Ordinance enters into force on 1 September 2016, except for §15 which enters into force on 1 January 2017).

Persons who addressed the Ombudsman for Children claimed that rights were not respected in various contexts. For that reason the Ombudsman entered into cooperation with the Centre of Education Development in the field of trainings for inspectors in respecting the rights of the child in educational facilities. Two of such trainings took place in November 2016, subsequent ones were scheduled in January 2017.

Na example of intervention in this category was the case<sup>231</sup> taken upon an anonymous request for help to be provided by pupils of a youth education centre due to the fact that the centre did not meet requirements defined in the Ordinance of the Minister of National Education of 2 November 2015 *regarding types and specific rules of operation of state facilities, the conditions of children's and youth's stay in those facilities and the amount and rules of payments made by the parents for the stay of their children in those facilities*.

Due to the gravity of the charges, the Ombudsman for Children decided to inspect the state of affairs in the centre in situ. The inspection referred in particular to methods and quality of educational measures applied against the pupils.

Irregularities observed in the centre included i.a. bullying, limiting telephone conversations to 10 minutes a day and times for bath to 5 minutes a day. There were no conditions of privacy in the shower room. The rules governing the life of the centre did not facilitate development of correct system of values which

<sup>230</sup> Dz. U., Journal of Laws of 2015, Item 1872.

<sup>231</sup> ZEW.43.1.2016.ZA

was decisive of positive moral and emotional development of the pupils so that they could accept and follow the norms and values of healthy interpersonal relations and life in open society.

As a result of the inspection, numerous comments and conclusions were formulated. The manager of the centre informed the Ombudsman that most of the had been implemented, including the training for the pedagogical staff and workshops for pupils in the field of dealing with aggressive behaviours. The centre was improved in terms of aesthetics of the bedrooms and other pieces of furniture. Also the manger informed that at the end of 2016 the centre would be moved to another location. The Ombudsman is still monitoring the process of implementing comments and recommendations and the situation of the pupils.

In another case<sup>232</sup> of this category, a mother of a minor staying in youth education centre addressed the Ombudsman. She complained that the children were not provided with safe housing conditions and other necessities to learn, continue social rehabilitation and therapies.

The Ombudsman for Children started an inquiry and addressed the relevant education officer with a request for inspection under his pedagogical supervision. As a result of the inspection the manager of the centre was given recommendations regarding arrangement of psychological and pedagogical support for the pupils in accordance to the regulations of law as well as developing and broadening specialist assistance of psychological and pedagogical nature addressed to each pupil individually. The Ombudsman for Children is monitoring the process of implementing the recommendations.

- **Application of improper punishment against children**

Cases concerning the application of punitive measures that infringed the dignity and the rights of the child formed another numerous category.

For example<sup>233</sup> there was a case in which the Ombudsman had to intervene because mental violence was inflicted by educators against pupils of a residential institution. In the course of the investigation, the Ombudsman charged the relevant voivodeship office to conduct an inspection in the case. It revealed irregularities mentioned in the complaint, i.a. application of such punishment as: many hours' prohibition to leave the room, forcing pupils to do arduous maintenance works and removing personal properties from the pupils. 24 recommen-

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<sup>232</sup> ZEW.441.1139.2016.JK

<sup>233</sup> ZEW.442.17.2016.AS

dations were issued and the manager was obliged to take appropriate disciplinary measures against the educators who were aggressive, vulgar, threatened the pupils, and in case of the educator who inflicted physical violence against a pupil – exclude the educator from performance of his work. The Ombudsman for Children is monitoring the process of implementing the recommendations.

The Ombudsman for Children received also information that improper punishing methods were applied against children living in residential institution<sup>234</sup>. The Ombudsman started intervention and charged the voivodeship office to inspect the state of affairs. The results of the inspection confirmed that the pupils were forced to participate in Sunday Mass under threat that they would be forbidden to go out that day. Such practice is against the law, that is: Convention on the Rights of the Child (Article 14 item 1) which tells to respect the child's right to freedom of thought, conscience and faith and Article 53 item 6 of the Constitution of the Republic of Poland, pursuant to which no person may be forced to participate or to abandon religious practices. Relevant recommendations were issued with respect thereto and they were implemented.

Investigation of the practice of moving girl pupils from one facility to another (for the time of attendance to a lower secondary school (gymnasium)<sup>235</sup> gave rise to inspect the situation of girl pupils of a residential institution. The inspection revealed that disciplinary measures were applied against the girls, which violated their rights. The pupils were punished for improper conduct by refusing leaves to family homes and their contact with families by phone was also limited (there was only one phone in the room of the educators).

As a result of the Ombudsman's intervention, the manager of the centre introduced many changes in the way the facility operated. Punitive measures that could violate the child's rights were removed from the rules and regulations, the pupils were given an additional phone number, provided with necessary psychological and pedagogical support, the educators abandoned the practice of applying punitive measure for acts of self-harming, workshops were offered to parents/ carers along with other forms of support.

- **Psychological and pedagogical measures**

Cases undertaken by the Ombudsman for Children show that some residential facilities still attached too little importance to the quality of psychological and pedagogical support provided to their pupils as well as to the widely under-

<sup>234</sup> ZEW.441.795.2016.AS

<sup>235</sup> ZEW.43.9.2016.ZA

stood educational work. As a result of this negligence, similarly as in previous years, motions were referred to courts for placing children in youth social therapy centres or youth education centres or even mental hospitals.

One of cases taken by the Ombudsman for Children referred to such a motion filed by a manager of a residential institution for placing a minor girl in a mental hospital<sup>236</sup>. Family court, having obtained relevant information from the Ombudsman and the opinion of a team of expert psychologists, dismissed the motion and the minor -according to her wish – was moved to another facility. The girl claimed that the motion for her placement in mental hospital was a punishment for her because she notified relevant supervisory bodies of irregularities she observed in the facility. The Ombudsman for Children is still monitoring the situation of the girl.

In another case of this category, pupils of children's home addressed the Ombudsman for Children with a complaint about not being provided with proper care in the facility<sup>237</sup>. Inspection ordered by the Ombudsman to the relevant voivodeship office revealed that the facility did not perform her tasks and duties in the field of pedagogical work correctly. It was also found necessary to increase the time of work of the psychologist and provide all pupils with relevant psychological assistance. Furthermore it was pointed out that the tests and observations records of each pupil had to be correctly and regularly filled and kept. The Ombudsman is waiting for inspection to be conducted by voivodeship services.

The Ombudsman for Children was informed that children living in a residential institution were not provided with proper all day care, their needs were not satisfied especially those connected with housing, social, emotional and developmental conditions and they were not provided with relevant first aid and psychological care<sup>238</sup>. The Ombudsman started intervention and charged the voivodeship office to inspect the state of affairs. The inspection confirmed numerous irregularities. Among other recommendations, the voivode pointed to the need to perform a deep and thorough analysis of child's situation, especially with respect to those pupils who, according to the facility's best knowledge, could have experienced violence and the necessity to recognize and identify the needs of pupils by analysing their conditions and elaborating psychophysical diagnoses. He also ordered changes in the personnel and elaboration of in-

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<sup>236</sup> ZEW.441.1161.2016.ZA

<sup>237</sup> ZEW.441.1661.2015.JK

<sup>238</sup> ZEW.441.1483.2015.JK

depth assessment of candidates for educators as well as to adjust the internal records to binding regulations of law also those referring to respecting children's rights. The manager informed the Ombudsman that the recommendations were implemented. The effects shall be subject to inspection by voivodeship office in the first quarter of 2017.

Another case undertaken by the Ombudsman for Children upon anonymous complaint referred to lack of support for pupils of a residential institution in the process of self-improvement and non-provision of necessary psychological assistance<sup>239</sup>. The Ombudsman addressed the relevant voivodeship office and charged it to inspect the problem. The inspection confirmed the charges with respect to non-provision of specialist assistance to children. It was also found out that the facility had deficiencies in human resources which added up to the difficulties in taking care of children and applying proper educational methods, which in turn demoralized some of the pupils even more. The manager received recommendations which were implemented. Additionally, as a result of the Ombudsman for Children's intervention, the facility employed a pedagogue for full time work and a psychologist for 1/2 time work. The situation in the facility improved considerably.

- **The process of pupils' becoming independent**

Numerous complaints received by the Ombudsman for Children against the improperly arranged process of becoming independent with respect to children placed under a court decision in foster care and other types of facilities gave rise to appointment of a Team for affairs of pupils of foster care, youth education centres, youth shelters and juvenile detention centres with respect to the process of becoming independent.

As a result "Recommendations of the Ombudsman for Children with respect to successful process of becoming independent of children placed in foster care and other facilities under a court decision and of mothers with children and pregnant women leaving institutions" which were addressed to poviats authorities as the units responsible for arrangement of the process of children becoming independent.

The Ombudsman addressed also the Minister of Family, Labour and Social Policy with a request for amendment of the currently binding regulations regarding the process of children becoming independent, including standardization of regulations set forth in the Act on family support and foster care system

<sup>239</sup> ZEW.441.606.2015.AS



and the Act of 12 March 2004 on social support.<sup>240</sup> In response the Minister assured the Ombudsman that the problem would subject to analysis and the Ombudsman's recommendations would be taken into account in the course of work in that field.

The Ombudsman for Children received also a complaint about a manager of a residential institution who did not provide his pupil with an expert guardian in the field of becoming independent<sup>241</sup>. The boy was staying in a mental hospital and his legal carer (educator in the facility) applied for termination of this function to court before the boy reached the age of majority. The newly established legal carer notified the Ombudsman that a month before reaching the age of majority, the boy still had no guardian appointed. As a result of the action taken by the Ombudsman, the situation was repaired and the boy, after he reached the age of majority, moved to supported accommodation.

In the course of investigation the Ombudsman addressed also the relevant voivodeship office with a request for supervisory measures. The inspection revealed irregularities and the manager of the facility received relevant recommendations. The operation of the facility is still monitored both by the voivodeship office and the Ombudsman for Children

The Ombudsman was also addressed by a grandmother of a boy (legal carer, foster family) who had been the patient of a mental hospital for a couple of years<sup>242</sup>. The woman found it difficult to take care of the boy while he was on leave (Asperger's syndrome). She asked for assistance by an employee of the municipal social service centre. Relevant authorities filed a motion to court for dissolution of foster family. This happened shortly before the boy reached the age of majority. It was necessary to undertake measures to help the boy become independent.

Ombudsman's intervention resulted in referring the boy to a residential institution (for one month trial period at first), yet he was to move there only after he reached the age of 18. The boy left the hospital on the day of his 18. birthday. The facility did its best to make the young man feel welcome. All other pupils and carers (children and adults) had been prepared for his presence (and potential unusual conduct). As the experts assessed, the boy was talented but his disorders did not let him fully use his talents.

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<sup>240</sup> Dz. U., Journal of Laws of 2016, Item 930.

<sup>241</sup> ZEW.441.15.2016.ZA

<sup>242</sup> ZEW.441.145.2015.ZA

After moving to the facility the boy started learning in a general (upper) secondary school. Now he is doing quite well, he is acquiring new skills to be able to live an independent life. After the trial period he was allowed to stay there until he was allotted a supported accommodation. The boy maintains contact with his grandmother.

The Ombudsman for Children received also a case<sup>243</sup> reported by a legal carer of a boy who was placed in a foster family. The boy, after reaching the age of majority, wanted to become independent (he had good results at school, a workplace guaranteed in a company where he was an apprentice). So he filed an application to the local family support centre with a request for financial support in renting a flat until he finished school.

The Ombudsman for Children undertook measures to support the boy in obtaining financial assistance. The application was allowed and after the boy reached the age of majority he moved to a rented apartment.

- **The right to privacy of a child in foster care**

Children often tell the Ombudsman for Children how important it is for them that the adults respect their privacy and the right to express their own opinions.

The problem of violating this right was particularly visible in case of children brought up out of biological family. Inspections conducted by the Ombudsman for Children in residential institutions showed that the right to privacy was often violated and children suffered badly because of that. It must be also stressed that in many cases the carers were not aware that they were violating a right. It was quite the opposite – they believed that what they did was in the best interest of the child.

For example, there was a case reported to the Ombudsman for Children concerning a child living in residential institution<sup>244</sup>. His picture was published on social media web page. In this way the carers wanted to increase the girl's chances to find a foster family. The Ombudsman addressed the relevant voivodeship with a request to investigate whether dissemination of child's image takes place upon the child's consent and the consent of her statutory representatives. The inspection revealed that the facility had infringed the girl's right to privacy by using her image. The manager received a recommendation which was implemented

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<sup>243</sup> ZEW.441.535.2016.ZA

<sup>244</sup> ZEW.441.256.2016.JK

### 3. THE RIGHT TO DECENT SOCIAL CONDITIONS

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

(Article 26 of the Convention on the Rights of the Child)

In 2016 the total of 3,831 cases were reported to the Ombudsman for Children with respect to the right to decent social conditions.

The Ombudsman for Children referred to other authorities and institutions with the request to initiate actions or provide information in cases pertaining, among other things, to:

- ▶ homelessness of children,
- ▶ child-support benefit,
- ▶ parent-support benefit,
- ▶ enforcement of maintenance benefit,
- ▶ the sentence of deprivation of liberty by prisoners under Article 209 of the Penal Code in the Home Detention Electronic Monitoring System,
- ▶ protection of personal data of adopted children,
- ▶ procedure of granting family benefits,
- ▶ certifying disability,
- ▶ insufficient number of council housing,
- ▶ conflicts between neighbours,
- ▶ protection of the image of minors,
- ▶ safety in playgrounds,
- ▶ collective transport allowances for children and youth.

#### 3.1. General addresses with regard to the right to decent social conditions

- **Homelessness of children – address of 08 January 2016**

The Ombudsman for Children in his address<sup>245</sup> to the Minister of Family, Labour and Social Policy asked the Ministry to take measures to reduce homelessness among children. He stressed that though there was no problem of “street children” in Poland, yet children happened to be homeless as their parents did too.

<sup>245</sup> ZSS.422.3.2016.KT

The data given by the ministry<sup>246</sup> showed that children constituted about 5% of all homeless people. The number of homeless children is 1,892 and increased by 354 cases as compared to 2013. According to the Ombudsman the practice of referring parents and children to shelters for adults must be limited, and in case it is necessary – the period of stay must be shortened to the minimum. The problem was not only the number of children staying in shelters and homes for the homeless but also the housing conditions of such places. In extreme cases known to the Ombudsman and revealed in the course of inspections, parents with their children were staying in a shelter for homeless people for 3 years without any break. The analysis of complaints revealed also that shelters for adult homeless were not places where children should stay under any circumstances.

Also the Committee on the Rights of the Child of the UN referred to the problem of homelessness among Polish children in the Final conclusions to the 3. and 4. periodical review of Poland. The Committee expressed its anxiety with respect to increase of the number of homeless children in Poland. It recommended e.g. a review of laws and housing policies to prevent from and eliminate homelessness, with special consideration of special needs of children.

In response<sup>247</sup> the Minister of Family, Labour and Social Policy informed that the Ministry was working on a draft ordinance on standards for night shelters and the Ombudsman for Children's suggestions as to protection of children's rights would be taken into account.

The works on the draft ordinance of the Minister of Family Labour and Social Policy on *the standards for nights shelters and warming up rooms* are in progress.

- **Child-support benefit – addressed of 13 January, 9 February and 12 February 2016**

In reference to legislative work on the draft Act on State support in child rearing, the so called 500+ programme, the Ombudsman for Children addressed<sup>248</sup> the Minister of Family, Labour and Social Policy with his suggestions concerning the draft act.

<sup>246</sup> All -Polish count of homeless people commissioned by the Minister of Labour and Social Policy from 21 to 22 January 2015.

<sup>247</sup> DPS-IV.071.1.2016.AM

<sup>248</sup> ZSS.422.5.2016.JW

In the opinion of the Ombudsman, child-support benefit should be granted also for the first child and regardless of the level of income. If such solution is adopted, it will accomplish the target of covering partially the expenses connected with child rearing and education, including care of the child and satisfying the child's living needs.

The Ombudsman for Children indicated – in case the child-support benefit would not be granted to first child – the need to introduce a change in the definition of a disabled child by including in this definition also a child holding a certificate of mild degree of disability. Such change would give the possibility to become entitled to child-support benefit for the first child in case of persons upbringing a child with mild disability and in case the family income per person did not exceed the amount of 1,200.00 and not, as the draft act provided the amount of 800.00 PLN.

In his address the Ombudsman for Children pointed also to the usefulness of extension of the law onto major but still learning children which would correspond to solutions adopted in the Act of 28 November 2003 on family benefits<sup>249</sup> and the Act on 07 September 2007 on support for persons entitled to child or family maintenance<sup>250</sup>.

The Ombudsman submitted this request also to the Speaker of the Sejm of the Republic of Poland<sup>251</sup> and the Speaker of the Senate of the Republic of Poland<sup>252</sup>. He presented his position at session of the Sejm and Senate.

The Act adopted on 11 February 2016 on child-support benefit<sup>253</sup> does not take into account the demands of the Ombudsman for Children.

- **Attendance benefit – address of 23 February 2016**

In the Senate's draft act amending the act on family benefits and the act on defining and payment of allowances for carers (Senate's printed matter no. 46) a regulation was introduced that repealed those regulations of the Act of 28 November 2003 on family benefits which were the obstacle to grant benefits in case one of the member of family was already granted a benefit for care of another person. The Ombudsman for Children, appreciating the necessity to

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<sup>249</sup> Dz. U., Journal of Laws of 2016, Item 1518.

<sup>250</sup> Dz. U., Journal of Laws of 2016, Item 169.

<sup>251</sup> ZSS.422.7.2016.JW

<sup>252</sup> ZSS.422.8.2016.JW

<sup>253</sup> Dz. U., Journal of Laws of 2016, Item 195.

intervene in that matter; fully backed up<sup>254</sup> the initiative of the Senate of the Republic of Poland expressed in the above mentioned acts.

The Act was undersigned by the President of the Republic of Poland on 27 June 2016.

- **Transport allowances for children – addresses of 26 February and 26 September 2016**

The Ombudsman for Children has been intervening in that matter since 2013, showing the relevant ministers that children with Polish citizenship, attending schools abroad or at foreign diplomatic service authorities in Poland must be provided with allowances for collective transport. In his address<sup>255</sup> to the Minister of Infrastructure and Civil Engineering the Ombudsman again pointed to unequal access to mass transport. The Ombudsman informed the Minister of his previous activity in that field and asked for development of solutions that would satisfy the demands in that matter.

On 26 September 2016 the Ombudsman again addressed the Minister of Infrastructure and Civil Engineering for information on undertaken activity.

In response<sup>256</sup> the Minister of Infrastructure and Civil Engineering informed that on 02 May 2016 the President of the Republic of Poland referred the draft act amending the act on *the right to allowances in public collective transport and some other acts* (Sejm printed matter no. 492) to be discussed by the Sejm. The Minister stated that the draft provided i.a. new regulations granting students of Polish social schools managed by Polish community educational organisations, parents' associations, Polish parishes and Polish sections operating at schools under foreign education systems, part of which was registered in the database of the Centre of Polish Education Development abroad – allowances to payments for using public transport and entrances to museums and national parks in Poland.

On 15 December 2016 the Sejm of the Republic of Poland passed the Act amending the Act on the right to allowances in public collective transport and some other acts. Pursuant to new regulations, children and youth under 18 and when they are learning Polish language, history, geography and culture or other subjects in Polish language in schools run by social organisations abroad and

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<sup>254</sup> ZSS.422.10.2016.KT

<sup>255</sup> ZSS.422.11.2016.GR

<sup>256</sup> DBI.3.050.26.2016.RS.2

in schools operating under foreign education systems (...) are entitled to special allowances in public transport and entrances to museums and nature parks.

It must yet be stressed that the proposed changes solve the problem raised by the Ombudsman only partially.

- **Homelessness of children – address of 07 April 2016**

The Ombudsman for Children addressed<sup>257</sup> the President of the Supreme Audit Office with a request for all-Polish emergency inspection of performance of the tasks appointed to municipalities in the field of prevention of homelessness. The *all-Polish count of homeless people* conducted at night between 21 and 22 January 2015 showed that 5,2% of the homeless were children. What is more, this number grew by 354 cases as compared to 2013. Children were found mainly in shelters, hostels, homes for the homeless, warming up rooms and night shelters. The data presented in the survey showed that there are too little places in Poland that could give shelter to homeless persons. The Ombudsman stressed also that it was the task of local administrative unit – the commune (gmina) to provide shelter to people who needed it. Yet it often happened that local authorities did not manage their own facilities adjusted to helping such persons. On the other hand the facilities that did provide such shelter, were poorly supervised. Persons who lived in such facilities had many times complained about it to the Ombudsman.

In response<sup>258</sup> the President of the Supreme Audit Office informed that supervision of local authorities in that matter did take place. He stressed that analysis of data included in the count showed that the phenomenon of homelessness among children was strictly related to the problem of homelessness among their parents. Hence these problems must be considered jointly and not only local self-governments but also other state bodies and institutions responsible for implementation of family, housing and migration policy should be engaged in eliminating homelessness of children.

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<sup>257</sup> ZSS.422.18.2016.AJ

<sup>258</sup> KPS.0511.002.2016

- **The Electronic System of Home Detention Monitoring for prisoners under Article 209 of the Penal Code. – addresses of 7 April and 10 August 2016**

In their joint address, the Ombudsman for Children<sup>259</sup> and the Human Rights Defender<sup>260</sup> addressed the Minister of Justice – the Prosecutor General with a request for considering the option of doing all of the sentence under Article 209 of the Penal Code (for the crime of failure to provide family maintenance) of deprivation of liberty in the system of electronic monitoring in case the court imposed the obligation on the sentenced person to provide maintenance on the person entitled to it.

The crime of failure to provide maintenance carries a penalty of imprisonment up to 2 years whereas the electronic monitoring system may be applied in sentence of only 1 year imprisonment. To introduce the suggested change, the above mentioned condition would have to be modified and the electronic home detention system would become a much more efficient instrument in penal policy. It would also be an important element of implementation of the state policy in the field of securing the needs of persons entitled to maintenance.

The Minister of Justice did not agree with the Ombudsmen<sup>261</sup>. He answered that the demanded change seemed groundless from the point of view of coherence of the system of substantive criminal law. First of all there were no reasonable grounds to allow this group of sentenced persons that is sentenced under Article 209 of the Penal Code to benefit from the option of doing the sentence in the home detention system regardless of any time limitations. It seemed doubtful whether doing the sentence in home detention system would guarantee higher effectiveness in performance of the obligation to maintain other persons by the prisoners. According to the Minister also the amendment of 209 of the Penal Code was groundless in that the sentence would be shortened to 1 year so that the sentenced persons could do the sentence in the home detention system.

The Ombudsman for Children<sup>262</sup> and the Human Rights Defender<sup>263</sup> again addressed the Minister of Justice and pointed out that it was not their intention to shorten the penalty under Article 209 of the Penal Code. They concluded that it would be useful to define legal options for doing the sentence in the home

<sup>259</sup> ZSS.422.20.2016.KT

<sup>260</sup> IX.517.1048.2016.PM/ED

<sup>261</sup> UNP 160512-01497

<sup>262</sup> ZSS.422.20.2016.KT

<sup>263</sup> IX.517.1048.2016.PM/ED



detention system also for failure to provide maintenance also when longer than a year and other conditions for consent to doing a sentence in home detention system are jointly met.

The Ombudsmen stressed that this small change of currently binding regulations would not have any negative impact on coherence of the substantive criminal law but would allow to actually enforce the maintenance obligation by bailiffs as a person doing a sentence in home detention system might actually work for remuneration and the system would allow to monitor whether the sentenced person was at work. Additionally it would decrease the number of prisoners, which is desirable and should be striven after by various means. Placing a person in prison solely for failure to provide maintenance would not facilitate fulfilment of maintenance obligations with respect to children and additionally charges the state with further costs. A monthly sentence under home detention system is incomparably cheaper than a month in prison.

In response<sup>264</sup> the Minister of Justice informed about legislative work targeted at change of the definition of the crime of failure to provide maintenance<sup>265</sup>. The amendment abandons the notion of “notoriousness” and the notion of “exposure of the entitled person to lack of possibility to meet basic life needs” in the basic type of the crime and introduces more objective qualifications in the form of overdue maintenance payments the total of which would amount to at least 3 periodical payments or when the delay in overdue payment, other than periodical was at least 3 months. This crime in its basic form carries a penalty of fine, semi-liberty or deprivation of liberty for a year. This means that a sentenced person could do the sentence under home detention system.

- **Protection of personal data of adopted children – address of 18 April 2016**

The Ombudsman received a notification from a parent who wanted to secure the well-being of adopted child and when asked by authorities to submit a decision on adoption in the course of proceedings pertaining to single child birth allowance, he did so but covered the personal data of the child with black colour. As a result the authority did not allow the application as it concluded that the petitioner did not meet the requirement of submitting the adoption decision.

The Ombudsman for Children, appreciating the weight of the problem of protection of personal data in the context of application for single child birth al-

<sup>264</sup> DL-III-072-6/16

<sup>265</sup> Draft Act amending the the Act Penal Code (Sejm paper no. 1193)

lowance according to the Act of 28 November 2003 on family benefits<sup>266</sup> filed an address<sup>267</sup> to the Minister of Family, Labour and Social Policy.

The Ombudsman pointed out that the need to disclose a court decision on adoption to a body of public administration which contained personal data of the child, including the personal data of the child's biological parents was harmful both to the child and the adoptive parents. According to the Ombudsman, when parents apply for single aid for giving birth to a living child, it is not reasonable to require submission of family court decision on adoption which includes previously used personal data of a child especially when it would enough to present the child's certificate of birth.

In response<sup>268</sup> the Minister of Family, Labour and Social Policy informed that in order to prove the act of adoption it was enough to present a certificate from the family court or adoption agency confirming that adoption proceedings had been instituted (even if they were already officially concluded with adoption). Such a certificate along with the child's certificate of birth which already included the data of adoptive parents (or after certification of the child's adoptive parents' data by checking the PESEL – personal identification number – in relevant electronic register by the authority) undoubtedly confirmed the fact of adoption.

- **Concealing the information on remuneration for employees under maintenance obligations by their employers – address of 27 April 2016**

In the joint address to the Chief Labour Inspector, the Ombudsman for Children<sup>269</sup> and Human Rights Defender<sup>270</sup> presented their comments and conclusions reported in the course of works of the Team for Maintenance Affairs appointed by the Ombudsmen to develop systemic mechanisms that would allow to improve the situation of children in the context of unpaid maintenance.

The members of the Team, based on their experience, confirmed that the fact that employers concealed real incomes of their employees if they were obliged to pay the maintenance was a big problem. Employers entered into employment contract with their employees and defined a minimum wage/remuneration in it whereas the remaining part of the agreed remuneration was paid directly in

<sup>266</sup> Dz. U., Journal of Laws of 2015, Item 114

<sup>267</sup> ZSS.422.21.2016.JW

<sup>268</sup> DSR-IV.073.22.2016.GJ

<sup>269</sup> ZSS.422.25.2016.KT

<sup>270</sup> V.7100.5.2016.JF

cash. According to the Team sometimes employees are employed under procedures beyond the regulations of law (grey market). This allows the employees to evade enforcement of maintenance obligations. Despite penal consequences, also fines both for employers and employees, this was not a rare phenomenon.

Hence the Ombudsmen addressed the Chief Labour Inspector with a request for presenting his position in that matter and particularly for information whether inspections conducted by the National Labour Inspectorate revealed any cases of this kind and for submission of statistical data.

In response<sup>271</sup> the Inspector informed that in the course of supervising activity of the National Labour Inspectorate it had been sometimes revealed that the sum of the remuneration actually paid to persons employed on the basis of employment contract or performing other type of contracts (of mandate, of specific work etc) was higher than the sum defined officially in documents, also in case employees provided work for remuneration without valid contract and being registered in the insurance system.

The phenomenon of concealing the real sums of remuneration is one of the elements of the so called “grey market” of economy, which the activity of public supervision bodies should eliminate. The reasons why people seek illegal employment and decide to be paid “under the table”, without having to pay relevant instalments for social insurance or taxes have been the same since many years: the costs of employment are very high (social insurance and tax obligations) and regulations governing employment are complex and strict. Such dishonest practices are often tolerated by the employees themselves. They decide to enter the grey market arguing that there is no job for them to be taken in legal way. Relatively lower remuneration offered by employers for registered work and low benefits or even lack of any jobs result in consent to illegal employment.

As far as statistical data collected in the records of National Labour Inspection office on various forms of the phenomenon in question are concerned, the Chief Labour Inspector informed that it covered only selected cases revealed in course of inspections carried by bodies of the National Inspection Office and did not show the full picture and scale of the phenomenon of unfair practices.

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<sup>271</sup> GNP-249-0799-9/16

- **Motivating child maintenance debtors to settle their arrears – addresses of 11 May, 30 August, 12 September and 23 December 2016**

In their joint address to the Minister of Family, Labour and Social Policy, the Ombudsman for Children<sup>272</sup> and the Human Rights Defender<sup>273</sup> stated that based on individual cases that they officially received, they could conclude and identify what were the main obstacles in realisation of the child's right to maintenance. Among those were: common belief in social acceptance for non-payment of maintenance and low level of the sense of responsibility of persons obliged to pay maintenance.

In the opinion of the Ombudsmen, those wrong and harmful attitudes could be changed not only by introducing appropriate legal regulations but mainly by educating the public in the form of all-Polish social campaigns the purpose of which would to make the public aware of the problem of non-provision of maintenance and motivate maintenance debtors to settle their obligations against their own children. Achieving this objective would be beneficial to children in the first place, but it would be also favourable to the State – as the guarantor of enforcement of the maintenance obligation.

In response<sup>274</sup> the Minister of Family, Labour and Social Policy, approved of the demands presented by the Ombudsmen. He informed that the Ministry was going to carry out a social campaign the purpose of which would be to highlight the problems related to non-payment of maintenance and to encourage to pay it. The campaign would include a cycle of informative materials and an animated movie on maintenance which would focus on benefits arising from paying it. Different channels of communication were planned to be used. The material would be disseminated in the media and published on the Ministry's internet site and also in social media. The message of the campaign would focus on proving that both parents are responsible for their child and the maintenance money allow to finance health care, education and hobbies of the child.

In their address<sup>275</sup> of 30 August 2016 the Ombudsmen informed also the Minister of Family, Labour and Social Policy that in their address of 30 August 2016 they also addressed the President of the Lewiatan Association, the Presidents of Employers of the Republic of Poland and the President of the Association of

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<sup>272</sup> ZSS.422.24.2016.KT

<sup>273</sup> IX.7064.1.2016.ED

<sup>274</sup> DSR-IV.071.7.2016.GJ

<sup>275</sup> ZSS.422.24.2016.KT

Entrepreneurs and Employers<sup>276</sup> with a request for a social campaign targeted directly at employers that would make them aware of the necessity to employ personnel legally. The Lewiatan Association answered that they were intending to carry out such a campaign. This information was in turn passed to the Ministry for the purpose of coordination.

On 19 September 2016 the Ombudsmen addressed<sup>277</sup> the Minister of Family, Labour and Social Policy and asked for information on the progress of works over the intended social campaign and its communication channels.

The Minister of Family, Labour and Social Policy had not yet answered to this address.

On 23 December 2016 the Ombudsmen again addressed<sup>278</sup> the Minister for detailed information on the intended social campaign, its form and content, schedule and means of dissemination.

The Ombudsmen obtained information that the campaign was launched on 28 October 2016 and they are waiting now for the answer to their address.

- **Exemption from work with retained right to remuneration for an employee who is upbringing a child under 14 – address of 13 May 2016**

In his address<sup>279</sup> to the Minister of Family, Labour and Social Policy, the Ombudsman for Children asked whether it would be possible for the ministry to start legislative work to specify and differentiate the time of exemption from work defined in Article 188 of the Labour Code<sup>280</sup> for an employee who brought up a child under 14 with the right to remuneration retained. The Ombudsman argued that the number of children a person had influenced the amount of matters that required the parent to be personally present in public authority offices and other institutions, opened only during his or her working hours.

In response<sup>281</sup> the Minister of Family, Labour and Social Policy informed that due to the wide catalogue of rights an employee was entitled to in connection to his having children, the ministry was not going to undertake any legislative works in that field. He stressed also the possible change in the legislation in

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<sup>276</sup> ZSS.422.29.2016.KT

<sup>277</sup> ZSS.422.24.2016.KT

<sup>278</sup> ZSS.422.24.2016.KT

<sup>279</sup> ZSS.422.26.2016.GR

<sup>280</sup> Dz. U., Journal of Laws of 2016, Item 1666.

<sup>281</sup> DPR.I.4102.65.2016.KJ

that field could only be introduced after a certain period of time, that is after the other recently introduced regulations were in force for some time so that their functionality and scope of application could be analysed and assessed.

- **Professional mobilisation of maintenance debtors – address of 23 May 2016**

In his address<sup>282</sup> to the Minister of Family, Labour and Social Policy the Ombudsman for Children<sup>283</sup> and the Human Rights Defender, made reference to the Report entitled “Polish attitude against maintenance debtors” conducted by Institute ARC Rynek i Opinia, commissioned by BIG InfoMonitor and asked for action to improve the system to activate professionally maintenance debtors. The results of the research showed that about 30% of the one million of children who did not receive maintenance were not given financial support from one of the parents because this parent could not afford it as he/she was unemployed. It seems then that activating them on the labour market would be the most effective method of enforcing their maintenance obligations. Such mobilisation would mean first of all that the unemployed would be supported in finding a job and keeping it as well as that the unemployed would not distance themselves too much from the labour market. The legislator assumes that increased threat of unemployment for some social groups requires increased and more targeted intervention by the State to increase their chances for permanent employment and prevent them from being excluded from the labour market.

So the Ombudsmen addressed the Minister of Family Labour and Social Policy with a request for his opinion in that matter and whether he could consider possible legislative initiative and steps to promote special programmes, regional actions and professional mobilisation campaigns performed under active labour market policy addressed to maintenance debtors.

In response<sup>284</sup> the Minister informed that bearing in mind the very difficult situation of children who did not receive their maintenance, the ministry was going to consider the option to include the group of maintenance debtors in Article 49 of the Act on promotion of employment and labour market institutions<sup>285</sup> which defined certain groups of unemployed persons entitled to access to special programmes.

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<sup>282</sup> II.7064.121.2016.AN

<sup>283</sup> ZSS.422.27.2016.KT

<sup>284</sup> DSR-IV.071.7.2016.GJ

<sup>285</sup> Dz. U., Journal of Laws of 2016, Item 645

- **Eliminating obstacles that impede efficient provision of child maintenance**

In their joint address the Ombudsman for Children<sup>286</sup> and the Human Rights Defender<sup>287</sup> handed over to the President of the Lewiatan Association, the President of Employers of the Republic of Poland their comments and conclusions presented in the course of works performed by the Team for Maintenance Affairs, appointed by the Ombudsmen to develop general mechanisms allowing to improve the efficiency of maintenance system.

The Ombudsmen pointed to the fact that employers concealed incomes paid to their employees obliged to provide child maintenance or employed them beyond the regulations of law which resulted in their evading the enforcement of maintenance obligations.

The Ombudsmen addressed the organisations of businessmen with a request for position in that matter and particularly for information whether this problem was identified at all in the activity of the organisation. They appealed for undertaking, in cooperation with other associations of employers, a social campaign that would make the entrepreneurs and employers aware of the need to employ workers legally, which would give them the possibility to fulfil their maintenance obligations.

The President of Lewiatan Association gave a positive answer<sup>288</sup> to the appeal for social campaign for entrepreneurs and employers.

Also the President of the Association of Entrepreneurs and Employers<sup>289</sup> submitted a positive answer. It said that the problem of evading from the maintenance obligation was very serious so the state institutions and their social partners had to do all their best to find a solution to it. For that reason, if any action would be undertaken in that matter, the Association would support it.

- **Safety of children in playgrounds – address of 22 June 2016**

In relation to numerous – as in previous years – complaints about bad technical condition and removals of playgrounds, the Ombudsman addressed<sup>290</sup> the city presidents and mayor and borough leaders with a request for initiating meas-

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<sup>286</sup> ZSS.422.29.2016.KT

<sup>287</sup> V.7100.6.2016.JF

<sup>288</sup> KL/319/1432/GB/2016

<sup>289</sup> Unmarked letter of 30 June 2016.

<sup>290</sup> ZSS.422.34.2016.MW

ures to provide safe operation of the existing playgrounds and to modernize them. The Ombudsman stressed that bad technical condition might pose a real threat to life and health of the youngest, hence technical inspections and regular checks were so important. The obligation to undertake such initiatives is set forth in the Convention on the Rights of the Child, in which it is acknowledged that the youngest have the right to safety and recreation.

- **Enforcement abroad of maintenance obligations under decisions of Polish courts – address of 22 July 2016**

The Ombudsman for Children in his address<sup>291</sup> to the Italian Ombudsman for Children pointed to the problem of difficulties in enforcing maintenance obligations adjudicated by Polish courts and enforced under the Convention on the recovery abroad of maintenance, elaborated in New York on 20 June 1956<sup>292</sup> and the Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations<sup>293</sup>.

The Ombudsman pointed out that he received the information from Polish creditors and Polish central authorities that the Italian central authority body notoriously and persistently did not enforce creditors' complaints in such matters and ignored all letters of reminder sent by Polish authorities and interventions undertaken by Polish diplomatic service.

At the same time the Ombudsman for Children addressed the Italian Ombudsman for Children with a request for taking measures in cases pertaining to hearing and enforcement of decisions on two minors whose parents asked the Polish Ombudsman for help.

In response<sup>294</sup> the Ombudsman for Children of the Italian Republic informed that he had addressed the Minister of Justice, the Department of Juvenile Delinquency for updated information regarding the status of proceedings that involved the children.

<sup>291</sup> ZSS.422.39.2016/AT

<sup>292</sup> Dz. U., Journal of Laws of 1961 r. item 87

<sup>293</sup> Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (Official Journal of the European Union L. of 2009 1 with later amendments).

<sup>294</sup> Nr 2193/2016



On 12 December 2016 the Ombudsman for Children of the Italian Republic informed that the bar association in Salerno admitted the mother of the minor to advocacy and appointed her as the legal representative of the minor in proceedings before the local court of appeal for the purpose of implementation of a foreign judgement. The proceedings are in progress.

- **Working off debts of maintenance fund by maintenance debtors – address of 03 August 2016**

In his address to the Minister of Family, Labour and Social Policy the Ombudsman for Children<sup>295</sup> together with the Human Rights Defender<sup>296</sup> asked whether it would be possible to consider the use of the instrument of imposing community works on maintenance debtors to increase the rate of return of benefits paid by the maintenance fund. The Ombudsmen stated that the idea of the self-financing system of the maintenance fund should not only be realised by implementing solutions that increase the enforceability of due payments, mobilising maintenance debtors to work but also by other general activity targeted at elimination of this debt. They pointed out that the option in which a debtor might work his debt off by doing community service was worth considering.

In response<sup>297</sup> the Minister of Family, Labour and Social Policy informed that having in mind the difficult situation of children who did not receive their maintenance, the ministry was analysing possible solutions and legislative changes so that the situation of maintenance creditors be improved. The analysed solutions included also suggestions concerning the use of existing instruments related to the labour market which could effectively counteract professional inactivity of maintenance debtors.

- **Enforcement of maintenance abroad – address of 3 August and 5 November 2016**

The Ombudsman for Children<sup>298</sup> with the Human Rights Defender<sup>299</sup> addressed the Minister of Justice – Prosecutor General with a request for review and re-assessment of cooperation with the authorities of the Italian Republic and pro-

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<sup>295</sup> ZSS.422.36.2016.JW

<sup>296</sup> III.7064.121.2016 AN

<sup>297</sup> DSR-IV.071.10.2016.GJ

<sup>298</sup> ZSS.422.30.2016.SK

<sup>299</sup> IV.7022.31.2016.MK

vision of information in that matter. The Ombudsman for Children had already acknowledged this problem in his previous addresses<sup>300</sup>.

Following the letter<sup>301</sup> of 11 May 2015 which was the answer to the address<sup>302</sup> of the Ombudsman for Children of 11 May 2015, the issue was deemed valid. The Ombudsmen asked for information about the details of the correspondence on the general problems in cooperation with the Italian authority that received the complaints and on effects of interventions in particular cases. The also asked for information whether – according to previous assurances – the dialogue with Ministero della Giustizia was undertaken and if so – what were its results.

As no answer was obtained to the demands, the address was repeated on 05 November 2016. Yet as of the day this Report was submitted, the address still remained unanswered.

- **Child-support benefits for children with mild disability – address of 17 August 2016**

Following numerous appeals from parents of children with disabilities who, despite difficult situation did not meet the criteria to be entitled to child-support benefit because their income was too high and, in result were deprived of supplementary support for covering expenses for the life needs and upbringing of their children, the Ombudsman for Children addressed<sup>303</sup> the Minister of Family, Labour and Social Policy and asked him for analysis of the problem and legislative reaction to ensure uniform conditions for acquiring the right to child-support benefit for families who were bringing up children with mild disability certificate.

Pursuant to the Act of 11 February 2016 on State support in child upbringing, a family who is bringing up a child in the age from 16 to 18 with a mild disability certificate, is entitled to child-support benefit for the first child if the family income per capita does not exceed the amount of 800 PLN. In case of families who are bringing up children with moderate and severe disability this level of income must not be higher than 1,200 PLN. In the opinion of the Ombudsman it is unacceptable to treat differently children with mild disability within the

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<sup>300</sup> ZSS.500.19.2012.JZ, ZSS.422.2015.AT

<sup>301</sup> DWMPC-VII-072-1/15/2

<sup>302</sup> ZSS.422.2015.AT

<sup>303</sup> ZSS.422.41.2016.JW

context of the group of impaired children. The occurrence of similar feature in the form of disability in general should be the reason for equal treatment.

In response<sup>304</sup> the Minister of Family, Labour and Social Policy informed about the criteria adopted in qualifying families and children for state support and did not agree with the Ombudsman for Children.

- **Development of national register / database of maintenance debtors – address of 30 August 2016**

The Ombudsman for Children<sup>305</sup> and the Human Rights Defender<sup>306</sup> in their address to the Vicepresident of the Council of Ministers – the Minister of Development presented a proposal how to increase the enforceability of maintenance obligations against children, namely the development of national database of maintenance debtors.

The register would collect all information including the data of only those persons who are obliged to pay maintenance for their children under an enforcement order issued or certified by court (maintenance obligation). The data of a debtor would be entered into the register only in case of ineffective enforcement. The database could be supplemented with data coming from the register of insolvent debtors, information disclosed in the offices of economic data and also with information from all court bailiffs submitted to the register automatically by means of the Komornik SQL-VAT or Kancelaria Komornika-VAT applications or through an internet portal. At the same time the register would ensure constant access to data of maintenance debtors to all bailiff's offices and other entitled entities.

In response<sup>307</sup> the Minister of Development and Finance informed that the ministry was well advanced in the works over a comprehensive amendment to the law in order to facilitate enforcement of arrears. Yet the Minister stated that realisation of demands raised by the Ombudsmen did not fall into the scope of the ministry's mandate. He also informed that data of maintenance debtors were currently available in the system operating under general terms defined in the Act on access to and exchange of economic data. Maintenance supervision bodies are obliged to pass to all offices of economic data the information on arrears of persons obliged to provide maintenance. Relevant bodies should

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<sup>304</sup> DSR-IV.071.11.2016.AW

<sup>305</sup> ZSS.422.38.2016.KT

<sup>306</sup> IV.7022.35.2016.MK

<sup>307</sup> DDR-II-0112.4.2016

pass the required information to those offices and no contracts for giving access to economic data are necessary. In result each office of economic data did have and could make available the information on all maintenance debtors. According to the Minister, this solution as it had been applied for a couple of years, was effective.

- **Income levels entitling to benefits from the maintenance fund – address of 31 October 2016**

In their joint address to the Minister of Family, Labour and Social Policy the Ombudsman for Children<sup>308</sup> and the Human Rights Defender<sup>309</sup> stated that based on individual cases they dealt with it had to be concluded that the group of persons entitled to maintenance fund benefit was small as compared to the real needs, and was going to get even smaller in years.

The amount that entitled to be granted maintenance fund benefit was 725 PLN of income and was unchanged from the moment the relevant act entered into force that is from 01 October 2008. According to the Ombudsmen it was necessary to account for such factors as the increase of maintenance costs, fall of the value of money or increase of the minimum remuneration amount. It was worth noting that when the act was being processed the minimum remuneration was 936 PLN whereas it is about 2,000 from 01 January 2017.

Maintenance fund benefits are requested by single parents who bear the burden of maintaining a child on their own. If such a person takes up a job it very often happens that he or she does not get any benefits – neither those from maintenance fund nor the child-support benefit or other family allowances for the reason the criterion of minimum income level is not met. Such families, though they are trying to manage on their own, do not receive any support on the part of the State.

So introduction of a system (zloty for zloty) used also in qualifying citizens to be granted family benefits to the Act on support to persons entitled to maintenance could help to solve the problem. At the same time, the Ombudsman concluded that abandoning the criterion of income level would be useful and legitimate.

Hence the Ombudsmen asked the Ministry for analysis of the issue and feedback.

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<sup>308</sup> ZSS.422.42.2016.MW

<sup>309</sup> III.7064.175.2015.AN

The Minister responded<sup>310</sup> that currently the Ministry was not working on increase or abandonment of the income criterion that entitled to be granted benefits from the maintenance fund nor introduction of specific procedures of granting the benefit despite exceeded income level.

- **Rights of residents – address of 08 December 2016**

In his address<sup>311</sup> to the Minister of Infrastructure and Civil Engineering the Ombudsman for Children presented his remarks and suggestions as to the draft act amending the Act on the protection of tenants' rights, municipal housing and amendment to the Polish Civil Code, the Act – the Code of Civil Procedure and the act on supplementary financing of community housing, supported accommodation, night shelters and homes for the homeless. The Ombudsman was alarmed by the proposal included in Article 1 item 8 of the draft which repealed Article 14 item 4 and 7 of the currently binding act. The draft assumes abandonment of the catalogue of persons against whom a court decided to be granted a council flat. The catalogue included: pregnant women, minors, disabled or incapacitated persons (...), unless those persons could move to a different apartment.

In the opinion of the Ombudsman, elimination of this catalogue could lead to social exclusion of persons who should receive special protection from the State and was against the assumptions of the draft itself as its purpose was to improve the situation of the poorest people.

On the other hand the Ombudsman approved of the change in Article 17 of the act connected with relocation of the regulation included in Article 24 of the amended Act. Relocation of the regulation to the chapter entitled “community accommodation” instead of the chapter entitled “local housing resources” would enable the courts to adjudicate in such matters. Under the amended act courts made reference to the systemic interpretation of Article 24 of the act, claimed that the regulation was addressed only to local authorities and did not concern the adjudicating court.

The Ombudsman was also satisfied the suggested change in the form of adding the point 6a in Article 21 item 3 of the act that obliged local authority to regulate, by means of a resolution on the rules of renting apartments from the local community housing resources, requirements that an apartment must meet when offered to a person with disability. Currently the act does not provide

<sup>310</sup> DSR-IV.071.17.2016.GJ

<sup>311</sup> ZSS.422.19.2016.KK

for any additional requirements that would account for the needs of disabled persons.

In response<sup>312</sup> the Minister of Infrastructure and Civil Engineering informed that under interministerial cooperation and public consultations of the draft act, comments were made which indicated the need to adjust appropriately the content of the draft act to the draft *act on supplementary financing of community housing, supported accommodation, night shelters and homes for the homeless*, due to the fact that both acts refer often to the same issues.

As part of analysis of remarks to the draft amendment, a change of Article 14 item 4 would be considered, namely introduction of grounds in substantive law for courts to adjudicate on refusal to grant the right to community apartment not only when persons mentioned in Article 14 item 4 might move to another flat but also when their economic situation allowed them to arrange for accommodation on their own.

The draft was withdrawn from further proceedings. In new draft act amending the above mentioned act (UD 99) the remarks submitted by the Ombudsman were allowed.

### 3.2. Individual cases connected with the child's right to decent social conditions

- **Non-provision of maintenance for children**

Similarly as in previous years, the Ombudsman received many complaints regarding problems with enforcement of child maintenance<sup>313</sup>.

<sup>312</sup> DM4.054.57.2016.EĽ.1

<sup>313</sup> ZSS.441.860.2016.KK, ZSS.441.878.2016.KK, ZSS.441.620.2016.KK, ZSS.441.490.2016.KK, ZSS.441.907.2015.KK, ZSS.441.243.2016.KK, ZSS.441.106.2016.KZ, ZSS.441.439.2016.JW, ZSS.441.1240.2016.JW, ZSS.441.998.2016.AG, ZSS.441.629.2016.JW, ZSS.441.193.2016.KT, ZSS.441.233.2016.KT, ZSS.441.330.2016.KT, ZSS.441.384.2016.KT, ZSS.441.457.2016.KT, ZSS.441.526.2016.KT, ZSS.441.541.2016.KT, ZSS.441.925.2016.KT, ZSS.441.1012.2016.KT, ZSS.441.1118.2016.KT, ZSS.441.1135.2016.KT, ZSS.441.809.2016.SK, ZSS.441.842.2016.SK, ZSS.441.1069.2016.SK, ZSS.441.1269.2016.SK, ZSS.441.363.2016.AT, ZSS.441.548.2016.AT, ZSS.441.574.2016.AT, ZSS.441.808.2016.AT, ZSS.441.1265.2016.AT, ZSS.441.1314.2016.AT, ZSS.441.523.2016.KK

For example, there was a case in which the Ombudsman for Children intervened upon notification by a mother of three minors who, since 2014 made efforts in vain to enforce maintenance for her children from their father who was living abroad<sup>314</sup>.

In the course of the proceedings before a district court it was necessary to determine whether the debtor was alive, as the mother received information from her relatives that he had died. As the father of the minors was the citizen of Vietnam and probably was living there, it took almost a year to find him. Information provided by relevant Vietnamese authorities said that they had not registered death of any maintenance debtors.

This meant that he was still alive. The district court addressed the relevant Vietnamese institution with a request for information on the father's place of residence.

The Ombudsman for Children, following a long time of waiting for the data from the Vietnamese bodies, addressed the Consul of the Republic of Poland in Hanoi with a request for obtaining the data necessary for further proceedings as soon as possible.

After two months from the Ombudsman's intervention, the Consul confirmed that the Vietnamese authorities had made contact with the Polish diplomacy and submitted information on the identity and place of residence of the father.

Currently proceedings are in course to determine the value of the debtor's property, so that the maintenance could be enforced.

In another case<sup>315</sup> the Ombudsman was addressed by a mother if a minor due the fact that the father of the minor had been evading his maintenance obligations.

The Ombudsman for Children found out that the father of the minor was involved in criminal proceedings before regional court in which he was accused of notorious evasion from paying maintenance instalments and exposing his daughter to the condition of being unable to satisfy her basic needs.

The Ombudsman for Children monitored the proceedings. By force of a judgement the court found the father guilty of charges and decided to punish him

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<sup>314</sup> ZSS.441.1410.2015.JW

<sup>315</sup> ZSS.441.361.2015.AT

with 8 month imprisonment, suspended for two years' probation time. The court also obliged the father to fulfil his maintenance obligation.

Unfortunately the father still evaded it.

The Ombudsman for Children analysed the detention records kept by court-appointed probation officer in criminal cases, and came to a conclusion that despite gross failure to fulfil his obligations, the court did not adjudicate execution of the sentence of imprisonment.

Hence the Ombudsman for Children asked the court for information with respect to execution of the sentence against the debtor.

In result, the court adjudicated execution of the sentence.

- **Protection of the child's property**

The Ombudsman for Children was many times addressed by carers and parents in cases concerning security of the child's economic resources. Cases of his kind concerned mainly proceedings for ascertainment of acquisition of the estate of the deceased person, overrunning the deadlines for rejecting inheritance by statutory representatives, obtaining permission to act beyond the regular management of child's property and irregularities in proceedings pertaining to inventory<sup>316</sup>.

For example, there was a case in which the Ombudsman for Children officially joined the proceedings before regional court instigated upon motion of Regional Prosecutor's Office pertaining to permission for rejecting inheritance on behalf of a minor<sup>317</sup>.

In this case, in the Ombudsman's opinion, the previous activity of the mother who was the statutory representative of the minor, raised doubts as to whether it was in the best interest of the child.

The minor was placed in a professional foster family at that time. The mother was also to be deprived of her parental authority under separate proceedings. The Ombudsman, having reviewed the case files, came to a conclusion that the mother filed a declaration on acceptance of the inheritance on behalf of the

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<sup>316</sup> ZSS.441.96.2016.AT, ZSS.441.167.2016.AT, ZSS.441.466.2016.AT, ZSS.441.1297.2016.AT, ZSS.441.1334.2016.AT, ZSS.441.1341.2016.AT, ZSS.441.1306.2015.KK, ZSS.441.188.2016.KK, ZSS.441.699.2016.KK

<sup>317</sup> ZSS.441.752.2016.KK



child, being fully aware of the fact that it was heavily charged with debts. As a result the dues were compensated with family pension granted to the minor after the deceased father. Actions undertaken by the mother, including further increasing of the debt by not settling her rent for apartment which was an add-up to the girl's debts, raised many doubts.

So the Ombudsman for Children applied for appointment of a guardian by court who would represent the girl in the proceedings.

The took relevant measures and issued permission for the representative to act beyond the regular management of child's property in that the representative could file a declaration on behalf of the child on the declaration on avoidance of legal effects of inheritance acceptance with the benefit of inventory and rejection of the inheritance after the father. The decision is legally valid.

In another case of similar question, the Ombudsman for Children was addressed<sup>318</sup> by a sister of a minor girl who inherited after her father.

The minor had had no contact with her father for about to years and had been benefiting from the maintenance fund, After his death his relatives declared before a notary public that they rejected the inheritance, unfortunately the legal carer of the minor did not submit any appropriate declaration in required time.

Following the inheritance with the benefit of inventory the court addressed a bailiff with a request for inventory of the deceased person's property.

Due to lengthiness of proceedings pertaining to inventory, the Ombudsman for Children addressed the bailiff at regional court with request for explanations, including access to files of the enforcement case to check the real situation of the minor.

The information given to the Ombudsman said that difficulties in making the inventory were connected with some obstacles in determining full property of the deceased. In another letter the bailiff informed the Ombudsman that he had found out that the heritage included a real estate located within jurisdiction of another court.

Hence the Ombudsman for Children addressed the court and asked for information what measure the court took to proceed out of its jurisdiction.

The case is in progress.

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<sup>318</sup> ZSS.441.323.2016.AT

- **Family pension**

Similarly as in previous year, cases of refusal to grant family pension by way of exception by the President of the Social Insurance Institution formed a numerous category. Each of the reported cases was explained and analysed in terms of administrative decisions issued with respect thereto<sup>319</sup>.

For example, there was a case of a single mother who was applying for the right to family pension after the father. He worked and died abroad<sup>320</sup>.

To establish the right to family pension it was necessary to prove that the father had been insured in certain periods of time within the territory of Greece. The Greek insurance institution, despite numerous letters and reminders addressed by relevant division of Polish Social Insurance Company, did not sent any documentation of the deceased.

The Ombudsman for Children addressed a letter in the case to the Ombudsman for Children in Greece asking for action to secure the child's rights according the the Ombudsman's mandate. After the Ombudsman's intervention the required documents was sent by the Greek insurance institution to the relevant division of Polish Insurance Company.

The data provided allowed to issue a decision granting the minor the right to family pension after the deceased father.

- **Family pension granted by way of exception**

Cases reported to the Ombudsman concerned also refusals to grant family pension by way of exception by the President of Social Insurance Company and the President of Farmer's Social Security Fund. Each of the reported cases was analysed in terms of potential necessity to officially enter into the proceedings<sup>321</sup>.

For example there was a case reported by a mother of two children<sup>322</sup> who were refused by the President of the Farmer's Social Insurance Fund to be granted family pension by way of exception after the deceased father.

<sup>319</sup> ZSS.441.1184.2016.JW, ZSS.441.891.2016.JW, ZSS.441.527.2016.KK

<sup>320</sup> ZSS.441.310.2015.JW

<sup>321</sup> ZSS.441.441.489.2016.KZ, ZSS.441.877.2016.JW, ZSS.441.815.2016.JW, ZSS.441.1295.2016.AG, ZSS.441.911.2016.JW, ZSS.441.376.2016.KZ, ZSS.441.481.2016.KZ

<sup>322</sup> ZSS.441.1132.2016.AG

The mother appealed against the decision to the administrative court and demanded that the decision be repealed and proving that there had been special circumstances that grounded her right to family pension by way of exception. The administrative court repealed the decision by force of a judgement and referred the case for review.

The Ombudsman for Children addressed the Fund with a question whether any inquiry was undertaken and what was the status of the case. Then, after he received relevant information, he addressed the Central Authorities of the Fund and asked for their position in the case and information on the undertaken measures in the reviewed case.

Due to long time that passed from the moment the judgement of the voivodeship administrative court was issued and which repealed the decision on refusal to grant pension by way of exception to the above mentioned minors and referred the case for review, the Ombudsman requested urgent action for the sake of children.

In result, the Fund issued a positive decision.

- **Procedure of granting family benefits**

The Ombudsman for Children was many times addressed by carers and parents of minors with cases regarding the right to family benefits and maintenance fund benefits.

Their requests concerned most often: doubts as to the rules of granting benefits; types and sums of benefits that can be applied for; repealing of a decision granting the right to benefit in case it was found that the benefits were not due; lack of timely payment of granted benefits. The Ombudsman for Children heard every application individually and provided explanations based on the currently applicable regulations of law<sup>323</sup>.

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<sup>323</sup> ZSS.441.160.2016.KZ, ZSS.441.190.2016.KZ, ZSS.441.399.2016.KZ, ZSS.441.518.2016.KZ, ZSS.441.528.2016.KZ, ZSS.441.613.2016.KZ, ZSS.441.690.2016.KZ, ZSS.441.320.2016.KT, ZSS.441.344.2016.KT, ZSS.441.817.KT, ZSS.441.957.2016.KT, ZSS.441.682.2016.JW, ZSS.441.535.2016.JW, ZSS.441.991.2016.JW, ZSS.441.1054.2016.JW, ZSS.441.1072.2016.JW, ZSS.441.1199.2016.JW, ZSS.441.1376.2016.AG, ZSS.441.1415.2016.AG, ZSS.441.1396.2016.AG, ZSS.441.1397.2016.AG, ZSS.441.839.2016.AG, ZSS.441.1308.2016.AG, ZSS.441.1037.2016.AG, ZSS.441.279.2016.AT, ZSS.441.854.2016.AT

For example, there was a case<sup>324</sup> reported by a mother of a minor boy. She was refused to be granted the right to supplement to family allowance for single parents upbringing children.

The reason why she was refused was that, as the authority found out, the mother got married again and the child was being brought up in a reconstructed family. It was then concluded that the mother was not a single parent any more, under the regulations of the Act on family benefits.

The Ombudsman for Children officially joined the proceedings before the Local Government Appeal Council which upheld the decision.

So, the Ombudsman brought a complaint against it to the voivodeship administrative court of second instance. The court allowed the Ombudsman's complaint and repealed the decision of second and first instance.

Currently proceedings are in course before the Supreme Administrative Court upon appeal against decision of the appeal council.

In another case a local family support centre refused to grant to a non-professional foster family the benefit to cover the expenses of upbringing a child from the date a district court issued a sentence in which it decided to place the minor in a foster family indicated by relevant regional court<sup>325</sup>. The administrative body did not take into account the period of time from the day the district court judgement was issued as the judgement that placed the child in foster care as first, to the day the regional court issued the subsequent decision. The foster family appealed against the decision of the appeal council.

The local government appeal council repealed the decision in the part referring to the initial date of the granted pension for coverage of costs of child upbringing in foster care, but the date itself was defined incorrectly. The council granted the benefit from the date the regional court decision was issued and not from the date the judgement of district court became legally valid, as it was the first decision to place the minor in foster care, though it did not indicate particular foster family.

The Ombudsman for Children did not agree with the position of the administrative body of first instance and second instance and brought a complaint against the decision of the appeal council, arguing that both the local family support centre and the local government appeal council interpreted the sub-

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<sup>324</sup> ZSS.441.1161.2015.JW

<sup>325</sup> ZSS.441.1100.2016.AT

stantive law incorrectly. According to the Ombudsman, the minor was placed in foster family on the day the district court decision became legally binding. Having heard the Ombudsman for Children's complaint, the local government appeal council allowed in with no exception. The foster family was given compensation of the benefit.

The Ombudsman for Children stated that Article 35 item 1 of the Act on family support and foster care system said that placement of a child took place on the basis of court decision. He stressed that the above mentioned regulation played an important role in the Act as it standardized the issues connected with placing a child in foster care. The notion of "placement" that occurs in that regulation has two meanings. First one of them refers to the settlement of relevant public authority body under which the child will be admitted to be placed in foster care and is connected with issuance of specific decision by an authorised public authority body. The second notion is connected with the actual placement of the child in a family. The analysed regulation mentions two procedures of placing a child in foster care, that is under court decision and under agreement signed by foster parents or by family children's home with a starost. The Ombudsman stressed that the action undertaken by court are of mandatory nature. According to the analysed regulation it must be concluded that placing a child in foster care by force of guardianship court decision is part to the rules governing foster care and means that the court issues a relevant decision in that matter.

The local government appeal council allowed the complaint of the Ombudsman for Children.

The Ombudsman was also asked for intervention<sup>326</sup> by a citizen of Chechnya who was upbringing four children and was refused to be granted family benefits.

The woman informed that she was living in the Republic of Poland as she had been granted subsidiary protection. The reason why she left her country was the her husband had inflicted violence against them. The mayor refused to grant the petitioner the right to family benefits for children with supplement stating that she was married and her husband did not live with her and her children within the territory of the Republic of Poland. So the premise included in Article 1 item 2c of the Act on family benefits which is the prerequisite for granting family benefits to foreigners staying within the territory of the Republic of Poland in connection with subsidiary protection against residing within

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<sup>326</sup> ZSS.441.217.2016.JW

its territory with other members of family. The local government appeal council upheld the decision of the first instance authority.

The Ombudsman for Children decided to intervene by officially joining the proceedings before the voivodeship administrative court and appealed for repealing the decision of the first and second instance authority

The Court allowed the Ombudsman's motions.

Currently proceedings are in course before the Supreme Administrative Court upon appeal against decision of the appeal council.

- **Procedure of granting benefits under coordination of social security systems**

Similarly as in previous years, lengthiness of proceedings pertaining to granting benefits as part of coordination of social security systems was one of the problems<sup>327</sup>.

It must be noted that such proceedings are very long because the process in which verification of certain circumstances that condition the right to benefits takes very long time. It often happens that relevant authorities act correctly and use available instruments yet due to complex nature of these cases the time the petitioners had to wait for their conclusion was too long for them.

For example, there was a case of minors, reported by the mother who addressed<sup>328</sup> the Ombudsman for Children with a request for intervention in the case pertaining to granting the right to family benefits (attendance benefit and attendance allowance as part of coordination of social security systems). According to the petitioner, the proceedings were being conducted too long, though all formal procedures had been followed.

The Ombudsman undertook intervention, addressing the regional social policy centre with a request for representations with respect to the course of the above mentioned proceedings, and after he received the information, he monitored its further course.

<sup>327</sup> ZSS.441.70.2016.KZ, ZSS.441.199.2016.KZ, ZSS.441.401.2016.KZ, ZSS.441.1030.2016. AG ZSS.441.731.2016.AG ZSS.441.1275.2016.AT, ZSS.441.789.2016.AT, ZSS.441.1240.2016.JW, ZSS.441.1296.2016.JW, ZSS.441.1185.2016.JW, ZSS.441.1075.2016.JW, ZSS.441.629.2016.JW, ZSS.441.93.2016.JW, ZSS.441.996.2016. JW, ZSS.441.328.2016.JW

<sup>328</sup> ZSS.441.265.2016.KZ

In result the Ombudsman was informed that the minors were granted the right to attendance benefit and attendance allowance.

- **Child-support benefit**

The Ombudsman for Children received many requests for intervention in cases when parents were refused to be granted the child-support benefit, introduced on 01 January 2016 by force of Act adopted by the Sejm of the Republic of Poland of 24 July 2015 amending the Act on family benefits and some other acts<sup>329</sup>.

In each of the reported claims the reason for refusal was that the petitioner was already granted attendance benefit for an elder child. It was the result of this divergent interpretation of Article 27 item 5 of the Act on family benefits pursuant to which in case rights to the following benefits accumulate: parental benefit, attendance benefit, special attendance allowance or supplement to family allowance as defined in Article 10 or allowance for carer as defined in the Act of 04 April 2014 on determination and payment of allowances for carers, the entitled person has the right to only one of those benefits.

According to the Ombudsman, the cumulation of rights to benefits defined in Article 27 item 5 of the Act is applied only in case the right cumulate in the subjective sense both with respect to the person who provides care or custody and to the person who requires care.

The first case of refusal to grant the right to parental benefit was reported to the Ombudsman for Children in April 2016.<sup>330</sup>

The Ombudsman for Children reported officially his participation in court proceedings before self-government appeal council.

The appeal council had considered the demands included in the letter from the Ombudsman, repealed the appealed decision and granted parental benefit to the petitioner.

The Ombudsman for Children joined also officially four other proceedings before local government appeal council. In all of these cases, the bodies of second instance repealed the decisions of bodies of first instance and finally granted the parental benefit.

<sup>329</sup> Dz. U., Journal of Laws, Item 1217 with subsequent changes.

<sup>330</sup> ZSS.441.496.2016.AJ, ZSS.441.1138.2016.KK, ZSS.441.851.2016.JW, ZSS.441.712.2016.JW, ZSS.441.382.2016.JW

Yet not all cases were concluded with granting the rights already at the stage of appeal proceedings.

A local government appeal council, in a case of appeal against a decision of a mayor who refused to grant a parental benefit for a minor daughter, agreed with the position of the Ombudsman for Children and repealed the appealed decision and referred the case for review in the first instance<sup>331</sup>. As a result of this review the mayor again refused to grant the mother the right to the benefit.

The Ombudsman for Children again officially joined the proceedings before the local government appeal council and filed a motion for substantive and altered decision, that is a decision that would repeal the appealed decision and grant the benefit in question.

The case is in progress.

Another intervention by the Ombudsman for Children was undertaken in case pertaining to parental benefit for a daughter<sup>332</sup>. The mother of the minor failed to meet the due date of appeal against decision of a local government appeal council to administrative court pertaining to refusal of the right to be granted parental benefit.

The Ombudsman filed a complaint to the voivodeship administrative court and applied for repealing of the decision of the council and the decision of the first instance authority. The case is in progress.

- **Child-support benefit**

The Ombudsman for Children received many petitions for intervention in connection with the draft act on State support in upbringing children which in the opinion of petitioners promoted unfair treatment of the first child in the family in the context of the right granted to one of the parents, legal carers or actual carers to child-support benefit<sup>333</sup>.

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<sup>331</sup> ZSS.441.1001.2016.JW

<sup>332</sup> ZSS.441.640.2016.JW

<sup>333</sup> ZSS.441.25.2016.JW, ZSS.441.26.2016.JW, ZSS.441.37.2016.JW, ZSS.441.51.2016.JW, ZSS.441.55.2016.JW, ZSS.441.59.2016.JW, ZSS.441.60.2016.JW, ZSS.441.62.2016.JW, ZSS.441.72.2016.JW, ZSS.441.74.2016.JW, ZSS.441.75.2016.JW, ZSS.441.77.2016.JW, ZSS.441.78.2016.JW, ZSS.441.82.2016.JW, ZSS.441.83.2016.JW, ZSS.441.84.2016.JW, ZSS.441.85.2016.JW, ZSS.441.86.2016.JW, ZSS.441.87.2016.JW, ZSS.441.88.2016.JW, ZSS.441.89.2016.JW



Bearing in mind the reported claims and considering the need to protect every child's right to decent social conditions, the Ombudsman for Children addressed<sup>334</sup> the Minister of Family, Labour and Social Policy and presented his position with respect to the draft act. He also passed them to the Speaker of the Sejm of the Republic of Poland and the Speaker of the Senate of the Republic of Poland.

The position of the Ombudsman for Children was not allowed.

The Ombudsman received many complaints about the subjective scope of the act also after it was already passed.

One of them concerned child-support benefit for children of Polish citizens living with their parents or carers abroad<sup>335</sup>.

Following the claims the Ombudsman for Children addressed the Minister of Family, Labour and Social Policy with a request for his opinion on accessibility of the benefit for Polish families who stayed temporarily abroad and out of EU countries which have not entered into any bilateral agreements with Poland with respect to social security.

In response<sup>336</sup> the Minister of Family, Labour and Social Policy, as the body responsible for implementation of the child-support benefit, informed that the ministry was not carrying out any works on extension of the right to child-support benefit to persons who did not live in Poland. The minister also confirmed that the ministry was going to, not later than within 12 months from the launch of the Family 500+ programme, review it in terms of its expected performance and the impact of the new benefit on Polish families. Possible modification in terms of extending the programme should also be analysed.

Other complaints included also petitions to examine whether the Act on State support in upbringing children was consistent with the Constitution in the part in which it makes the right to child-support benefit conditional on meeting the income criterion<sup>337</sup>. It must be noted that the Ombudsman for Children is not one of the actors entitled to file a motion to the Constitutional Tribunal with respect to compliance of acts and international agreements with the Constitution, determined in Article 191 of the Constitution of the Republic of Poland.

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<sup>334</sup> ZSS.422.5.2016.JW

<sup>335</sup> ZSS.441.545.2016.JW

<sup>336</sup> DSR-IV.073.31.2016.MF

<sup>337</sup> ZSS.441.274.2016.JW, ZSS.441.713.2016.JW

Cases reported to the Ombudsman referred also the child-support benefit for children with mild disability<sup>338</sup>. Pursuant to the Act of 11 February 2016 on State support in child upbringing, a family who is bringing up a child in the age from 16 to 18 with a mild disability certificate, is entitled to child-support benefit for the first child if the family income per capita does not exceed the amount of 800 PLN. In case of families who are bringing up children with moderate and severe disability this level of income must not be higher than 1,200 PLN.

In the opinion of the Ombudsman it is unacceptable to treat differently children with mild disability within the context of the group of impaired children. Hence, the Ombudsman addressed the Minister of Family, Labour and Social Policy<sup>339</sup> with a request for analysis of the problem and relevant legislative steps to provide uniform conditions of granting the right to child-support benefit to families who were bringing up disabled children<sup>340</sup>. See the details in the Chapter entitled "The right to decent social conditions. General addresses."

- **Protection of rights of children with disabilities**

Cases connected with decisions of the poviats and voivodeship disability evaluation board<sup>341</sup> formed a vast category of cases.

Most of them concerned problems with obtaining a decision entitling to grant the attendance benefit. In each case the Ombudsman informed the parents on legal options they could take and the means of appeal.

In cases that required direct intervention of the Ombudsman, he notified the court officially on his participation in the proceedings<sup>342</sup>.

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<sup>338</sup> ZSS.441.560.2016.JW

<sup>339</sup> ZSS.422.41.2016.JW

<sup>340</sup> ZSS.422.41.2016.JW

<sup>341</sup> ZSS.441.182.2016.EK, ZSS.441.970.2016.EK, ZSS.441.1163.2016.EK, ZSS.441.1390.2015.EK, ZSS.441.1247.2016.KK, ZSS.441.1032.2015.KK, ZSS.441.887.2016.KK, ZSS.441.1401.2016.KK, ZSS.441.890.2016.KK, ZSS.441.1040.2015.KK, ZSS.441.146.2016.KZ, ZSS.441.198.2016.KZ, ZSS.441.487.2016.KZ, ZSS.441.655.2016.SK, ZSS.441.1078.2016.SK, ZSS.441.1105.2016.SK, ZSS.441.1378.2016.SK, ZSS.441.876.2016.SK, ZSS.441.267.2016.KT, ZSS.441.295.2016.KT, ZSS.441.513.2016.KT, ZSS.441.538.2016.KT, ZSS.441.1197.2016.KT, ZSS.441.185.2016.KK

<sup>342</sup> ZSS.441.788.2015.KT, ZSS.441.380.2016.KK, ZSS.441.38.2016.JW, ZSS.441.277.2016.KK, ZSS.441.104.2016.KK, ZSS.441.663.2015.AT, ZSS.441.1438.2016.KK, ZSS.441.1100.2016.AT, ZSS.441.872.2015.JW, ZSS.441.1305.2016.KK

For example, there was a case in which a mother of a minor addressed the Ombudsman asking for intervention and help with respect to the decision on child's disability<sup>343</sup>.

In this case, the voivodeship disability evaluation board filed an appeal against the judgement of regional court who adjudicated that the minor required full care or assistance of another person during day and night because of his limited independence in everyday existence and required the assistance of environmental support in provision with relevant equipment, supplementary products and technical solutions that facilitated his activity.

The voivodeship disability evaluation board motioned for alteration of the judgement and repealing the appeal in whole or possibly for admission of expert opinion in the field of genetic diseases to assess whether the disease of the minor made him incapable of meeting his basic needs on his own.

The Ombudsman, having analysed the case files and the opinion of experts officially joined the proceedings before district court and motioned for dismissal of the appeal as groundless.

In his petition the Ombudsman stressed that the regional court had come to conclusions based on a court and medical opinion and supplementary opinion of an expert paediatrician. In the opinion of the Ombudsman, the motion of the security institution for appointing another expert did not arise from the circumstances of the case but from the fact that the party was not satisfied with the previous opinion. Recalling the judgement<sup>344</sup> of the Supreme Court, the Ombudsman indicated that *the request for repetition or supplementing a hearing of evidence of expert was groundless if courts had obtained special information necessary to adjudicate substantially and correctly*. The charges brought by the appealing party with respect to violation of procedural law concentrated on the fact that the court violated the rule of free assessment of evidence and came to some conclusions as to the actual state of affairs which were contrary to the content of the collected material of evidence. Also contrary to reasoning of the security company, according to the Ombudsman, the assessment of evidence by the first instance court in the case did not violate neither the rules of logical thinking nor the rules of life experience of proper association of facts and events. The regional court duly collected and assessed the evidence and examined it without violating the rule of free assessment of evidence and took into account the rules of logic of referring to life experience.

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<sup>343</sup> ZSS.441.380.2016.KK

<sup>344</sup> II UKN 96/99, OSNAPUS 2000, nr 23, poz. 869

The district court allowed for the Ombudsman for Children's motions and by force of a judgement dismissed the appeal of the voivodeship disability evaluation board.

The Ombudsman for Children was also asked for intervention<sup>345</sup> in case of a minor girl, diagnosed with diabetes type 1, by The Association Ogólnopolska Federacja Organizacji Pomocy Dzieciom i Młodzieży Chorym na Cukrzycę.

The voivodeship disability evaluation board upheld the certificate of the poviats disability evaluation board on the minor's disability.

The minor, represented by statutory representative – her mother – appealed against it to a regional court as she demanded alteration of item 7 of the decision by acknowledging that she needed permanent or long term assistance of other person due to considerably limited capability to exist independently.

The Ombudsman for Children officially joined the proceedings before the regional court.

He pointed out that in the course of the proceedings evidence of court expert diabetes specialist's and psychologist's opinions were heard. The Ombudsman pointed out that the diabetes specialist acknowledged in his opinion that in order to comprehensively assess the minor's condition, especially in terms of her independent existence, it was necessary include an opinion of an expert psychologist. In the psychologist's opinion it was stressed that supervision assistance by another person was necessary so that the basic life needs of the minor were satisfied. According to the Ombudsman incapability to exist independently occurred even when a person could not perform some of the elementary everyday activities on their own, for example, communicate, if this person was deprived of practical possibility to exist in humane conditions without the need of permanent or long term assistance of another person.

The regional court allowed the demands of the Ombudsman and altered the decision in that it acknowledged the need of permanent or long term assistance of another person due to considerably limited capability to exist independently and the necessity of permanent participation of the girl's carer in her treatment, physical therapy and education.

Another case of this kind involved a girl ill with phenylketonuria<sup>346</sup>.

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<sup>345</sup> ZSS.441.277.2016.KK

<sup>346</sup> ZSS.441.104.2016.KK

The regional court which carried the case pertaining to determination of disability, upon appeal filed by the minor's statutory representative against the decision of voivodeship disability evaluation board, altered the contested decision and determined that disability certificate was to be issued with the date of 18 August 2030 but dismissed the appeal in the remaining part.

The statutory representative brought an appeal against the judgement with respect to the part in which the court indicated that the minor did not require permanent and long term assistance of another person due to her considerably limited capability to exist independently.

The Ombudsman officially joined the proceedings before the district court and motioned for admission of evidence of expert opinion in child metabolism and child psychologist to determine whether the minor who was found disable required permanent or long term assistance of another person due to her considerably limited capability to exist independently.

The Ombudsman stressed that in case of the minor, meeting one basic needs that conditioned regularity of her everyday life was to feed her properly which made her totally dependent on persons who surrounded her. This can be concluded from the fact that any deviations from this caused by negligence that could be avoided lead to serious deterioration of mental ability, that is a life of low quality. Moreover, a child, though capable of selecting products that could be eaten, was not capable of eliminating products that were inappropriate. It is difficult to find another disease in which consequences of improper diet are so important for the rest of the ill person's life. This means that the parent must assist the child all the time and followed the nutritional regime instead of the child. The Ombudsman stressed that phenylketonuria was a rare genetic disease of metabolism, chronic and incurable. It is diagnosed in screening tests of blood after the child is born. When the disease is diagnosed as soon as the child is born, it is possible to start a treatment early which prevents from serious complications and improves the quality and convenience of the child's life.

The district court allowed for the Ombudsman's motions and admitted the evidence of expert's opinion. The case is in progress.

Another example may be a report made by a mother of minor girl, who asked the Ombudsman for Children for help with respect to the decision concerning minor's disability<sup>347</sup>.

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<sup>347</sup> ZSS.441.38.2016.JW

The content of the decision read that upon deciding on the disability, the Regional Disability Evaluation Board in B. stated that the minor did not necessarily require permanent or long term assistance of another person for the reason of limited capability to exist independently. This decision was upheld by the voivodeship disability evaluation board.

The Ombudsman started intervention and officially joined the proceedings before the regional court and motioned for alteration of the decision issued by the voivodeship disability evaluation board. As the opinions of experts – psychologist, psychiatrist and paediatrician – appointed to assess whether the minor required assistance as above, the Ombudsman pointed out to the circumstance that the minor, despite her age (6,5), due to the degree of impairment could not perform activities connected with personal hygiene or eating on her own. The minor did not report her physiological needs, so she had to use sanitary products (nappies).

The court altered the content of the decision of the regional disability evaluation board and stated that the minor did require permanent or long term assistance of another person for the reason of limited capability to exist independently.

The sentence is legally binding and forms a basis for granting the attendance allowance to the minor.

In a similar case the Ombudsman officially joined proceedings before regional court<sup>348</sup>. The father of the disabled minor informed<sup>349</sup> the Ombudsman about the problem that the poviats disability evaluation board did not acknowledge that the boy had to be assisted by another person on a permanent or long term basis because he was considerably incapable to exist independently.

The father appealed against the decision on behalf of the minor. In the opinion of the disability evaluation board, the scope of the disability of the minor caused by congenital retardation of lower limb and a co-morbidity made the boy only partially dependent on others. The board acknowledged that other persons had to assist the boy part-time to help him perform social functions relevant for a person of certain age in the field of self-service and cooperation in the process of treatment and physical therapy. In order to improve the boy's situation it ordered to equip him with necessary orthopaedic tools and devices and to use the environmental support system in his independent existence.

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<sup>348</sup> ZSS.441.872.2015.JW

<sup>349</sup> ZSS.441.788.2015.KT

It did not come to a conclusion that the boy lost the capability of satisfying his basic needs to an extent that would justify provision of permanent or long term assistance and qualified his disability as moderate. The father appealed against the decision to court. The Ombudsman for Children officially joined the proceedings.

He stressed that in his expert's opinion, the expert in trauma and orthopaedic surgery, based on vast medical records of the previous treatment of the minor and the examination conducted prior to formulation of the opinion, stated that the position of the voivodeship disability evaluation board was not correct. He also stated that the board did not bring any charges to the expert's opinion, under the pain of being disregarded. According to the Ombudsman for Children, all materials and circumstances proved that the minor should have been qualified as severely disabled.

The court acknowledged his position and altered the decision on disability.

The Ombudsman for Children was also addressed<sup>350</sup> by a mother of a minor who suffered from child autism. The poviats disability evaluation board issued a decision in which it refused to grant the minor rights under Article 6b item 3, point 7 of the Act of 27 August 1997 on social and vocational inclusion and employment of disabled persons<sup>351</sup> in the form of attendance benefit. The voivodeship disability evaluation board upheld this decision.

The mother of the minor appealed against it. She did not agree with the decision and motioned for its alteration. She pointed out that the minor could not exist without her everyday assistance and care. She also stressed that the same experts adjudicated in committees appointed both by first and second instance bodies which could have influenced the decision to uphold the previous decision on disability. She also stated that the examination was carried out in an unprofessional way and the experts asked the minor humiliating questions.

The regional court admitted the evidence of an expert child psychiatrist.

He issued an opinion in which he stated that the minor did not require permanent or long term assistance of another person due to his considerably limited capability to exist independently.

The Ombudsman for Children officially joined the proceedings before the regional court.

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<sup>350</sup> ZSS.441.663.2015.AT

<sup>351</sup> Dz. U., Journal of Laws of 2011, Item 721 with later amendments).

He pointed to significant omissions and non-clarification of major circumstances referring to minor's condition and his needs and motioned for admission of evidence of expert's opinion by child psychiatrist, psychologist and pedagogue.

The court acknowledged the arguments and admitted the evidence. The case is in progress.

In another case the Ombudsman for Children was addressed<sup>352</sup> by a mother of a minor who appealed against a decision of the voivodeship disability evaluation board which refused to grant the minor rights under Article 6b, item 3 point 7 of the Act of 27 August 1997 on social and vocational inclusion and employment of disabled persons<sup>353</sup>.

In the course of the proceedings, the court admitted the expert's opinion of a paediatrician.

The physician requested in his opinion that an expert ENT specialist be appointed as the paediatrician was not an expert in the field of treating the congenital malformation of cleft palate and lip. The court admitted the evidence of the ENT specialist who diagnosed the minor with left part cleft palate and lip, condition after I surgery, adenoid hypertrophy, bilateral secretory otitis media, yet the expert concluded that the minor did not require permanent or long term assistance of another person due to his considerably limited capability to exist independently.

The court admitted the evidence of the expert opinion of a specialist in child surgery.

The expert diagnosed the minor with irregularities of structure and function of the bony face, typical for the cleft palate malformation. Asymmetric face, malformation of nose with impaired patency, incorrect occlusion connected with cleft of crestal bone, shortened soft palate. SO the expert concluded that the patient was disabled already at the time of birth and to the moment all possible treatments were completed and now he required permanent of long term assistance of another person due to his considerably limited capability to exist independently.

According to the Ombudsman for Children, the expert was right in that he pointed out that due to complexity of the defects various specialists had to be involved in his treatment and the stigma of cleft palate and lip would remain

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<sup>352</sup> ZSS.441.862.2015.AT

<sup>353</sup> Dz. U., Journal of Laws of 2016, Item 2046 with later amendments).



for all of the minor's life even after most precise surgery. Disorders in occlusion might result in incorrect nutrition and in disorders in articulation, so and orthodontist played an important role there. Other specialists involved were an ENT specialist, phoniatriest and speech therapist.

Hence, the Ombudsman for Children entered the proceedings.

The Ombudsman for Children stated that the genetic defect of the minor required permanent supervision of many specialists as well as frequent inpatient hospital treatment, including serious and painful surgeries. Cleft palate and lip is a congenital malformation that may lead to many disorders, including impaired hearing, disorders in development of bony face and speech disorders.

The Ombudsman applied for appointment of experts in ENT, psychology and speech development.

The court altered the content of the decision of the voivodship disability evaluation board and stated that the minor did require permanent or long term assistance of another person for the reason of limited capability to exist independently.

#### • Evictions

The Ombudsman still received cases connected with eviction of families from their current places of residence<sup>354</sup>.

Such was the problem<sup>355</sup> of a single mother of three minors against whom a regional court adjudicated eviction without the right to community apartment and the district court upheld the judgement.

It is a rule that persons who arbitrarily occupy an apartment, against whom an eviction order was issued, has no right to community apartment, as granting the right to community apartment would be well grounded if the rules of social coexistence were followed (Article 24 of the Act of 21 June 2001 on tenants' rights, municipal housing stock and amendment to Civil Code.

<sup>354</sup> ZSS.442.12.2016.GR, ZSS.442.23.2016.GR, ZSS.441.403.2016.GR, ZSS.441.597.2016.GR, ZSS.441.332.2016.GR, ZSS.441.1387.2016.KK, ZSS.441.803.2016.SK, ZSS.441.892.2016.SK, ZSS.441.1399.2016.SK, ZSS.441.417.2016.KT, ZSS.441.549.2016.KT, ZSS.441.598.2016.KT, ZSS.441.425.2016.JW, ZSS.441.1235.2015.KK, ZSS.441.693.2016.KK, ZSS.441.766.2016.KK

<sup>355</sup> ZSS.441.1126.2015.KK

Considering the difficult economic and living situation of the family, the Ombudsman officially joined the proceedings before the regional court pertaining to establishment of the right to enter a rental agreement by the family and motioned for stay of execution of eviction until the family was given an offer of community apartment rental agreement.

The Ombudsman stressed that the petitioner did not have any legal title to the occupied apartment yet it had to be kept in mind that she was a single mother upbringing three children and she occupied the flat because she wanted to provide some shelter for her family.

The regional court dismissed the action. The petitioner brought an appeal against the decision. The case is in progress.

In another case<sup>356</sup> a mother of 8 year old boy informed the Ombudsman for Children that as a result of enforcement proceedings she and her son had been deprived of a place to live. The purchasers of the apartment took measures to empty the apartment bought by them by way of bailiff's auction. The petitioner pointed also out that the bailiff was carrying out the enforcement proceedings against the regulations of civil procedure.

Having reviewed the case, the Ombudsman addressed the President of regional court with a request for judicial supervision of the enforcement proceedings conducted by the court bailiff at the regional court, under Article 759 § 2 of the Code of Civil Procedure.

In reaction to Ombudsman's letter the court ordered the bailiff to notify the minor on institution of enforcement with the enforcement order with a copy and, under Article 791 § 3 of the Code of Civil Procedure, ordered the bailiff to caution the family about the possibility of bringing action against limiting the enforceability of enforcement order and establishment of the right to community apartment. At the same time the bailiff was ordered to stay the enforcement procedure under Article 791 § 3 and 4 of the Code of Civil Procedure and inspect the technical condition of a temporary flat suggested by the creditor.

In another case, a father of minors<sup>357</sup> asked the Ombudsman for Children for intervention with respect to community apartment offered to his large family by local authorities of one of the cities, and he complained that under eviction order for 7-person family, they were offered a flat of 33 m<sup>2</sup> area. The judge-

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<sup>356</sup> ZSS.441.788.2016.KT

<sup>357</sup> ZSS.441.747.2016.GR

ment did not refer to the youngest child who was born after the judgement was issued and who diagnosed with disability.

In reaction to the intervention undertaken by the Ombudsman the president of the city informed that the authorities abandoned the enforcement of the judgement and concluded an agreement on payment of the debt in instalments.

The Ombudsman was also asked for help<sup>358</sup> by a disabled mother of three children (two of them were holders of disability certificate) who informed him of institution of enforcement proceedings by a creditor. The family was going to face a bailiff's auction of the occupied flat because of rental arrears.

In his intervention the Ombudsman addressed the management board of the relevant housing cooperative and asked it to stay the enforcement proceedings and enter into agreement on payment of the rent in instalments.

The housing cooperative acknowledged the Ombudsman's motion and informed that they had ordered the bailiff to stay the proceedings and promised to offer the family an instalment agreement after they submit a relevant payment schedule.

- **Difficult affairs connected with accommodation**

Requests for intervention in affairs connected with accommodation addressed to the Ombudsman for Children constituted a numerous group of cases referring to social welfare. The cases concerned most often applications filed by petitioners for allotment of flats and for changing a flat due to its bad technical condition. Persons who addressed the Ombudsman asked most often for intervention to facilitate the realisation of accommodation applications filed in the public offices<sup>359</sup>.

A single mother of four minor girls addressed the Ombudsman with a request for intervention due to her difficult living situation.<sup>360</sup> She said the family was renting a two-floor flat of living area of 32.28 m<sup>2</sup>, yet the expenses of maintenance exceeded their economic resources and the family started to receive social support in 2013. From that time the mother had been also applying for

<sup>358</sup> ZSS.441.468.2016.GR

<sup>359</sup> ZSS.441.210.2016.GR, ZSS.441.57.2016.GR, ZSS.441.514.2016.GR, ZSS.441.1329.2015.KK, ZSS.441.164.2016.KZ, ZSS.441.285.2016.KZ, ZSS.441.335.2016.KZ, ZSS.441.430.2016.KZ, ZSS.441.517.2016.KZ, ZSS.441.1452.2015.KK, ZSS.441.1323.2015.KK, ZSS.441.1361.2016.KK

<sup>360</sup> ZSS.441.1329.2015.KK

community apartment yet due to the fact the are criterion was exceeded, she was constantly refused.

The Ombudsman for Children addressed the mayor of the city asked him to take relevant measures and provide assistance in obtaining a flat to minors and their mother.

As a result of the Ombudsman's intervention the family was qualified for renting a flat for an unlimited period of time and entered into a waiting list of persons waiting for a rental.

A single mother of a minor girl had a similar problem and she addressed the Ombudsman for Children<sup>361</sup>. A regional court had issued a judgement under which she and her daughter were ordered to leave and empty the apartment and give it to the Military Property Agency. At the same time, under the same judgement, she was granted the right to receive a community apartment and it was ordered to stay the evacuation until the petitioner was offered to rent a flat.

In her letter to the Ombudsman, the mother claimed that the community flat offered by the housing cooperative was inappropriate for a child. It was a single room flat of total are of 11.43 m2 and the kitchen, the bathroom and the toilet were located in the corridor and were shared with other residents. So the Ombudsman addressed the president of the city and asked him to give support to the family.

As a result of this intervention the housing cooperative offered a different community apartment the living room of which was bigger (17,30 m2). She accepted it and soon moved to it with her daughter. It was also indicated that while residing in the community apartment the petitioner could still apply for rental for an unlimited period of time.

The Ombudsman was also addressed by a single mother of a minor girl<sup>362</sup> who asked him to help her exchange her council flat. The petitioner informed that she had undertaken steps to get assistance from the commune (gmina) in obtaining a flat for her and her minor child, yet without any result.

The Ombudsman for Children addressed the mayor of the city asked him to take relevant measures and provide assistance in obtaining a flat to minor and

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<sup>361</sup> ZSS.441.402.2016.KK

<sup>362</sup> ZSS.441.23.2016.JW

their mother. As a result of the intervention she was offered a flat equipped with a bathroom.

In another case of this category, a single mother of three children was staying in a emergency centre<sup>363</sup>. The children had to leave the centre as it could provide shelter only for six months which was about to end in this case. The petitioner did not have any other home to which she could come back with her children and she was waiting for allotment of council flat by the local housing stock.

The Ombudsman for Children intervened at the mayor and told him about the urgent need to offer a flat to the family.

As a result of the undertaken intervention, they were offered a council flat where they moved directly after leaving the emergency centre.

A single mother of two minors addressed the Ombudsman with a request for intervention due to her difficult living situation.<sup>364</sup> She informed that she had been trying to improve their living situation for many years i.a. she applied many times for allotment of council flat from the resources of the local authorities. Her attempts remained ineffective.

The Ombudsman for Children addressed the mayor of the city asked him to take relevant measures and provide assistance in obtaining a flat to minors and their mother.

As a result of the Ombudsman's intervention, he was informed that her petition for allotment was allowed. She was qualified to enter into rental as first on the list.

In another case of this kind<sup>365</sup>, the Ombudsman intervened for a minor and his single mother. The building where the apartment of the family was located, was in very bad technical condition (there were no main door, no windows or apartment doors on the ground floor; nor any wicket or gate. It was a condemned building. The petitioner had many times called the Police and municipal police as it was occupied by persons who were not its residents. Moreover, her flat was broken into twice and it was too damaged to be inhabited. Her endeavours to be granted another flat were ineffective.

The Ombudsman intervened with the city mayor.

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<sup>363</sup> ZSS.441.1395.2015.JW

<sup>364</sup> ZSS.441.529.2016.KZ

<sup>365</sup> ZSS.441.566.2016.KZ

In response he was informed that the petitioner filed an incomplete application. Yet, having in mind the minor child's well-being, the housing committee of the city council applied to conditionally enter her on the waiting list.

The Ombudsman for Children was also asked for support in a case of young married couple whose flat was very little and whose neighbour was mentally ill. The wanted the authorities to accelerate the allotment<sup>366</sup>. The Ombudsman, pointing to the special circumstance of the case, addressed the manager of municipal housing stock and asked whether he could consider earlier commencement of renovation of the flat that was to be offered to the family.

In response the Ombudsman was informed that the renovation would begin earlier, in the first quarter of 2017, out of turn.

The Ombudsman was also addressed<sup>367</sup> by a mother of disabled child who were living on the 5 floor of a private multifamily building.

The situation of the flat was problematic for the mother of the disabled boy. The costs of renting the private-owned flat without any conveniences did not allowed to satisfy all the needs of the family and hindered the boy's physical therapy as he attended a special-profiled school. The woman had been applying for support ineffectively for years.

In this case, the Ombudsman addressed the local authorities twice, asking for positive settlement of the problem.

In response the Ombudsman was informed that the petitioner had accepted the offer of new council flat located on the ground floor and composed of a kitchen, two rooms, and bathroom and a toilet, equipped with central heating system, electricity, gas and water and sewage systems.

The Ombudsman took up also a case which involved a family who was bringing up disabled child and who were residing in one of the so called allotment gardens<sup>368</sup>. The main problem of the family was the fact that every winter, electricity and water were turned off in all area of allotments. The family was applying for a council flat from the city housing stock. The management of the allotment gardens association also closed the main entrance gate to the area. Finally the family had their rental agreement terminated. A regional court dismissed the

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<sup>366</sup> ZSS.441.943.2016.GR

<sup>367</sup> ZSS.441.281.2016.GR

<sup>368</sup> ZSS.441.561.2016.MW

action to deem the termination ineffective. The court of second instance upheld the judgement.

The Ombudsman for Children many times raised the problem and addressed the management of the allotment gardens association in that matter and the president of the city.

As a result of the Ombudsman's intervention the management did not turn off the media for the winter. The first proposal of rental agreement was however rejected as the flat was not adjusted to the needs of a disabled child. After subsequent interventions the family finally received appropriate accommodation.

- **Modernisation of the infrastructure**

The Ombudsman was addressed with respect to issues connected with traffic infrastructure near hospitals, schools and other public utility buildings and their modernisation. Most often, complaints referred to liquidation or need to mark pedestrian crossings near buildings attended by the youngest and lack of facilities for prams as well as granting or arranging for a separated parking room for a disabled child<sup>369</sup>.

The Ombudsman for Children was addressed i.a. with respect to the traffic organisation near a primary school and the need to modernise it<sup>370</sup>. The petitioners indicated that parking places placed along the pavement had to be moved or reorganised as they limited the view on the street for the children who wanted to cross it on a pedestrian crossing, which was dangerous.

The Ombudsman asked the starost for information what action had been taken to develop a concept to improve children's security on the crossing near the primary school.

The Ombudsman was informed that Traffic Safety Committee had analysed the level of safety in this place, applied to the road manager for cutting out two trees growing next to the crossing and putting two blocking posts U-12c which would not allow to park a car next to the crossing.

The works were done which considerably improved safety of children and other pedestrians.

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<sup>369</sup> ZSS.441.1259.2016.GR, ZSS.441.1153.2016.GR

<sup>370</sup> ZSS.441.1090.2016.AG

The Ombudsman for Children was also addressed<sup>371</sup> with respect to the problem child transport to schools and lack of safe crossing from a housing estate to a bus stop and the need to modernise traffic organisation.

The petitioner saw the need to change the situation of the residents, especially families with children who lived one of the nearby streets, and, in the same way, to increase their safety when moving from their place of residence to schools, work or shops.

The Ombudsman addressed the city president with a request for action to increase the safety of local residents.

The Ombudsman was informed that the president addressed the manager of railway line no. 25 with a motion for consent to elaboration of a design and execution of a level crossing type E, with "scissoring" infrastructure. After the consent is given, relevant works will be contracted along with building a pavement that connects the existing part of pavement located near the buildings with the existing part of the gravel road under a flyover, along the railway and connecting to the street.

Moreover, upon the initiative of the Ombudsman for Children, the president of the city filed a motion in the Office of the Marshal a motion for supplementary funding of the project entitled "Improving the functionality of public transport for MOF M." from the EU resources. The financial resources will be used to extend the street and a new bus line will be opened along this route. These action will surely positively influence the life and convenience of pedestrians.

There was also another case<sup>372</sup> received from residents of small town who asked for intervention of the Ombudsman regarding missing pavement that would allow them to safely move along a traffic lane of a national road.

The Ombudsman for Children addressed the relevant department of the General Directorate of the National Roads and Motorways.

The Ombudsman was informed that all investment activity in the field of improving the safety of traffic were conducted by the General Directorate of the National Roads and Motorways under the Programme of National Roads Construction for years 2014-2033 adopted by the Council of Ministers on 08 September 2015, which included a Programme of Elimination of Dangerous Places. One of the objectives of the programme was to build a pavement along national

<sup>371</sup> ZSS.441.845.2016.AG

<sup>372</sup> ZSS.441.449.2016.KZ



road in the city and was approved for performance by the Minister of Infrastructure and Civil Engineering in 2016.

At the same time the Ombudsman was informed that considering the necessary improvement of traffic safety and protection of all its participants, including pedestrians, upon the next updating of the Programme of Elimination of Dangerous Places, the relevant department of the General Directorate of National Roads and Motorway will enter a new task for realisation in the form of building a new part of the pavement – from the existing bus bays to the pedestrian communication in the town.

Moreover the Ombudsman for Children was reassured that the department of General Directorate would undertake any and all measures to solve the problems of safety as it was decisive of health and life of the participants of the traffic.

- **Protection of children against improper contents**

The problem of children and of using children's image in public media is of special interest to the Ombudsman for Children. A child participating in a public media advertisement is only a small part of this issue Polish Law does not keep up with the real needs of the child in the modern world and thus does not fully protect the child's rights in that context. The problem then needs to be thoroughly and comprehensively approached to adjust the catalogue of legal instruments so that the youngest are protected in best possible way.

The Ombudsman for Children received a request<sup>373</sup> for intervention regarding an advertisement of computer games much touted by a well-known electronic supermarket network as a gift for children on the occasion on their first communion, published in an national daily newspaper.

In the opinion of the petitioner, the games, which were given titles that suggested content improper for minors, supplemented video game console offered for purchase.

The Ombudsman referred the case to the Advertising Standards Association for their review and opinion.

As a result of the intervention, after investigation of the case, the Committee found the advertisement violating the standards defined in Article 2, item 1; Article 8 and Article 10, item 1a of the Advertising Standards Association Code.

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<sup>373</sup> ZSS.441.622.2016.GR

- **Conflicts among neighbours**

The Ombudsman investigated and analysed numerous cases related to conflicts among neighbours, which were unintentionally witnessed by children or in which they were involved. The most frequently suggested solution in such cases was to undertake mediation by the conflicted parties or addressing social service centres with requests for intervention<sup>374</sup>.

The Ombudsman was addressed by a resident of a housing estate who informed that the one of the flats was inhabited by a couple who regularly harassed children playing near their block of flats<sup>375</sup>. The man videotaped the children and his wife called them names.

The Ombudsman for Children asked the local social service centre to arrange for mediation between the conflicted neighbours by a team of specialists with expert knowledge in the field of crises and dispute solving by mean of mediation and of ways of providing a family with relevant support.

The centre informed the Ombudsman that a contact had been made with the conflicted families in their place of residence and that they were informed about free of charge legal counselling and psychological support. They were also offered assistance to reassure them and make them feel safer. The parties agreed to take part in mediation arranged by crisis intervention centre.

The Ombudsman was also addressed<sup>376</sup> by a resident of a block of flats who reported that one of the residents harassed children playing nearby in that he made a very noisy and loud sound of high frequency which was very painful to human hearing; she also informed that a child's physical inviolability was infringed.

The Ombudsman asked the local police station to inform him on their intervention.

In response it was stated that the inquiry confirmed that the neighbours had been in conflict for many years. They were informed on their rights including the right to report a crime. Additionally the police community support officer provided special supervision over this community to secure the minors.

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<sup>374</sup> ZSS.441.653.2016.KK, ZSS.441.775.2016.KK, ZSS.441.1007.2016.AG, ZSS.441.12.2017.AG

<sup>375</sup> ZSS.441.855.2016.MW

<sup>376</sup> ZSS.441.1119.2016.SK

- **Alteration of local acts of law**

Based on the content of individual cases reported to the Ombudsman, he many times saw the need to address relevant authorities with a request to amend local law<sup>377</sup>.

One of such cases referred to a minor whose mother asked the Ombudsman for support due to her difficult housing situation<sup>378</sup>. She told him that she had applied for a council flat to the local mayor.

The Ombudsman asked the mayor for his position in the case and information of the housing stock so that the problem of the family could be solved. In response the mayor informed that only persons who did not have any legal title to any flat and living within the administrative area, as registered by authorities could apply for a council flat. As the petitioner did not meet these requirements, she was refused.

So the Ombudsman addressed the local council with a request for solution, relevant action and alteration of the local act of law, indicating that according to the well-established judicature of administrative courts, obtaining a council flat could not be made dependent upon the domicile.

The council responded that they took measures to alter the above mentioned local act of law.

In another case, a resident reported a problem with a shop that sold alcoholic drinks very close to a kindergarten. The Ombudsman for Children analysed<sup>379</sup> the relevant local act of law which set the rules governing the location of places where alcoholic drinks were served or sold.

Pursuant to the local ordinance, places where alcoholic drinks could be served or sold within the territory of the city could be located not closer than 30 meters from the following objects: shelters for homeless persons, residential institutions and detoxification centres. This meant that the distance did not have to be kept in case kindergartens, schools and other educational facilities.

The Ombudsman for Children addressed the city council with a request for altering and adjusting the above mentioned ordinance to the currently binding regulations of law.

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<sup>377</sup> ZSS.441.1070.2016.SK

<sup>378</sup> ZSS.441.1070.2016.SK

<sup>379</sup> ZSS.441.1279.2016.JW

In response the council informed that it was planning to appoint a team for development of alteration of the rules governing the location of places where alcoholic drinks were sold or served. The Ombudsman is monitoring this activity.

## 4. THE RIGHT TO EDUCATION

*The Convention on the Rights of the Child provides (Articles 28 and 29) the right to learn for every child. Learning should be, before all, oriented to development of personality, talents and mental and physical abilities of the child, development of respect for human rights and respect for the parents. It should make the child ready to live a good life in a free society and develop respect for natural environment in the child.*

In 2016 the total of 6,980 cases were reported to the Ombudsman for Children with respect to the right to education.

The Ombudsman for Children referred to other authorities and institutions with the request to initiate actions or provide information in cases pertaining, among other things, to:

- ▶ admittance and stay of the child at a crèche
- ▶ enrolment to kindergartens and schools,
- ▶ assessment of students,
- ▶ provision of wrong test sheets during examinations after lower secondary school,
- ▶ courses,
- ▶ support for children with special needs in education in kindergartens and schools,
- ▶ psychological and pedagogical support,
- ▶ access to student's books for children with sight impairment,
- ▶ unequal treatment and discrimination,
- ▶ mental health, cyber-violence and suicides of students,
- ▶ respecting the rights of the child and the student at school,
- ▶ the impact of divorce conflict on the child's progress at school,
- ▶ safety and hygiene in kindergarten and at school,
- ▶ child insurance at school,
- ▶ activity of parents' councils,
- ▶ stay of a chronically ill child in a facility,
- ▶ disciplinary liability of teachers,
- ▶ transporting children to schools, including children with disabilities
- ▶ financing of education system units,
- ▶ safety of children during after school activities organised by non-state actors,
- ▶ operation of the youth education centres,
- ▶ the operation of day care facilities,

- ▶ organisation of recreation for children and youth,
- ▶ organisation of school sports competition,
- ▶ operation of Polish schools in Lithuania,
- ▶ operation of social rehabilitation facilities for youth from other countries within the territory of Poland.

## 4.1. General addresses with regard to the right to education

- **Unfair treatment of student of fine arts schools attending general education programme activities – addresses of 18 January 2016**

In his address<sup>380</sup> to the Minister of National Education and the Minister of Culture and National Heritage, the Ombudsman for Children presented the problem of unfair treatment of students of fine arts schools in promoting students to higher class with a distinction or accomplishing the school with distinction.

The Ombudsman pointed out that pursuant to § 19 item 1 and § 20 item 1 of the Ordinance of the Minister of Culture and National Heritage of 24 August 2015 on detailed conditions, assessment, classification and promotion procedures for students of state fine arts schools<sup>381</sup>, a student of arts school under the general education programme, who, in his yearly classification obtained:

- ▶ the average grade of at least 4,75 of the mandatory educational classes,
- ▶ very good in the main subject(s) or major or specialization and at least very good conduct is promoted to higher class with distinction.

A student of a fine arts school in general education programme who, in final classification, obtained:

- ▶ the average grade of at least 4,75 of the mandatory educational classes,
- ▶ very good in the main subject(s) or major or specialization and at least very good conduct completes fine arts school with distinction.

Similar conditions were set in the regulations § 20 and 21 of the ordinance of the Minister of National Education of 10 June 2015 detailed conditions and methods of evaluating, classifying and promoting students in public schools<sup>382</sup>.

<sup>380</sup> ZEW.422.1.2016.ES

<sup>381</sup> Dz. U., Journal of Laws of 2015, Item 1258.

<sup>382</sup> Dz. U., Journal of Laws of 2015, Item 843.

In his address the Ombudsman noticed the problem of conditioning the distinction upon obtaining at least very good grade in the main subject(s) or major or specialization. The requirement to obtain very good in the main subject resulted in the fact that, according to petitioners<sup>383</sup> and the Ombudsman for Children in case the fine arts school was changed from fine arts school of general education into a generally accessible school, the children are deprived of equal chances in education.

In response<sup>384</sup> the Minister of Culture and National Heritage assured that in case of fine arts schools of general education profile lack of very good grade does not prevent from being promoted with distinction in the general education field. The schools are obliged ex officio to issue a certificate for students of fine arts schools of general education profile who meet requirements of mandatory general education courses and conduct defined by the minister of education. According to the Minister the rule of classifying and promoting students of state fine arts schools were not discriminating them and a student who decided to start his education in a fine arts school had to be aware of specific rules of assessing, classifying and promoting students.

The Minister of National Education informed<sup>385</sup> that the differences in regulations concerning students of fine arts schools and general education schools resulted from the specific nature of artistic education in Poland. To preserve the coherence of the education system, the relevant minister for cultural and national heritage affairs defines, in cooperation with the relevant minister for educational affairs. The issue in question shall also be subject to this procedure. Thus, a student or graduate of a general education school who received the average grade of at least 4,75 in mandatory classes under general education programme and at least very good grade in his conduct, shall receive – upon his written request or written request of a parent (legal carer) – a certificate that he met the requirements as mentioned above, defined by relevant minister. In the opinion of the Minister, those regulations ensure equal rights to all pupils.

- **Access to kindergarten for children – address of 22 January 2016**

In his address<sup>386</sup> to the Minister of National Education the Ombudsman for Children presented the problem of low accessibility to kindergartens faced by 3

<sup>383</sup> ZEW.441.1416.2015.ES, ZEW.441.1488.2015.ES, ZEW.441.1605.2015.ES, ZEW.441.1606.2015.ES, ZEW.441.288.2016.ES, ZEW.441.464.2016.ES

<sup>384</sup> DEK/607/16 oraz DEK.050.6.2016.JP/4

<sup>385</sup> DKO-WEK.4019.12.2016.AK

<sup>386</sup> ZEW.422.3.2016.MP

year old children and disproportions in this depending on the child's domicile. The Ombudsman stressed that pre-school age was especially important period of child's development and should be inherently related to pre-school / pre-primary education – as a factor of harmonious development in child's physical, cognitive, social and emotional sphere. The data for 2014/2015 show that in urban areas, 75,4% of 3 year old children take advantage of pre-school education, whereas in rural areas it is only 48%. The Ombudsman for Children pointed also to possible effects of change in that the school attendance obligation applied again older children – namely in the age of 7, which would mean the accessibility of pre-school education would be even lower.

In response<sup>387</sup> the Minister of National Education informed that meeting the needs of society with respect to public education was the task of local government authorities. In the opinion of the Minister, the number of vacancies in pre-school / pre-primary education facilities and pre-school departments in schools allowed to conclude that accessibility of pre-school education for children from 3 to 6 was quite high. He informed also about the rules and level of financing the state budget in the field of pre-school / pre-primary education and assured that pre-school education was deemed by the state as the right every child was entitled to.

- **Assessment of functioning of the regulations regarding healthy nutrition – addresses of 27 January and 26 September 2016**

The Ombudsman for Children in address<sup>388</sup> to the Chief Sanitary Inspector asked him to assess the educational and health-oriented activity of kindergartens, schools and other facilities of education system and to present conclusions of inspections conducted in that field by the National Sanitary Inspection under the Ordinance of the Minister of Health of 26 August 2015 on groups of food products for sale to children and youth in education system units and requirements that must be met by food products in mass catering for children and youth in those units<sup>389</sup>. The Ombudsman particularly asked for information on the number of inspections conducted in schools and education facilities, what irregularities were found (with details of problems related to feeding children in school canteens and in form of catering), functioning of school shops and product it offered, activity undertaken by managers of education system units to correctly implement the amended system of feeding children

<sup>387</sup> DJE-WEPiSN.4023.14.2015.MŁ

<sup>388</sup> ZEW.422.4.2016.EB

<sup>389</sup> Dz. U. poz. 1256



and youth (also with respect to raising awareness among children and youth, parents and teachers), reported problems reported by managers of those units referring to organisation of healthy diet, engaging parents in preparing lists of healthy food products used to prepare meals. The Ombudsman addressed also the Chief Sanitary Inspector with a request for potential conclusions as to the functioning of the existing regulations to amend them so that they facilitated good practices and attitudes in healthy diet and lifestyle among young people. In the opinion of the Ombudsman, proper diet of children and youth is crucial to their health now and in the future. For that reason he was so deeply involved in the action to eliminate unhealthy food products offered for sale in the education system units and introduction of commonly applied nutrition standards developed by the Institute of Food and Nutrition in Warsaw.

In response<sup>390</sup> the Chief Sanitary Inspector informed on the activity undertaken to promote the rules of healthy nutrition among children and youth. Under the educational and health promoting activity at the regional level of voivodeship and powiat, a cycle of activities were conducted to implement recommendations and standards of nutrition and healthy diet in schools and educational facilities. The activity was also dedicated to raise the awareness of children and their parents, employees of schools and kindergartens and concession holders and catering service providers. The Chief Sanitary Inspector undertook many educational activities and inspections in the field of counteracting overweight and obesity.

As the answer did not include answers to the questions asked by the Ombudsman for Children in his address, he again addressed<sup>391</sup> the Chief Sanitary Inspector with a request for explanation.

In response<sup>392</sup> he was informed about inspections conducted by the Inspector and the irregularities they revealed and on problems reported with respect to effects of the ordinance. The given data showed that the most often irregularities found during an inspection were: insufficient amount of improper proportion of vegetables and fruit, no fish (it is required to have them at least once a week), fried food served too often, adding sugar to drinks and – in case of school stores – availability of sweets, sweet rolls, cookies, sweet drinks and lollipops and yoghurt with too much sugar. The Chief Sanitary Inspector also presented his opinion that the new Ordinance of the Minister of Health of 26 July

<sup>390</sup> GIS-PZ-PZ-073-06/BS/16 SK 31013/2016

<sup>391</sup> ZEW.422.4.2016.AS

<sup>392</sup> GIS-PZ-PZ-073-10/BS/16 SK 39043/2016

2016 on groups of food products for sale to children and youth in education system units and the requirements that must be met by food products used in mass catering for children and youth in those units<sup>393</sup> allowed to streamline the previous regulations and extend the offer of school food shops. He gave the example of bread made of flour refined to a different level, confectionery except for bread made of deep frozen products, of lower sugar, fat and salt content and no-sugar chewing gums, dark chocolate with minimum 70% of cocoa mass.

• **Special care facilities- address of 28 January 2016**

In his address<sup>394</sup> to the voivodeship marshals, the Ombudsman for Children asked them to analyse the difficult situation of children who required specialist assistance because of the fact that there had been vacancies in specialist care centres and to immediately undertake relevant steps to establish new centres of therapy and care that would provide them with assistance and, in the future, provide their carers with support. According to the Ombudsman, the number of specialist care centres is low which results in many tragedies of children who are forced to be a patient of psychiatric wards, without any real medical recommendation.

The Ombudsman had already addressed<sup>395</sup> the Minister of Family, Labour and Social Policy in 2015. He then received a declaration<sup>396</sup> that the problem of foster care for children with individual needs would be analysed in the course of works on the oncoming amendment of the Act on family support and foster care system and that the ministry of Labour and Social Policy, under the new financial perspective 2014-2020 and under regional programmes had given a positive opinion to dedicate certain level of funds to denstitutionalize the system of foster care. According to the Minister, such activity may facilitate growth of foster families who would decide to provide care for ill children, including children with educational and behavioural disorders.

In the Ombudsman opinion, however, there was still too little activity focused on specialised foster care families and care and therapy centres.

The Marshals informed the Ombudsman for Children on solutions adopted in their respective viovodes to solve the problem and listed difficulties which they faced in fulfilling their tasks in that field.

<sup>393</sup> Dz. U. poz. 1154

<sup>394</sup> ZEW.422.5.2016.ZA

<sup>395</sup> ZSS.422.34.2015.AT

<sup>396</sup> DSR.I.073.21.1.2015.DI

- **Social rehabilitation centres for foreign youth – addresses of 26 February, 1 October and 28 December 2016**

The Ombudsman for Children<sup>397</sup> continued his activity started in 2014<sup>398</sup> again he addressed the Minister of National Education pointing to the problem of implementing social rehabilitation programmes within the territory of our state organised by German offices for their minor citizens. The Ombudsman presented information obtained from the voivodes which said that in the years 2012 – 2015 nine social rehabilitation programmes were being conducted within the territory of Pomorskie and Warmińsko-Mazurskie Voivodeships. In response<sup>399</sup> the Minister of National Education informed that he had undertaken activity to recognize the situation presented by the Ombudsman. Thus the Ombudsman again addressed<sup>400</sup> the Minister of National Education with a request for relevant information. The Minister informed<sup>401</sup> that as the case was of interministerial nature, it was reasonable to obtain more details from the German office on the social rehabilitation programmes organized within the territory of Poland. Hence, the Minister of National Education addressed the Minister of Foreign Affairs with a request that information be obtained from the German office. The Ombudsman for Children addressed<sup>402</sup> the Minister of Foreign Affairs with a request for access to data from the German offices.

In response<sup>403</sup> the Minister of Foreign Affairs informed that pursuant to German Social Code, performance of the tasks in the field of care and education remained within the mandate of offices for children and youth offices (Jugendamt) and actors of recognized status of public utility actor as for example Caritas or German Red Cross, which performed those tasks under commissioned tasks and actors admitted to perform those tasks upon permission. Both the issuance of the permission and commission of tasks to public utility actors and supervision over their performance are the responsibilities of offices for youth of the lowest level (municipal, district). Those actors perform also individual social rehabilitation programmes. If necessary, an individual educational plan is developed in cooperation with relevant office for youth affairs, the minor himself or herself, their statutory representatives and public utility actors which perform the tasks connected with care. If, according to agreements

<sup>397</sup> ZEW.422.2.2014.AS

<sup>398</sup> ZEW.422.2.2014.JK

<sup>399</sup> DSWM-SSC.086.12.2016.BS

<sup>400</sup> ZEW.422.2.2014.JR

<sup>401</sup> DSWM-SSC.086.12.2016.BS

<sup>402</sup> ZEW.422.2.2014.JK

<sup>403</sup> DPE.0121.18.2017/4

of the education plan, a measure in the form of placement in residential institution or foster family out of Federal Republic of Germany in another member state, the case is referred relevant family court and consultation procedure under Article 56 of the Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility which repealed Regulation (EC) No. 1347/2000 (Brussels II bis). The central authority appointed to implement the ordinance – in case of Germany it is the Federal Office of Justice in Bonn, addressed the central authority of the state within the territory of which the minor is going to be placed with a request for consent. Issuance of ordinance pertaining to the case by family court is possible only when the permission is issued.

According to the information obtained by Polish Embassy in Berlin in the Federal Office of Justice, in case citizens of Germany are placed within the territory of Poland, Polish central authority body abandoned the mandatory procedure of notifying Poland on such cases at all (similarly as Bulgaria). This means that the youth office or public utility actor must consult the fact of placement directly with the entity that the minor will be placed in, omitting the stage of central bodies. Hence the Federal Office of Justice does not carry out any statistical surveys among young persons placed within the territory of the Republic of Poland. Definition of tasks connected with school attendance is part of the educational plan and is executed in the form that was described in the plan. According to German regulations, it is possible to exempt the minor from the school attendance benefit or allow him or her to do it by means of e-learning or by attending a German school out of the German Republic. Current care of minor is provided by a centre or foster family in Poland based on a power of attorney granted by the statutory representative of the minor. According to the distribution of competences among federal bodies (Bund) and regional bodies (Land), the tasks performed by youth offices remain in the mandate of regional bodies. In Germany there are 17 offices for youth affairs at the level of Land (in North Rhine-Westphalia there are two) which supervise the activity of offices of lower level. So far three of them responded to Polish Embassy: state offices of Berlin, Mecklenburg -West Pomerania and Schleswig-Holstein which did not register cases of social rehabilitation in Poland in the years 2012 – 2015.

- **Student's book for children with impaired sight – address of 03 March 2016**

Following many signals<sup>404</sup> from parents about irregularities in the field of availability of student's books for children with impaired sight, the Ombudsman for Children took measures to investigate the problem in schools which those students attended. The Ombudsman addressed the managers of the facilities and asked them to identify problems connected with availability of the books and other materials. He was told<sup>405</sup> that children did not receive their student's books on time so that they could use them from 1 September each school year, though the managers did report in advance the need to have the books adjusted to the Education Development Centre, according to the well-established rules. The managers named also other problems with organisation of education for children with impaired sight (organisation of revalidation classes and education of students in mainstream schools, the need to extend the list of adapted titles, lack of updated list of student's books on the Centre's websites, lack of possibility to establish a sports department in a special schooling and education centre for blind and visually impaired children, lack of notebooks for blind children, limited accessibility to supplementary material, the state programme "Wyprawka Szkolna" not including those children).

Hence, the Ombudsman addressed<sup>406</sup> the Minister of National Education with a request for action to introduce reasonable improvements and adjustments to individual needs of students with visual impairment and provide them with necessary support under the mainstream education system which should be functioning in accordance to the rule of equal chances for each child.

In response<sup>407</sup> the Minister of National Education described in detail the process and way in which the ministry was accomplishing its tasks, pursuant to Article 22ad and Article 71d of the Act on education system and competences of other bodies in that field. The Minister referred also to other problems raised in the address. He informed that the ministry was working on comprehensive solutions in educating children and youth with special education needs, including the needs concerning special learning materials, student's books and supplementary exercise books adjusted to educational needs and psycho-physical potential of disabled children. He also informed that an national debate on the

<sup>404</sup> ZEW.441.1314.2015.ES

<sup>405</sup> ZEW.441.1314.2015.ES (Special Educational Facilities: Radom, Warsaw, Lublin, Bydgoszcz, Cracow, Wrocław, Łódź, Dąbrowa Górnicza, Łaski)

<sup>406</sup> ZEW.422.9.2016.ES

<sup>407</sup> DWKI-WSPE.4083.1.2016.AP

education system was scheduled that would include discussion with relevant experts. He assured that the above mentioned activity would result in implementation of specific solutions in the regulations of law.

- **Professional liability of teachers – address of 08 March 2016**

The Ombudsman for Children in his address<sup>408</sup> to the President of Committee of Education, Science and Youth of the Sejm of the Republic of Poland applied for introducing to the Draft Act amending the Act – teacher's charter and some other acts, powers for the Ombudsman for Children to participate in disciplinary proceedings, with the option to appeal against a decision of the disciplinary committee of first instance to the disciplinary committee of appeal in cases when child's rights were violated and appeal against a legally binding decision of the appeal committee to a common court.

The Ombudsman pointed also out that it was necessary to indicate the place where a minor was to be heard such that would guarantee safe conditions for that procedure. In the opinion of the Ombudsman for Children, the so called Blue Rooms met that requirement.

The Ombudsman asked also for extension of information included in the register of disciplinary decisions with data of teachers with legally valid disciplinary penalties pursuant to Article 76 item 1, point 1 and 2 (reprimand with a warning, dismissal from work) and completing the circle of persons excluded from the possibility to perform the function of a representative of teacher disciplinary proceedings or a member of adjudication panel also with a person who shared a life together with the excluded person. The exclusion as provided by the draft did not, according to the Ombudsman for Children, ensure proper unbiased procedure.

- **Preparing schools for the event of a terrorist attack – address of 10 March 2016**

Alarmed by latest acts of terrorism which are getting more and more frequent these days, having in mind that children and youth in all types of Polish schools must be safe, the Ombudsman for Children addressed<sup>409</sup> the Minister of Internal Affairs and Administration with a request for information on the current state of mobilisation of services, staffed employed at schools and the students themselves in the face of potential extraordinary events. The Ombudsman made also

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<sup>408</sup> ZEW.422.11.2016.JF

<sup>409</sup> ZEW.422.12.2016.JBR

reference to the issue of adjusting the educational material addressed to children (both considering their sensibility and having an educational role) and to the need to train managers, teachers and all other employees of schools and facilities.

In response<sup>410</sup> the Minister of the Interior and Administration informed about the activity undertaken in relation to the National Antiterrorist Programme for 2015-2019 which included: raising public awareness, development of educational programmes, organising trainings for school managers and employees of educational facilities, organising preventive meetings with specialists in special prevention of Police units.

- **Thematic competitions – addresses of 17 March and 23 April 2016**

The Ombudsman for Children in his address<sup>411</sup> the Minister of National Education expressed his view that the current way of organising thematic competition in lower secondary schools did not perform its role as instead of motivating to further work and developing hobbies and interests, triggered the feeling of unfairness and, in result, discouraged from further creative work. The reason for that was because there were no clear rules in the procedures of the competitions of various voivodeships, which was perceived by the students as unequal treatment. The Ombudsman again pointed out that it was necessary to adjust the procedure of competitions to the needs of disabled students.

In response<sup>412</sup> the Minister informed about moving regulations concerning the rights of winners of voivodeship and inter-regional thematic competitions and the winners of national thematic contests in the examination and recruitment system to schools to the Act of 07 September 1991 on the education system<sup>413</sup>. He told about ministerial activity to increase the interest of students in participating in thematic contests as an alternative to thematic competitions that raised many doubts. He also said that regular meetings of the ministry's employees with representatives of education officers would be taking place to develop proposals to solve the problems connected with organising thematic competitions.

In the Ombudsman's opinion, the indicated activity reinforced the system of educational preferences for smart students yet it did not change the fact that

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<sup>410</sup> BMP-0791-1-2/2016/PS/MJ

<sup>411</sup> ZEW.422.13.2016.JBR

<sup>412</sup> DWKI-WWPB.4056.13.2016.AMO

<sup>413</sup> Dz. U., Journal of Laws of 2016, Item 1943 with later amendments).

the number of contests (Olimpiada) participants is only 9% of students who took part in voivodeship competitions (at the stage of school) Thematic competition organised by education officers are still very popular among the most gifted young people. It is obvious then that when any irregularities appear, they raise great emotions in the group of young persons interested in them. In his another address<sup>414</sup> the Ombudsman asked the Minister of National Education for details of agreements made with respect to works over changes in the system or organising competitions. He also asked to repeat the analysis of the presented problem and undertake relevant measures to provide equal chance to education for all students, regardless of their domicile or disabilities.

In response<sup>415</sup> the Minister of National Education informed that in the light of the law in force, standardisation of the rules and regulations of competitions in particular voivodeships both in organisational and substantial terms was not possible. The issue of organisation of thematic competitions in reference with adjustment of terms of competitions to the potential of adisabled student remains the point of interest of the Ombudsman for Children.

- **Operation of youth educational centres and youth social therapy centres – address of 17 March 2016**

The Ombudsman for Children in his address<sup>416</sup> to the Minister of National Education requested changes to be introduced to the Ordinance of the Minister of National Education of 02 November 2015 on *types and detailed principles of operation of public facilities, conditions of children's and youth's stay in those facilities and the sum and rules of payment of fees by parents for the stay of their children in those facilities*. The Ombudsman noticed that the document included most of his demands given to him on 02 March 2015 in the document entitled “*Standards of stay of children in youth education centres and youth social therapy centre in the field of education, upbringing and care.*” Yet the new law omitted – as the Ombudsman for Children stressed – some very important issues regarding the quality of operation of those such as: determining the maximum number of children (72 persons), employing therapists and introducing supervision over educational work, upbringing and specialist work at least once a month and provision of medical care.

The Ombudsman pointed also to the need to accelerate the implementation of the definition of a “charge” from 01 September 2016 and not, as it was put down

<sup>414</sup> ZEW.422.13.2016.JBR

<sup>415</sup> DWKI-WWPB.4056.13.2016.AMO

<sup>416</sup> ZEW.422.15.2016.JF



in the ordinance – from 01 September 2016. In the Ombudsman's opinion this is of particular meaning when calculating the general part of educational subsidy for local government units dedicated to operation of those facilities and, in the same way, to the quality of support provided to children.

In response<sup>417</sup> the Minister of National Education informed that the demands of the Ombudsman for Children were allowed and made reference to other legislative proposals which were not taken into account. The Minister informed also about the ministerial plans with respect to increasing the availability of specialist psychiatric care for pupils of youth education centre and youth social therapy centres and improving professional qualifications of teachers employed in those centres.

- **Disproportion in the allocation of resources to education of Polish children abroad – address of 23 March and 10 August 2016**

The Ombudsman for Children investigated<sup>418</sup> the problem of disproportion in the allocation of means designated for education of Polish children in school consultation points and community schools. In complaints addressed to the Ombudsman the petitioners claimed that as a result of the solutions applied, many new Polish schools in Ireland were closed. Meetings held with representatives of foreign and Polish party at which they spoke about the necessity to change the system, were not concluded with an agreement.

The information<sup>419</sup> obtained by the Ombudsman said also that similar problem was reported by Polish people in Japan. Thus the Ombudsman addressed<sup>420</sup> the Minister of Foreign Affairs (pointed by the Minister of National Education as the political leader in shaping the politics of Polish Government against Polish community abroad<sup>421</sup>) and asked him for investigation in the problem and presenting his position in that matter.

The Minister of Foreign Affairs informed<sup>422</sup> about the adopted solutions in distribution of resources in previous years and changes connected with it. He indicated that he knew exactly what were the public and social needs of schools abroad. He stated that education in Polish community, under the Governmental

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<sup>417</sup> DWKI-WSPE.5015.5.2016.KT

<sup>418</sup> ZEW.441.1558.2015.ES

<sup>419</sup> ZEW.441.1679.2015.ES

<sup>420</sup> ZEW.422.14.2016.ES

<sup>421</sup> DSWM-WOPG.086.59.2015.BT

<sup>422</sup> DWPPG.0121.18.2016/3/IN

Programme of Cooperation with Polish community Abroad for the years 2015-2020, developed by the Ministry, was defined as one of the priorities in the policy of Polish Government. The Minister assured that his ministry reacted to the phenomena and processes taking place in the circles of Polish communities abroad and met specific needs as far as the available funds allowed to. On the other hand the Ministry was well aware that keeping the school consultation points unchanged, designed for a small number of Polish citizens who were learning abroad, caused an unfair disproportion for the others. The question of levelling the financing of school consultation points and community schools appeared for the first time in the strategy for Polish community education of the Minister of National Education in 2009. Numerous controversies and disputes stopped the implementation of changes and the ministry of education withdrew from this activity.

Having in mind the above mentioned explanations, the Ombudsman for Children again addressed<sup>423</sup> the Minister of National Education with a request for action so as to guarantee equal access to education for all Polish people staying abroad.

In response<sup>424</sup> the Minister of National Education informed about the tasks mentioned in the Act on the education system and executive regulations and presented data on the number of units that realized the framework or supplementary syllabus (school complexes and school consultation centres), the number of children participating in both types of learning, maintenance costs of those units and of teachers who were transferred to teach there. The Minister stressed that in 2016 he was continuing the implementation of tasks connected with management of schools and school consultation points at the diplomatic service units, consular offices and Polish military units on mission. He added also that he was working on, in cooperation with the Minister of Foreign Affairs, standards of support for Polish community education, to provide as wide access to Polish language learning for children and youth as possible. The Minister of National Education did not present his opinion with respect to the issue referred to by the Minister of Foreign Affairs, that is the unchanged model of school consultation points designed for small number of Polish people learning abroad and causing unfair disproportions this way. He neither answered to the question about levelling the financing. The case is still being controlled by the Ombudsman for Children.

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<sup>423</sup> ZEW.422.31.2016.ES

<sup>424</sup> DSWM-WOPG.086.131.2016.BP

- **Disciplinary proceedings for teachers – address of 29 March 2016**

Following the works on the Act of 18 March 2016 amending the Act – the teacher’s charter and some other acts<sup>425</sup> the Ombudsman for Children presented<sup>426</sup> his position to the Speaker of the Senate of the Republic of Poland. He stressed in it that the act took into consideration many demands brought by the Ombudsman for Children introducing new quality to disciplinary proceedings for teachers. In his opinion, to provide the child with full protection, further suggestions should also be considered. Lack of legal regulations that would empower the Ombudsman to participate in proceedings before disciplinary committee of first and second instance, raised doubts of the Ombudsman.

The Minister of National Education informed<sup>427</sup> that the suggested amendments would be considered after conclusions related to the effectiveness of new regulations were formulated.

- **Definition of terms “child” and “family” in the context of Act on the education system – address of 30 March 2016**

In his address<sup>428</sup> to the Minister of National Education the Ombudsman for Children again<sup>429</sup> pointed out that the term “child” and “family” had no legal definitions in the act. He stressed that lack of those definitions, with so many discrepancies in their definition in other acts caused serious interpretative problems for bodies that arranged the recruitment procedure for kindergartens. He suggested completion of the draft by adding to Article 1 point 13a, in which in Article 20b a point 3 and 4 are added after point 2, legal definitions of the terms: “family” and “child”.

The Minister of National Education did not agree<sup>430</sup> with the Ombudsman for Children. He wrote that care for the child’s well-being and meeting the needs of a family were taken into account in the criteria of recruitment procedure and local authorities should refer to this definition of family which most adequately supported local families.

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<sup>425</sup> Dz. U., Journal of Laws, Item 668

<sup>426</sup> ZEW.422.17.2016.JBR

<sup>427</sup> DWST-WPZN.6026.11.2016.KK

<sup>428</sup> ZEW.422.16.2016.JBR

<sup>429</sup> ZEW.422.7.2015.MP

<sup>430</sup> DKO-WOK.400.1.2016.MŁ

- **Rules of organisation of school sports competition under the programme "Sports of All Children" – address of 20 April 2016**

In his address<sup>431</sup> to the Minister of Sports and Tourism the Ombudsman for Children pointed to the problem arising from the rules and regulations of local sports associations. The rules and regulations provided that students who had competitor's license in a given discipline (e.g. football) could not take part in competitions of various levels organised by schools. According to the Ombudsman, the rules under which school sports competitions are organised in the programme "**Sport Wszystkich Dzieci**" ["**Sports for All Children**"] **exclude some of the students**. The Ombudsman asked the Minister for analysis of the problem, his position in that matter and undertaking relevant measures to remove the above mentioned irregularity.

The Minister of Sports and Tourism agreed<sup>432</sup> with the Ombudsman for Children and underlined that prohibition to represent one's own school in a given sports discipline – was unacceptable. Interpretation of clearly defined goals of the programme "Support for All Children" adopted by the School Sports Association, the Head and its Divisions, was unreasonable. Moreover, the Minister saw the need to touch the topic of participation by the students/competitors in the system of school sports in other sports discipline than his own (trained in a sports club), in the context of systemic regulation.

- **The Survey Report Observance of students' rights in schools of the Vistula area – address of 13 May 2016**

The Ombudsman for Children reviewed the report entitled *Observance of students' rights in school of Vistula area*<sup>433</sup>. The results of the survey implied that Polish students felt constrained when having to express their opinions and views and emotions and felt underestimated at school by adults, as the school's activity concentrated on achieving best possible results. Conclusions drawn in the report were in line with those that could be formulated on the basis of interventions undertaken by the Ombudsman for Children in the field of the right to education (there were more than 8,3 of them in 2015). The Ombudsman, acknowledging the need for wide public discussion on the picture of Polish school and its tasks in the context of the right of every young man to harmonious development as provided by the Convention on the Rights of the

<sup>431</sup> ZEW.422.18.2016.JR

<sup>432</sup> DS/4303/3/2016/MB1/25

<sup>433</sup> Survey Report *Observance of students' rights in schools of Vistula area*, developed by the Pokolenia Foundation and the Foundation of the Social Survey and Analysis Centre

Child, addressed a relevant address<sup>434</sup> to the Minister of National Education. He presented the conclusions drawn from the review of the *Report* and asked for its more detailed analysis and action to introduce such modification into the operation of education system units that the child and its unconstrained development be the subject of every educational activity and the knowledge and observance of the child's rights be the guarantee that well-being of the child would be protected as far as possible.

In response<sup>435</sup> the Minister of National Education agreed with the Ombudsman's reasons for change in the current regulations regarding statutes of state schools and facilities, yet due to other changes scheduled earlier, the deadline for implementation of the regulations in question was postponed to the 2019/2020 school year. He also informed that he had passed the *Report* to the education officer of Pomorskie Voivodeship for practical use.

- **Recruitment to first class of lower secondary schools out of districts – address of 13 May 2016**

The Ombudsman for Children in his address<sup>436</sup> to the President of Warsaw asked for analysis of the problem of defining criteria in the process of recruitment to out-of district lower secondary schools and to undertake action to guarantee fair treatment of children in the course of the recruitment process. The doubts were raised with respect to the grade in religion and conduct which were taken into account in the recruitment procedures (which were not considered in case of a student who learned out of school).

The President of the Capital City of Warsaw informed<sup>437</sup> that in case a student did not participate in the class e.g. religion or physical exercise, the average was not calculated adequately – of smaller number of subjects. In case of candidates who learned out of school, the average is calculated as mentioned above, meaning that if there was no grade in conduct, it was not included in the average grade. Yet the problem of additional points in the recruitment process was not clarified, as the points were given to children for the grade in conduct, and children learning out of school were deprived of those points. The problem referred mainly children who were applying for being admitted to a lower secondary school (gymnasium) out of district. The case is still being controlled by the Ombudsman for Children.

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<sup>434</sup> ZEW.422.20.2016.JBR

<sup>435</sup> DWKI-WPB.4017.5.2016.KK

<sup>436</sup> ZEW.422.21.2016.ES

<sup>437</sup> BE-WPSN.4450.70.2016.MKC

- **Suicides and suicidal attempts among students – address of 30 May 2016**

Conclusions drawn by the Ombudsman for Children from the analysis of cases of suicidal deaths of lower secondary school (gymnasium) students<sup>438</sup> suggested that the schools did not always play their protective role. Cases investigated by the Ombudsman revealed the phenomenon of bullying – specific type of violence based on long term and regular harassment of a victim by a person or a group. Its victims – students – died a tragic death (which did not mean that this was the only reason for committing suicide). The reasons for violence experienced by a boy and inflicted by his peers was his look – his special care for clothes and hair.

Having in mind that the phenomenon of violence is spreading the Ombudsman for Children addressed<sup>439</sup> education officers with a request for action and special focus on the problem under their pedagogical supervision.

The Ombudsman pointed also that in recent years violence – including bullying with the use of electronic devices – was a spreading phenomenon. It could take different forms: sending vulgar e-mails, phone messages, vulgar provoking by communicator and in the internet, publishing and distributing humiliating information, photographs, movies, adding humiliating comments to blog entries and fora, impersonating others to humiliate them.

Survey results<sup>440</sup> show that more than a half of children experience violence on-line. The specific nature of Internet and smart phones makes a seemingly innocent act of cyberviolence grow into a serious problem they very often are not able to deal with. The problem of cyberviolence refers of course to school. In the class, cloakroom or school yard, act of violence take place with use of phones or internet. Pedagogues learn about such event very rarely – they know about only 6% of them.

Counteracting the phenomenon of violence at school – in the opinion of the Ombudsman for Children – requires, on one hand, that parents and teachers be prepared for careful observation of children, initiating preventive activity and

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<sup>438</sup> ZEW.441.437.2015.JF, ZEW.441.817.2016.JF

<sup>439</sup> ZEW.422.26.2016.JF

<sup>440</sup> Wojtasik Ł., *Jak reagować na cyberprzemoc. Poradnik dla szkół* [How to react to cyber-violence. A guide for schools], 2 edition. The Library of the Programme “A Child in the Network” by Dzieci Niczyje Foundation.

properly reacting to problems that emerge; an on the other hand – such cooperation with parents/ legal carers that all its sign were eliminated.

In the Ombudsman for Children's opinion a school should be a place in which the children's well-being and their physical and mental state are consciously cared for. The Ombudsman saw the need to equip teachers and educators with specific knowledge so that they could consciously select programmes adapted to the specific nature of each single school community. It is important to become aware of the need to observe each child carefully and effectively diagnose the reasons for the child's possible improper conduct. When child's problems are noticed on time, there is still a chance that he or she would be given effective assistance.

In his address the Ombudsman for Children asked for consideration of the above mentioned issues in the plans of pedagogical supervision and presentation of results of the undertaken activity ad conclusions formulated with respect thereto.

The information would be sent after the 2016/2017 school year comes to an end.

- **Calculating subsidy dedicated to education of children out of a kindergarten of school – address of 30 May 2016**

Changed calculation of subsidy raised an echo reaction of parents whose children were learning out of school/kindergarten. Thus, in January 2016 a meeting was held at the Ministry with parents. Many conclusions were formulated then. Actions undertaken by the Ministry did not, however, dispel parents' doubts so the Ombudsman for Children addressed<sup>441</sup> the Minister of National Education and pointed to the issues discussed and asked for information on current arrangements with respect to functioning of the so called home education and further plans that would follow the conclusions formulated in the course of the consultations.

In response<sup>442</sup> the Minister of National Education presented i.a. regulations governing the obligation to attend kindergarten, school and the obligation to learn out of the education system and arrangement of classification exam. He also informed that currently binding regulations did not provide neither standardisation of classification exams nor the option of having them on-line. The

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<sup>441</sup> ZEW.422.24.2016.ES

<sup>442</sup> DKO-WOK.4031.45.2016.AAS

issue of missing grade in conduct in the context of its influence on the process of recruitment to a higher level school was not found to be a sign of unfair treatment.

The Ombudsman could not agree with that. Currently binding regulations provide that a student who is learning out of school is not evaluated in terms of his or her conduct. In the process of recruitment to schools other than district schools, this fact had a great meaning, as it did not allow the students to get additional points for that.

Finally however the Minister took arguments of the Ombudsman for Children into consideration, namely that a grade in conduct – as such – did not influence educational achievements of a pupil and that the adopted regulations could lead to unfair treatment of children in the process of recruitment to schools. In the currently bonding Educational Law the regulations do not allow for the option of granting additional points for conduct in the process of recruitment.

- **Sanitary condition of schools – address of 03 June 2016**

Having analysed all complaints addressed to him and considering the Report “Stan sanitarny w kraju w roku 2014” [Sanitary condition of the state in 2014] which included information on unsatisfactory conditions provided to children in crèches, kindergartens, schools, children’s homes, boarding houses, dormitories and special centres, the Ombudsman addressed<sup>443</sup> the Chief Sanitary Inspector with a request for assessment of the sanitary condition of facilities meant for children and youth in 2015. He asked also for information whether legal orders to provide appropriate safety standards and hygienic conditions by local authorities and bodies that managed facilities were enforced and whether those bodies who had planned to remove external toilets in years 2010-2015 really did so, and if not – for a list of facilities which still faced the problem.

In response<sup>444</sup> the Chief Sanitary Inspector passed the Ombudsman the Report on assessment of sanitary condition of facilities and informed that in 2015 six schools still used external toilets (along with their names). He also informed that in April and May 2016 it was evaluated how the regulations regarding the option provided to children and youth to leave student’s books and school equipment were followed (96% inspected schools – that is 338 primary schools and 340 lower secondary school – did follow this regulation). Those results showed that the situation had improved. At the same time the Chief Sanitary

<sup>443</sup> ZEW.422.25.2016.ES

<sup>444</sup> GIS-PZ-HD-073-00003/WO/16



Inspector assured that the data obtained during the last report were being analysed and the results of this analysis would be used to develop an educational campaign regarding the correct weight of school bags – addressed to schools, parents and students.

- **Day support centres – address of 06 June 2016**

The Ombudsman for Children in his address<sup>445</sup> to the Minister of Family, Labour and Social Policy, applied for presentation of conclusions drawn in the report on the situation of children that required support. Restricted regulations governing the sanitary and housing requirements for day support centres introduced in recent years resulted in that many of them had to be closed. In his previous address the Ombudsman asked for evaluation of the scale of the problem and its analysis.

The Ombudsman for Children had many times pointed out in his addressed about day support centres that cases he happened to undertake showed clearly how difficult the situation of neglected children, children living in pathological families had been and how important day support centres were for them.

In response<sup>446</sup> the Minister informed that in 2015 the number of day support centres increased by 31 facilities as compared to the year 2014 and the number of children who attended them decreased by 2,3%. As far as financial security was concerned, he stressed that in 2014 Regional Operational Programmes started to be implemented. Creating and supporting the activity of day support facilities that existed already had become one of the priorities in the social service agenda. He stressed that it was the task of local governments (gmina and powiat) to manage such facilities, so it was also their responsibility to liquidate them or establish new ones. Yet as a result of monitoring of the realisation of the Act on family support and foster care system by day support centres, the ministry undertook relevant measures both legal and securing the financial resources to support establishing new and develop existing day support centres.

- **Irregularities in recruitment process in kindergartens and accessibility of vacancies in kindergartens – address of 07 June 2016**

In the address<sup>447</sup> to the Minister of National Education the Ombudsman for Children, making reference to his address about accessibility of kindergartens

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<sup>445</sup> ZEW.422.25.2016.ZA

<sup>446</sup> DSR.I.8300.55.2016.AKU

<sup>447</sup> ZEW.422.27.2016.MP

to 3-year-olds, quoted also the results of inspection conducted by Supreme Audit Office (NIK) in the period from 15 June to 30 September in kindergartens and similar facilities in the Podlasie region. As NIK concluded, in at least 80% of inspected local communities their educational basis allowed to meet only 69% – 92,1% of the needs of children domiciled within the respective areas in the age from 3 to 5. According to NIK, the school attendance obligation brought back to the age of 7 additionally increased the risk. NIK pointed also to the irregularities in recruitment procedure in kindergartens, meaning that statutory regulations and internal procedures were violated, for example, additional criteria were set by unauthorised bodies (recruitment committees) and those criteria were not made public, incorrect assessment and qualification of applications for a child's admission to a kindergarten and disobeying regulations with respect to appeal proceedings.

In response<sup>448</sup> the Minister of National Education presented the regulations of the education law that governed the organisation of pre-school education and statistical data referring to the factor of dissemination of pre-school education and the number of kindergartens. Making reference to irregularities reported by the Ombudsman for Children, the Minister informed that in order to solve problem on a current basis, during the process of recruitment, an information service line was opened by the Ministry which received applications both by phone and the Internet.

The Ministry published a list of objectives in the performance of tasks under pedagogical supervision in the field of inspections in state kindergartens, other forms of pre-school education and pre-school departments in primary schools and one of them was to inspect the *conformity with the regulations of law in the recruitment procedures in kindergartens for the school year 2017/2018*<sup>449</sup>.

- **Draft Act amending the act on family support and foster care system, Act on social support and Act amending the act on commune self-government and some acts – address of 15 July 2016**

In the address<sup>450</sup> to the president of the Sejm Commission of Social Policy and Family the Ombudsman for Children presented his comments and suggestions to the draft act amending the act on family support and foster care system, Act on social support and Act amending the act on commune self-government and some acts.

<sup>448</sup> DKO-WOK.400.63.2016.AT

<sup>449</sup> DKO-WNP.4092.58.2016.DB

<sup>450</sup> ZEW.422.30.2016.ZA

The Ombudsman stressed that as because of the family-like nature of a residential institution which was to create conditions as close to a family home as possible, it seemed reasonable to introduce some restrictions with respect to places where such residential institutions could be located. They should not be located at medical facilities or detoxification detention centre. He stressed that this referred also to day support centres. Yet he noted that this should not exclude the option to locate educational units or social service units in the nearby – of course if it was safe for children. According to the Ombudsman, such facilities should be generally accessible to children, and any restriction to their location should be thoroughly analysed. Arbitrary restrictions as to the location of a day support centre in one building with another organisational unit would result in closing the existing facilities of day support or in building barriers in establishing new ones, which would be against the widely interpreted child's well-being.

This remark was allowed in the course of legislative work.

- **The level of pocket money for pupils of residential institutions – address of 19 July 2016**

The Ombudsman for Children in the address<sup>451</sup> to the Minister of Family, Labour and Social Policy again called for the possibility to undertake legislative steps to make the level of pocket money given to children living in residential institutions and regional care and therapy centres more realistic so that it would be adequate to their needs, be in line with the assumed educational objective and not be a negative factor in shaping the self-esteem of a young man, deprive of daily support of his or her biological parents.

The problem of extremely low level of pocket money paid to pupils of residential institutions and regional care and therapy centres was already signalled in 2015 to the Minister of Labour and Social Policy by the Ombudsman for Children in his opinion to the *draft ordinance of the Minister of Labour and Social Policy amending the ordinance on institutional foster care*. In the opinion of the Ombudsman, the minimum sum of monthly pocket money (10 PLN) was not only absurd in terms of meeting the basic needs of children, but also humiliating.

In response<sup>452</sup> the Minister of Family, Labour and Social Policy agreed with the Ombudsman that the sum of 10 PLN was very small. He informed that the

<sup>451</sup> ZEW.422.29.2016.ZA

<sup>452</sup> DSR.I.8302.150.2016.AKU

previous government had started to work on the relevant regulations in that matter but did not finish them during its term. He also mentioned that the indicated sum was only the lower limit and its final amount was to be decided by a manager of a facility. He also informed that the Ministry was reviewing the Act on family support and foster care system and executive law in terms of possibly necessary amendments.

- **Consequences arising from incorrect exam sheets during lower secondary school examinations – address of 04 August 2016**

The Ombudsman for Children in the address<sup>453</sup> to the Minister of National Education applied for an analysis of an issue connected with giving students wrong sheets during lower secondary school examinations and for action to introduce such changes that the well-being of a child was protected in such situations. The reason of the address were complaints sent to the Ombudsman indicating distributing wrong exam sheets during examinations, as a result of which the results were deemed invalid and children had to do the exam again. The Ombudsman pointed out that it was the children only who suffered the consequences of mistakes made by adults, because regulations did not provide for other solutions. In his opinion, consequences provided by regulations of law for persons who did such mistakes should be severe enough to force due diligence during examinations.

In response<sup>454</sup> the Minister of National Education informed that due to the need to provide students with the most comfortable conditions for the exam, it was not appropriate to put a description on the exam sheet that would define the forms of adjustment. Exam sheets were marked on the title pages with symbols that would allow to identify them correctly. The symbols included information on the type of exam, its scope and adjustment.

The Minister assured that teachers and school managers regularly participated in trainings organised by the District Examination Board and relevant procedures in that matter had been implemented. At the same time the Minister informed that having in mind the great importance of such negative events, the presidents of District Examination Boards were obliged to turn the school managers' attention to this specific problem.

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<sup>453</sup> ZEW.422.23.2016.JBR

<sup>454</sup> DKO-WEK.4043.5.2016.MR

- **Equal treatment of children in awarding grants to children for very good results in learning – address of 13 September 2016**

According to the rules and regulations of awarding grants, developed on the basis of guidelines of the Minister of Infrastructure and Development of 02 June 2015 in realisation of undertakings involving the resources of European Social Fund in education for the years 2014-2020, grants might be awarded only to students from schools that achieved the worst results, which, in opinion of the Ombudsman, violated the child's right to equal treatment.

The Ombudsman addressed<sup>455</sup> the Deputy Prime Minister, the Minister of Development with a request for analysis of the problem of unequal treatment in providing financial support co-financed by the European Union under European Social Fund as well as for action to eliminate the practice of unfair treatment of children and to compensate for the lost benefits the students not included in the grant programme.

In response<sup>456</sup> the Minister of Development and Finance informed that the guidelines for awarding grants were changed so that it would not be necessary to apply the prerogative of providing support to students of schools with least achievements. At the same time, Institutions Managing the Regional Operational Programme were informed of the possibility to apply amended provisions to competitions and application reception announced before that date unless it violated the regulations of the Act of 11 July 2014 on the rules of implementing cohesion policy programmes financed in the 2014-2020 financial perspective in the field of equal treatment of applicants.

- **Unequal access to education for children from rural areas – address of 27 September 2016**

In his address<sup>457</sup> to the Minister of National Education the Ombudsman for Children indicated the problem of social disproportions in access to education among children from urban and rural areas. The Ombudsman expressed his anxiety that the changes in the education system (the age of 7 as the first year of mandatory school attendance) could have a negative impact on educational chances of children from small towns and rural areas. He pointed out that the previous system of promoting pre-school education and early education start

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<sup>455</sup> ZEW.422.34.2016.JF

<sup>456</sup> DZF.VII.054.12.2016.BP.1

<sup>457</sup> ZEW.422.35.2016.KD

in primary school facilitated levelling of chances of children from different social groups.

In his opinion, promotion of pre-school education is a prerequisite for providing equal chances to children. Pre-school activities stimulate child's development and prepare the child to learn at school, shape the ability to spend time with peers, and children from families of low cultural potential are stimulated in their intellectual development. Owing to that children who attended a kindergarten manage better in the future than those who did not. This is confirmed by vast research.

The Ombudsman noticed also that in recent years pre-school education was disseminated in rural areas much more intensively which can be related to the introduction of mandatory pre-school education for 5-year-old children from 2011 and gradual increase of the number of facilities. Yet the disproportion between access to kindergartens in cities and rural areas is considerable. According to the data published by the Main Statistical Office in the school year 2014/2015, 4% of children in the age from 3 to 5 attended pre-school education facilities and the interest of children from urban areas was 92,9% and from rural areas – only 60,8%.

In response<sup>458</sup> the Minister of National Education, making reference to the problem of social disproportion in access to education, informed that it was a complex problem – connected with different economic potential of families, differences in infrastructure in various environments and systemic and structural solutions in the education system. The Minister presented information about intended amendments in this system which would facilitate levelling of educational chances for children from rural areas. Liquidation of lower secondary school (gymnasium) was supposed to be particularly advantageous in that context. The Minister informed that currently many of the lower secondary schools in big cities held selective recruitment which resulted in highly differentiated results of the final exam and that such selection did not facilitate levelling of chances. The Minister made also reference to the functioning supportive mechanisms which aim was to level different factors, economic and social, that could pose a risk of unequal access to education for children and youth.

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<sup>458</sup> DWKI-SPR.053.3.2016.CZ

- **Operation of Polish schools in Lithuania – addressed of 30 September and 22 December 2016**

The Ombudsman for Children addressed<sup>459</sup> i.a. the Speaker of the Senate already in 2015 with respect to changes in the Lithuanian education system that led to lithuanisation of Polish people and de-polonisation of Lithuania. In response<sup>460</sup> the Speaker of the Senate informed the Ombudsman for Children in detail of activity undertaken under monitoring activity by the Presidium of the Senate with respect to current problems of Polish-speaking education system in Lithuania and planned strategy for the future.

As part of continuation of his activity for improvement of difficult situation of Polish circles in Lithuania, the Ombudsman again addressed<sup>461</sup> the Speaker of the Senate with a request for further information in that matter, particularly with respect to whether there had been developed – according to the previous declaration – in cooperation with Lithuanian authorities – solutions that would allow to effectively protect Polish children in the context of education system being restructured.

In response<sup>462</sup> the President of the Senate Committee for Emigration Affairs and Contacts with Poles Abroad informed that, alarmed by the policy of Lithuanian authorities against Polish education facilities and the protests of Polish schools, addressed in March 2016 the Minister of National Education with a request for urgent reaction to maintain Polish schools in Vilnius. Additionally in June 2016 the Committee held a session dedicated to the situation of Polish education in the East in which also representatives of Polish community in Lithuania participated.

The Ombudsman was also informed that the Interministerial Team for Polish Community Abroad was working on the governmental strategy for development of Polish language teaching abroad. So the Ombudsman addressed<sup>463</sup> the President of the Team for the document as soon as it was completed. The Ombudsman is waiting for the answer.

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<sup>459</sup> ZEW.422.35.2015.JR, ZEW.422.35.2015.JK

<sup>460</sup> GMS/042-2/16

<sup>461</sup> ZEW.422.35.2015.JR

<sup>462</sup> BPS/KSEP/042-15/2016

<sup>463</sup> ZEW.422.35.2015.JK

- **Position of the European Network of the Ombudsmen for Children on education of children – address of 03 October 2016**

The Ombudsman for Children submitted<sup>464</sup> to the Prime Minister the position of the European Network of the Ombudsmen for Children (ENOC) of 22 September 2016 regarding unequal access to education for children of poor environments and ethnic minorities or disabled children. This problem was already subject to analysis and debate during the ENOC convention in Vilnius. Ombudsmen for Children of Europe, having in mind the necessity to fully exercise the rights of children, adopted a resolution on “Equal chances in education for all children”. The Ombudsmen stressed that the phenomenon had a deep impact on the rights of the child and their realisation as set in the Convention on the Rights of the Child and resulted in unequal treatment of the youngest which violated the constitutional values of the state.

The document presented priorities in the tasks appointed to state institutions in the sector of education. Among them are: provision and maintenance of relevant level of funds dedicated to education; guarantee of the same quality of education to all children regardless of their social, ethnic and cultural background, gender or nationality, increasing the chances of access to early childhood education and care (ECEC) to children in most difficult situations; increasing the chances of higher education after the mandatory education; provision of access to high quality inclusive or special education that takes into account the needs of children; development of measures to include minor foreigners and children from ethnic, religious or cultural minorities into state education systems and provision of full and equal access to their rights; giving children who live temporarily in camps or shelters equal access to educational classes on high level, adjusted to their needs; provision of the possibility to really participate in the education system to all children; provision of equal access to creative and expressive teaching and professional improvement of teachers oriented towards realisation of the rule of equal chances in education.

The Ombudsman for Children addressed the Prime Minister with a request for analysis of this document and indication what activity in that field had been undertaken by the government.

In response<sup>465</sup> given in behalf of the Prime Minister, the Minister of National Education informed about the realization of action to promote equal chances in education arising from the currently binding regulations, that it the Act on

<sup>464</sup> ZEW.422.36.2016.KD

<sup>465</sup> DWKI-SPR.053.4.2016.CZ



the education system and executive regulations, including i.a. the Ordinance of the Minister of National Education on *the rules of providing and arranging for psychological and pedagogical support in state kindergartens, schools and facilities*<sup>466</sup>, the Ordinance of the Minister of National Education on *types and detailed rules of operation of state facilities and the rules and fees for parents for their children's stay in those facilities*<sup>467</sup>, and the Ordinance of the Minister of National Education on *decisions and opinions issued by adjudicating committees in state psychological and pedagogical consultation centres*<sup>468</sup>. The Minister of National Education informed also about the activity to promote pre-school education and means of financing it. Furthermore the Ombudsman received information about psychological and pedagogical support offered to students and legal solutions that allowed the students with disabilities and their parents to choose freely the path of education. The Ombudsman was also given information about activity in the field of education of foreign children.

- **Amendment of regulations on education – addresses of 5 October, 28 November and 22 December 2016**

The Ombudsman for Children in his address<sup>469</sup> to the Minister of National Education presented his position with respect to suggested changes in education law, which was at the same time the opinion to the submitted draft act Regulations that introduce the act – Education Law and the act – Education Law. In the presented opinion the Ombudsman stressed that all changes regarding school system should be carried out with great deliberation and at a pace that would allow to analyse thoroughly the potential effects of the suggested solutions. The activity of the ministry in that field – according to the Ombudsman – did not allow to carry out a detailed analysis of consequences of the suggested systemic solutions.

The Ombudsman pointed also out that the disturbed feeling of security, connected with such wide and ambiguous changes resulting from the reconstruction of the school system.

In the opinion addressed to the Minister of National Education the Ombudsman pointed also that as a result of changes in the system of education, students who would start education in 2017 in the 1. and 7. grade of a primary school would be the first to start their education in the new system. At the same

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<sup>466</sup> Dz. U. poz. 532

<sup>467</sup> Dz. U. poz. 1872

<sup>468</sup> Dz. U., Journal of Laws of 2008, Item 1072.

<sup>469</sup> ZEW.422.37.2016.JF

time, students of other grades would continue their cycle of learning in primary schools and lower secondary schools. This means that in the school year 2019/2020, upper secondary schools and upper secondary technical schools would receive students after 8. year of general school and after 3. year of lower secondary school and, considering the dates of children's birth, three years: 2003, 2004 and 2005). In such case, even if the school's work was very well organised, the grades would have to be very numerous and access to their school of dreams – limited.

In this context, solutions proposed in the regulations introducing the Act education law could be deemed unconstitutional and violating Articles 32 and 70 of the Constitution of the Republic of Poland that guaranteed equal treatment and access to education to all citizens. The Ombudsman informed that detailed comments and suggestions to the draft act would be submitted by him in the course of works. In his opinion, making an overall assessment was not possible as there were no detailed information about suggested solutions (e.g. executive regulations to the act).

The Minister of National Education did not agree<sup>470</sup> with the Ombudsman for Children and informed about intended solutions which, in his opinion, would facilitate improvement in the education system and in students' feeling of safety. He also informed that the acts provided gradual and evolutionary elimination of lower secondary schools.

In his subsequent address<sup>471</sup> the Ombudsman for Children upheld his previous position, presented demands and possible threats arising from the suggested solutions in the education system. He stressed that despite lack of multi-surface research and expert's opinions that would allow to identify areas of risk and to effectively secure well-being of children against the consequences of suggested solutions and despite many questions and doubts expressed by the educational environment, the ministry was going to introduce the intended changes too fast. He called for an in-depth analysis of effects of the suggested solutions and deliberation in implementing the changes.

In response<sup>472</sup> the Minister of National Education informed that the work on the education system reform were preceded by numerous debates and consultations in which, apart from trade unions of teachers and local self-government units, also parents, students, teachers and school managers took part. Then,

<sup>470</sup> DPPI-WPPiP.400.12.2016.JS

<sup>471</sup> ZEW.422.40.2016.JBR

<sup>472</sup> DPPI-WPPiP.400.42.2016.JS

at the stage of legislative work, the act were consulted with many partners representing circles related to the education system. The Minister concluded that changes suggested in the acts covered many solutions dedicated to reinforcement of the educational role of school, including combining the school educational programme and the preventive programme. Experience and skills of teachers employed in lower secondary schools would be full used in work with students of higher grades of primary schools who, after the changes came into force, would become the students of grades 7 and 8. Teachers employed at that tie in lower secondary schools had qualifications to teach also in primary schools and most of them had also qualifications to teach in higher secondary schools. A positive atmosphere at school results from cooperation of all actors involved in school's society – the manager, teachers, employees, parents and students.

The Ombudsman for Children was addressed<sup>473</sup> by a group of members of the Council of Children and Youth of the Republic of Poland at the Minister of National Education who asked him to support their Open Letter to the President of the Republic of Poland with a request for veto the Act of 14 December 2016 the Education Law and the Act of 14 December 2016 – Regulations introducing the Act – Education Law.

In response to the demand of the youth, the Ombudsman for Children addressed<sup>474</sup> the President of the Republic of Poland, presenting his position with respect to possible negative effects of the reform – which was the same as the one previously presented to the Minister of National Education. The Ombudsman stressed that it was the child who was the basis of any thinking about education. Thus, the reform should be rather perceived as a process during which the education programme was subject to constant improvement, the relation with students are built (which was an important element of shaping students' social competence), reinforced potentials and school self-government – as the basis of civil society.

The Ombudsman for Children pointed out especially to the necessity to realise the very important right of the child set in Article 72 item 3 of the Constitution of the Republic of Poland and Article 12 of the Convention on the Rights of the Child. In this context he stressed that this was beyond doubt that the proposed reform referred directly to children, so their right to be heard and to express freely their opinions should be fully realised, particularly with

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<sup>473</sup> ZEW.441.1581.2016.JF

<sup>474</sup> ZEW.422...37.2016.JF

respect to the youth of lower secondary schools, so he asked the President to listen to their voice.

- **Parents' councils in youth educational centres – address of 31 October 2016**

The Ombudsman for Children was notified of the problems with interpretation of regulations governing the work of public youth education centre and public youth social therapy centres. Doubts referred to discrepancies in the regulations governing the operation of parents' councils in the above mentioned centres. The Ordinance of the Minister of National Education and Sports regarding general statutes of public facilities<sup>475</sup> unambiguously shows that parents' councils which operate in state youth education centres and state social therapy centres, submit their opinions on the performance of the facility. The Ordinance of the Minister of National Education though on types of schools and facilities in which parents' councils are not established<sup>476</sup> mentions youth education centres and youth social therapy centres in § 1 point 9. So, both ordinances provide regulations that are contrary to each other.

Thus the Ombudsman for Children addressed<sup>477</sup> the Minister of National Education with a request for analysis of the problem and relevant reaction to make the executive acts uniform.

In response<sup>478</sup> the Minister of National Education informed that remarks provided by the Ombudsman would be used during works on executive acts of law to the Act Education Law. He also informed that relevant delegations were included in the drafter version of the Act, that is in Article 83 item 6 of the draft act Education Law it was indicated that the relevant minister in charge of education, and in case of schools and arts schools – minister in charge of culture and national heritage protection would define, by way of and ordinance, types of schools and facilities in which parents' councils were not established, taking into account the structure of the school or facility or parents being unable to personally participate in their operations. On the other hand, in Article 112 item 2 of the draft it was mentioned that the minister in charge of education, would define, by way of ordinance, general statutes of state facilities, including youth education centres and youth social therapy centres, taking into account

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<sup>475</sup> Dz. U. poz. 466

<sup>476</sup> Dz. U. poz. 1101

<sup>477</sup> ZEW.422.38.2016.WR

<sup>478</sup> DWKI-WSPE-5015.70.2016.KT

the general rules governing the structure of the facility and scopes of issues that should be regulated by such a statute.

- **Disciplinary liability of teacher of other forms of pre-school education – address of 22 November 2016**

The Ombudsman for Children turned<sup>479</sup> the Minister of National Education's attention that there were no regulations to have the effect of holding teachers of other forms of pre-school education disciplinary liable or having them liable to other duties resulting from the Act – Teacher's Charter.

In response<sup>480</sup> the Minister of National Education assured that the problem presented by the Ombudsman for Children would be the subject of the work of the newly established Team for affairs related to professional status of persons employed in the education sector. The task of the Team was to develop systemic solutions in the field of national education with respect to rights and duties of persons employed in this sector, including the professional status of teachers employed by other pre-school education facilities. He informed that as the Team finished their work, it would be possible to design new trends in amending law governing the professional status of those teachers.

- **Safe conditions for and proper care of children with chronic diseases in kindergartens – address of 24 November 2016**

The Ombudsman for Children in his address<sup>481</sup> to the Minister of National Education pointed out that there were no binding and systemic regulations with respect to care of children with chronic diseases that would take into account their individual physical, psychical and educational needs and relevant organisation of kindergarten life. He particularly stressed that the regulations of education law did not include any regulations governing care of children ill with diabetes, epilepsy or food allergy. He noticed that in practice, children are dependent upon an "internal" procedure adopted by a given facility or the attitude of its employees against the child's condition. The Ombudsman had then received information that there were facilities in which teachers would be eager – after a training – to react in situations resulting from the child's specific condition and would perform procedures recommended by physicians. Yet there were also such facilities of which teachers declared that they would only have a supportive role against a child with chronic disease, that they would care

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<sup>479</sup> ZEW.422.39.2016.MP

<sup>480</sup> DWST.WPZN.6026.55.2016.KK

<sup>481</sup> ZEW.422.45.2016.JF

for the child and provide basic life support. It happened then that the child's attendance, and so the realisation of the child's right to education, depended on whether the parents assisted the child in the facility all the time.

In his address the Ombudsman called for analysis of the raised problems and undertaking, in cooperation with the Minister of Health, steps to secure the needs of children with chronic diseases in kindergarten and other types of education facilities. He also declared his readiness to participate in such works. He also made a request for providing children in pre-school education with health care provided by a nurse.

The Minister of National Education agreed<sup>482</sup> with the Ombudsman for Children that provision of health care by a nurse was necessary in kindergartens and informed that the Ministry of Health was actively participating in interministerial consultations regarding draft acts of the Minister of Health, taking into account comments and remarks received in that matter. Proposals and suggestions by the Ministry of National Education indicated i.a. The necessity for the Ministry of Health to start recruiting new employees to work in the education and upbringing, owing to the possibility to use the competences of a health carer. The system of education and vocational training for medical personnel should take into account also training in the field of needs of children suffering from chronic diseases and disabilities, and be adjusted to the specificity of changing health condition of society.

The Minister informed also that the inter-institutional teams of experts at the Ministry of National Education had reported a working remark to the Ministry of Health regarding the need to introduce systemic regulation that would govern the situation of children with chronic diseases in kindergartens and schools, and suggested that the option should be considered to include children in pre-school education facilities into preventive health care (which would be provided by a nurse in the kindergarten). Such cooperation between the nurse, teachers and the parents would facilitate child's correct development.

The Minister of Health answered<sup>483</sup> that no such changes were being implemented at that time as it required a number of binding decisions that would influence the structure and financing of health care system.

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<sup>482</sup> DWKI-WWR.513.30.2016.AZ

<sup>483</sup> DWKI-WWR.513.30.2016.AZ

- **Financing the units of education system – address of 24 November 2016**

The Ombudsman for Children pointed to two problems connected with financing of education system units in his address<sup>484</sup> to the Minister of National Education. First of them referred to subsidy dedicated to operation of youth education centres. The Ombudsman pointed out that the draft ordinance of the Minister of National Education on *the distribution of the subsidy education to local self-government units in 2017*, the level of subsidy the pupils of youth education centres – referred to, but not taken to a centre – and requiring special organisation of learning and teaching methods, defined as 3.000 (P46) was too low. The Ombudsman for Children stressed that a centre's readiness to receive a pupil was related with certain expenses, as it meant that the a vacancy had to be provided in an education group and school class, and relevant number of teachers and other specialists had to be employed. Thus, the Ombudsman called for increasing the level of subsidy dedicated to pupils of youth education centres – those who were referred to but not taken to such a centre.

The second problem presented to the Minister of National Education concerned subsidizing self-government units of non-state integration kindergartens. The Ombudsman had received information that amendments of the Act of 23 June 2016 amending the Act on Education System and some other acts<sup>485</sup> made it impossible for the local authorities to calculate the level of subsidy for disabled children in integration kindergartens on the basis of defined expenses and obliged the authorities to calculate the subsidy on the basis of expenses for all kindergartens in their jurisdiction (mainstream, special and integration kindergartens). This resulted in levelling the subsidy for non-state integration kindergartens with non-public mainstream kindergartens. As a result of amended law from 01 January 2017 (the day the regulations came into force), authorities supervising non-state integration kindergartens would receive lower subsidy. Thus, the Ombudsman for Children asked for analysis of the problem and for official position with respect to possible ways of defining subsidies provided from the budget of local self-government units to able-bodied pupils of non-state integration kindergartens before 01 January 2017 and later on.

W odpowiedzi<sup>486</sup> Minister Edukacji Narodowej wskazał, że waga P46 dla wychowanków młodzieżowych ośrodków wychowawczych skierowanych, lecz

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<sup>484</sup> ZEW.422.41.2016.JK

<sup>485</sup> Dz. U. poz. 1010

<sup>486</sup> DSWM-WA.350.57.2016.PF

niedoprowadzonych zostanie zwiększona z wartości 3 do 5. As far as the problem of subsidizing students with disabilities in integration departments of kindergartens and pre-school departments of primary schools, he informed that it would be analysed along with the works over the act on financing education objectives. He also informed that the ministry was intending to amend the way of subsidizing kindergartens with integration departments so that the local self-government units would be able to provide higher subsidies for those kindergartens.

• **The path to independence of children in foster care – address of 28 November 2016**

As a result of analysis carried by the Ombudsman for Children<sup>487</sup> with respect to cases he received, it appeared that the scale and variability of problems were vast, connected with foster care children becoming independent, placed under a court's decision in foster care and other types of facilities and leaving the homes for mothers with children and pregnant women (as far as they had been in foster care or other unit directly before being admitted to such a home).

Conclusions in that matter, formulated in the course of works of a Team for foster care pupils gaining independence, youth education centres, youth shelters, juvenile detention centre, showed clearly that the procedure of preparing this group of youth to living and adult's life had to be amended in three fields:

- 1) Correction of currently binding regulations, including standardisation of regulations incorporated in the Act on family support and foster care system and the Act on social welfare;
- 2) Defining standards of accomplishing tasks in that field by poviats (regions – arising from the above mentioned acts, that is the Act on social welfare and the Act on family support and foster care system);
- 3) Establishing standards of operation of facilities as actors realising the objective of pupils' becoming independent (resulting from the Act on family support and foster care system) directly with children.

In his address<sup>488</sup> the Minister of Family, Labour and Social Policy with respect to correction of the currently binding regulations (p.1), the Ombudsman for Children asked for amendment of law, including unification of regulations re-

<sup>487</sup> ZEW.421.10.2015.ZA, ZEW.401.1.2016.ZA, ZEW.420.3.2016.ZA, ZEW.422.46.2016.ZA, ZEW.422.47.2016.ZA

<sup>488</sup> ZEW.422.47.2016.ZA



garding the process of becoming independent of pupils of the above mentioned facilities, and to take into account the Ombudsman's demand.

In Ombudsman's opinion, current legal regulations in that respect were inconsistent and ineffective and thus did not provide relevant security for young people who were becoming independent which in many cases led to serious violation of child's rights and was an indication of unfair treatment. He stressed that it was also necessary to consider whether a new act of law was needed (along with executive acts) to regulate all issues connected with children who were becoming independent in various situations of life.

In the other two fields the Ombudsman for Children saw the need to undertake cooperation with starosts – as authorities competent to introduce the above mentioned amendments. In his address<sup>489</sup> to starosts the Ombudsman for Children asked them for detailed analysis of the raised problem and implementation of *Recommendations of the Ombudsman for Children regarding effective independence gaining by children placed in foster care under a court decision and in other types of facilities and by mothers who leave homes for mother with children and pregnant women*, elaborated by the above mentioned Team.

Those recommendations, though addressed before all to institutions that support children, might also be useful when defining the rules of the process of gaining independence by children living in foster care families.

The Minister of Family, Labour and Social Policy agreed<sup>490</sup> with the Ombudsman's initiative to help minor pupils become independent in their adult life. He also agreed that the regulations concerning the process of gaining independence by pupils were inconsistent. Furthermore, the Minister backed also the demand to establish the same network of definitions and unify the rules of providing assistance to all groups of pupils in the process of gaining independence, regardless of the Act based on which this process was taking place. He also informed that the ministry was reviewing the Act on family support and foster care system and how it could be amended also with respect to assistance provided to persons in the process of gaining independence.

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<sup>489</sup> ZEW.422.46.2016.ZA

<sup>490</sup> DSR-I.8303.51.2016.MT

- **Transformation of music schools – addresses of 08 December 2016**

The Ombudsman for Children was addressed <sup>491</sup> by parents of students of music schools, alarmed by the intended changes under the education system reform announced by the Minister of National Education. The intended changes did to provide transformation of music school as in case of schools managed by local self-governments – were not to apply also to music schools in which students were learning under the regular mainstream education programme. If the current structure (6 years) of schools were to be unchanged, situation of a quite large number of children (students of general education music schools which did not operate as one of associated schools) would get more difficult. Education of 7th and 8th grade of primary school would have to be realised in a local school and music education – out of the general education system – in the so called afternoon classes that dealt only with education in art and music. The Ombudsman asked <sup>492</sup> the Minister of Culture and National Heritage to take his position in that matter.

## 4.2. Individual cases connected with the child's right to education

- **Admittance and stay of the child at a crèche**

In 2016, the Ombudsman for Children interceded in cases concerning children in crèches and toddler's clubs. Yet it must be mentioned that compared to the year 2015, the number of those cases was much lower.

For example, there was a case <sup>493</sup> undertaken upon complaint received by the Ombudsman for Children against improper termination of agreement on child's attendance to a crèche. Parents could agree to that and immediately appealed against the termination.

The Ombudsman for Children, having analysed the case, interceded with the city president, asking for action to let the child be still in care of the crèche as before. As a result of this intervention, the child was admitted to the crèche again <sup>494</sup>.

<sup>491</sup> ZEW.441.1377.2016.ES, ZEW.441.1451.2016.ES, ZEW.441.1428.2016.ES, ZEW.441.1511.2016.ES, ZEW.441.1475.2016.ES, ZEW.441.1510.2016.ES

<sup>492</sup> ZEW.422.49.2016.ES

<sup>493</sup> ZEW.441.417.2016.AS

<sup>494</sup> ZD.8120.32.4.2016

- **Support for children with special education needs**

In 2016 the Ombudsman for Children still received complaints about improperly organised education process for children requiring special teaching forms and working methods

The Ombudsman was addressed<sup>495</sup> by a father of a 4 year old boy diagnosed with diabetes type 1. The boy was attending the local crèche. Yet the facility did not provide full care to the boy. One of the parents had to be with him within the territory of the facility and perform necessary procedures connected with giving medicines to the child. At the same time the parents tried to persuade the manager of the facility to take care of their child in full scope. They offered to train the staff and be fully available in case any consultation was needed without them having to come to the crèche. Unfortunately, no agreement was reached.

After the Ombudsman for Children's intervention, the boy, as his parents wished, was admitted to a different crèche. Prior to that the manager of the facility arranged for a training for the staff led by a specialised entity, introduced a new procedure connected with provision of assistance to a child with diagnosed chronic disease and established the form of cooperation with the parents.

In another care the Ombudsman for Children was informed<sup>496</sup> that a manager of primary school notified parents of a student with certified disability that from the beginning of the school year 2016/2017 he would not be allowed to enter the school on his electric wheelchair. The manager argued that heavy and big wheelchair may be dangerous to other children.

The boy had been using the wheelchair to come to school from 2016 and the school manager did not object to that. The records of the school did not mention any problems connected with using the electric wheelchair in school nor it included any information that change of the wheelchair changed the school life.

The school manager did not talk to the parents about the way their son managed at school, including the way he moved on the new wheelchair which he used in the period from April to June 2016.

The parents tried to clarify the problem and appealed against the manager's decision which did not allow the boy to move in electric wheelchair, yet the

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<sup>495</sup> ZEW.441.268.2016.MP

<sup>496</sup> ZEW.441.936.2016.JBR

manager did not answer nor tried to solve this situation, so difficult for the child. He introduced the prohibition without giving any legal basis for it. It must be stressed here that the building was adjusted to the needs of persons with disabilities.

The decision of the manager, despite recommendation of a teacher and physical therapist, was not supported by any reservations made by persons who worked with the boy, his personal observations or comments by parents of other students or teachers. The decision violated Article 23 of the Convention on the Rights of the Child and proved that the manager did not follow the regulations of education law, which provided care of all children, also those in need.

During the inspection (see the chapter: Monitoring Activity) conducted on behalf of the Ombudsman for Children the manager changed his decision and allowed the student to use his wheelchair in school, which he confirmed by relevant protocol.

A representative of teacher disciplinary proceedings instituted proceedings against the school manager. The case is in progress.

In the school year 2015/2016, the Ombudsman for Children was addressed<sup>497</sup> by parents of a 6 year old girl who was attending a kindergarten. The child was diagnosed with autism and was the holder of a certificate of special education need. The parents complained that recommendations included in the certificate were not followed. Thus, the Ombudsman addressed the education officer and asked for inspection in the kindergarten.

As the parents informed, their complaint was deemed reasonable. Many irregularities were found in the course of the inspection. Recommendations issued for the child included: special classes for the girl, provision of assistance of an additional teacher and inclusion of all recommendations of a psychological and pedagogical clinic into the educational and therapeutic programme for the child.

Due to such serious negligence, the Ombudsman for Children took further measures to monitor the way how the recommendations were being implemented by the facility manager. As a result, the education officer conducted another inspection to see what measures had the manager taken in the meantime. Unfortunately, the inspection revealed that the recommendation were still not followed. This resulted in issuing subsequent recommendations. Only

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<sup>497</sup> ZEW.441.279.2016.MP

the inspection of the education officer, undertaken at the beginning of the year 2016/2017 confirmed that the manager did realise the recommendations included in the special education need. At the same time, the officer declared that he would continue his monitoring over the facility and its operation.

The Ombudsman for Children was addressed<sup>498</sup> by a mother of 7 year old boy ill with epilepsy and Asperger's Syndrome. The boy was the holder of a certificate on special education need and was a student of a private integration primary school, After two weeks of attendance the boy was separated from the group because of his aggressive behaviour. After 30 days the mother of the boy had her agreement terminated and received a decision of the school manager that the boy was taken off the list of students. When the boy was attending the school, an incident took place, in which the school, as a reaction to the boy's difficult behaviour (he had supposedly bitten a teacher), did not provide any psychological and pedagogical assistance to the boy but called the police instead.

The Ombudsman asked the relevant education officer for inspection of the cases under the educational supervision procedure. As a result of the Ombudsman for Children's intervention, the officer carried out an immediate inspection which confirmed the irregularities in the field of psychological and pedagogical assistance the school was supposed to provide, i.a lack of educational care connected with the boy's difficult conduct and groundless separation of the boy from the rest of the group. The inspection proved also that the school employed persons without qualifications required for work with children. The manager was given the post-inspection recommendations to follow the rules and special education for students with certified disability and employ teachers with relevant qualifications. The Ombudsman is still monitoring the realisation of the recommendations. He also turned his attention to the circumstances of the police intervention upon the school's call.

The Ombudsman for Children was also addressed<sup>499</sup> with a problem of physical exercise classes organised in primary school. It referred to second educational stage. The petitioner informed the Ombudsman that her two children diagnosed with valgus knees and heels (because of which children had to wear orthopaedic shoes), had their access to physical exercise classes limited. She informed that in winter the school organised the classes at an ice rink and her children could not participate in it and had to be offered a different activity.

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<sup>498</sup> ZEW.441.1158.2016.KD

<sup>499</sup> ZEW.441.1411.2016.ES

The Ombudsman interceded. He presented the school manager regulations that obliged him to adjust the educational requirements to *individual developmental and educational needs and psycho-physical potential of a student holding a physician's opinion on limited scope of physical exercise possible for the student to perform at the physical exercise class – based on that opinion*. He also stressed that pursuant to the regulations of the Ordinance of the Minister of National Education on admissible forms of mandatory physical exercise classes<sup>500</sup> school manager prepared proposals of activities to be chosen by students – taking into account their health needs.

The manager responded that in 2008 the city opened an all-season indoor ice rink and primary schools were obliged to organise classes on the rink from half of October till the end of March, two hours a week. Children with disabilities were not offered anything else instead. The manager admitted that he agreed with the mother that mandatory participation in ice-skating classed was against the regulations of law.

The mother of the students had used the information included in the response of the Ombudsman for Children to address the school manager and city mayor and present the problem, backed up with relevant regulations of law.

The case ended with a survey conducted by the manager to learn the students' interest in classes organised under the so called admissible forms of realisation of mandatory physical exercise school. For a group of students, including those with disability, indoor gym classes were organised.

The Ombudsman was addressed<sup>501</sup> also by parents who complained about organisation of special education in a mainstream department of a primary school for their son diagnosed with the Asperger's Syndrome. They complained that the school did not employ an assistant teacher for their child. Such assistance, pursuant to regulations on organisation of education for children with disabilities and social ill-adjustment, was the school's obligation. As a result of the Ombudsman's intervention, an assistant teacher was employed and other teachers took into account the boy's mental, physical and educational potential.

- **Criteria of assessment and duties of teachers in that respect**

In 2016 the Ombudsman for Children still received complaints about inappropriate way of assessing students' educational progress by teachers.

<sup>500</sup> Dz. U. poz. 1042

<sup>501</sup> ZEW.441.247.2016.JF

The Ombudsman was addressed<sup>502</sup> by a girl student of an upper secondary school who complained about difficult communication with her maths teacher about the reasons for her assessment in that subject. The girl stated that the teacher did not want to show her the results of a test. She also mentioned that she had been failed a couple of times without being explained what were the criteria of assessment with respect to particular assignment. The intervention of the Ombudsman allowed to clarify the problem and to carry out a number of actions to increase the qualifications of maths teachers in communication with students and to explain their duty of providing relevant information to their students connected with their assessment. The teachers were also made more aware of the necessity to take immediate action in case student's notes were getting successively worse and provide them with relevant assistance.

The Ombudsman for Children received also a complaint<sup>503</sup> from parents of students about limited access to students' works in some schools in one of the voivodships, which meant violation of Article 44, item 4, 5 and 7 of the Act on education system.

Upon request of the Ombudsman for Children, an education officer carried out an inspection in one of the schools and in other schools, their managers were interviewed and obliged to analyse the rules and regulations and the statutes of the schools and adjust them to the regulations of law in force and make the teachers follow those regulations. Further inspections with respect to the teachers' duty to give students access to their works were carried out.

Currently the problem seems to have been solved.

The Ombudsman received also an anonymous complaint<sup>504</sup> of parents about leaving less talented students in the third year of lower secondary school for the second time. The purpose of such procedure was to increase the number of classes in the subsequent school year. Upon the Ombudsman for Children's request, an inspection was conducted at school by an education officer. As a result, the school manager was obliged to undertake specific steps, that is to supervise the process of assessing students and the regularity of that process, applying criteria of assessment, providing psychological and pedagogical support to students depending on their personal situation. Realisation of those recommendations was subject to control under pedagogical supervision, upon request of the Ombudsman.

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<sup>502</sup> ZEW.441.1284.2016.KD

<sup>503</sup> ZEW.441.559.2016.JBR

<sup>504</sup> ZEW.441.498.2016.JF

- **Providing pedagogical and psychological assistance**

Another category of cases reported to the Ombudsman for Children in 2016 was connected with reservations of parents with respect to realisation of recommendations included in opinions issued by pedagogical and psychological clinics.

The Ombudsman for Children was addressed<sup>505</sup> by a mother of an 8 year old boy. She claimed that the primary school had refused to implement the recommendations included in an opinion issued by a pedagogical and psychological clinic. The boy was a new student at school and he was the patient of the clinic because he had been the victim of bullying.

The clinic issued a list of guidelines how to work with the child, for example, that it was advisable for the child to participate in social therapy classes to make it easier for him to function in a group of peers.

The Ombudsman was informed that the school had refused to follow those guidelines. The school manager, and the leading educator concluded that the opinion of the clinic was inadequate to the boy's problems who – in their opinion – required a psychiatric diagnosis.

The mother was pressed to take her son to a psychiatrist. The mother sent the Ombudsman printouts of text messages she had been receiving from the boy's teacher who urged her to take her son to the psychiatrist. At the same time, according to information provided by the mother, partially confirmed by a psychologist who consulted the boy, the leading teacher did not provide proper support to the boy, had a negative attitude against him and displayed conduct harming to the child.

The Ombudsman for Children interceded with the school manager and the manager of the psychological and pedagogical clinic and asked the relevant education officer to inspect the pedagogical and psychological assistance provided to the boy by the school and whether the pressure exerted by the school manager and leading teacher on the mother was legal.

As a result of the Ombudsman for Children's intervention, the education officer carried out an 'ad-hoc' inspection, which revealed irregularities in the school's performance of recommendations issued by the psychological and pedagogical clinic and forcing a parent to take her son to see a specialist. The manager was

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<sup>505</sup> ZEW.441.1282.2016.KD



given post-inspection recommendations. Yet the inspection did not confirm the charges of improper treatment of the student and stalking the mother with text messages.

Thus, the mother reported the case to the police. The Ombudsman is monitoring the proceedings. At the same time, as there was no communication between the mother and the school manager, she decided to move her son to another school. After the Ombudsman's intervention, the boy was admitted to one of the local primary schools. The child is now functioning correctly in the new environment.

The Ombudsman for Children was also informed about a case<sup>506</sup> in which a psychological and pedagogical clinic refused to issue a decision on the need for special education programme. The Ombudsman asked the relevant education officer to investigate the problem.

After another analysis of cases files in proceedings of appeal, the child's well-being was secured (until a thorough and extended medical diagnosis was issued) by arranging an individual learning system. The Ombudsman is still monitoring the child's situation.

The Ombudsman for Children was also addressed<sup>507</sup> by parents who claimed that one of the students of the school attended by their son misbehaved. The fact, that a complaint was addressed to the Ombudsman about it, even deepened the conflict between the peers and also between their parents. The Ombudsman undertook measures in cooperation with relevant education officer, the body that supervised the activity of the school and the school manager. As a result, the child who misbehaved received relevant psychological and pedagogical assistance to improve the child's skills in building social relations. The parents could take part in the training in educational skills under the programme School for Parents, arranged by the psychological and pedagogical clinic. The situation at school is now stabilizing. The relevant education officer is monitoring the school's progress in that respect.

Another example in this category was the complaint<sup>508</sup> addressed to the Ombudsman for Children by one of parents about improper operation of primary school of their son. A student of IV grade was subject to bullying (knocking a sandwich out of his hands, screaming directly to the ear, prodding, misleading

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<sup>506</sup> ZEW.441.1401.2016.ES

<sup>507</sup> ZEW.441.44.2015.EM

<sup>508</sup> ZEW.441.1309.2016.ES

by telling the wrong number of classroom, throwing someone else's sandwiches to the boy's backpack, mashing and breaking writing instruments, walking behind and singing to the boy's ear songs in obscene language offending the boy's family, kicking and beating during swimming classes). The father said that because of those circumstances the boy abandoned his maths classes and stopped participating the swimming classes.

The Ombudsman interceded with the school manager. He ordered to investigate the problem and take steps to prevent bullying and improve the situation of students. He asked to increase pedagogical supervision to increase the effects of educational – including preventive – measures. He suggested that cooperation should be started with a psychological and pedagogical clinic for the purpose of arranging workshops, consultations etc. He also addressed the education officer with a request for inspection.

As a result of the undertaken measures, it was concluded that some of the implemented individual forms and methods of psychological and pedagogical support for the child did not take into account his individual developmental needs and psycho-physical potential of the child that had been identified and did not provide enough support to his parents. Violent behaviour against the boy made him withdraw from the social life of the class and then changed into defensive mechanisms – which also turned into violent conduct. The manager was given relevant recommendations. As a result of the Ombudsman's intervention and correct diagnosis of the problem, the boy was provided with support that met his real needs.

In another case the Ombudsman for Children was informed<sup>509</sup> about difficult situation of a student of one of primary schools. The petitioner claimed that the boy had had a serious car accident which led to him having problems with learning and concentration. He was under constant care of a psychological and pedagogical clinic.

The Ombudsman asked the school manager to explain the situation and was informed that the boy had emotional problems resulting in learning difficulties owing to the fact that his parents took little interest in him. The boy's mother was an employee of the school. The school manager notified family court about the problem. The court conducted investigation as a result of which it was concluded that the child's well-being was secure in the family, so there was no reason to interfere in parental authority. The court concluded in its decision that

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<sup>509</sup> ZEW.441.334.2016.JBR

the charges the school brought against the parents resulted from the conflict between the minor and the school.

The Ombudsman addressed the relevant education officer with a request to investigate how the school provided psychological and pedagogical support to the boy and how was the cooperation between the school and the parents organised, and whether the leading educator and school pedagogue fulfilled their duties duly. He also asked for investigation whether there were any grounds to conclude that the school manager's actions were harmful to the child or whether his rights and well-being were violated because of the conflict between the employer and the employee.

As a result of the inspection, no irregularities were found and no recommendations were issued, though the attached protocol clearly told about the school's failure to correctly inform the boy's parents about his problems (no information in writing on communication between school and parents or reasons why electronic register was not used). Furthermore, the school did not provide support to the child, only expected action on the part of the parents. The child did not receive relevant assistance even when the school was informed about the boy's self-aggressive conduct.

The Ombudsman pointed also out to the report on overall evaluation of the school's activity. It said that parents did not participate in establishing rules of conduct against their children at school which was important in terms of education and upbringing process and it made them feel disrespected, and analysis of surveys made among the students did not confirm the thesis that the school was a safe place.

The Ombudsman intervened again, as a result of which the education officer carried out another inspection. The school manager was given relevant recommendations, and an investigation was initiated against him which was then referred to disciplinary committee for teachers. The case is in progress.

- **Unequal treatment and discrimination of children**

In 2016 the Ombudsman for Children received subsequent complaints about unequal treatment of children and various forms of discriminating them.

The Ombudsman was addressed<sup>510</sup> by a student of an technical upper secondary school, who asked him for help in bringing him back to the list of partic-

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<sup>510</sup> ZEW.441.1130.2016.JF

ipants in foreign apprenticeship. The boy was removed from the list for consuming alcohol in the boarding house. The student had already been punished for that in that he was deprived of the possibility to live in the boarding house. In the student's opinion, it was unfair, as he was punished for the same thing twice. The Ombudsman concluded that the minor should not have been punished twice for the same guilt and interceded with the facility authorities, as a result of which the boy could take up foreign apprenticeship.

Another case of this category referred to unfair criterion of domicile<sup>511</sup> that qualified candidates for grant awarded by the local mayor.

As a result of the Ombudsman's reaction, the local municipal council adopted a regulation that amended the regulation on the principles of awarding grants to students of schools and universities. The change – as the chairman of the council said – allowed to award grants to students of primary schools and lower secondary schools who did not live within the borders of the commune (gmina). And so, the reason of unfair treatment of children was eliminated.

The Ombudsman for Children received also a complaint<sup>512</sup> from parents of a student of a state primary school who came to Poland from of the EU countries. Lack of understanding of cultural difference was the reason why the boy was excluded from his group of peers. The children did not want to play with the boy and destroyed the flag of his country. Furthermore, the boy did not get his note in ethics, though he participated in the classes.

As a result of the Ombudsman's intervention, the school implemented an anti-discrimination programme and extended its psychological and pedagogical care over the students. Currently the situation of the boy is improving.

- **Refusal to give access to information about the child**

The Ombudsman for Children was addressed<sup>513</sup> by a father of a student of primary school who asked him for intervention and help in getting access to information about his son's progress at school (e.g. By access to extranet, copy of school certificate, information about the boy's conduct). The school refused to give access to this information upon request of the mother. The parents were divorced. The petitioner had however the right, based on the judgement of divorce, to obtain information on the child's progress and problems at school.

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<sup>511</sup> ZEW.441.662.2016.JF.

<sup>512</sup> ZEW.441.1061.2016.JBR

<sup>513</sup> ZEW.441.28.2016.JF

As a result of the Ombudsman for Children's intervention, the parents received relevant information about his son.

The Ombudsman for Children received also a complaint<sup>514</sup> against unauthorised removal of a child from the list of primary school students. The manager argued that he had been informed by the child's mother that she had registered the child to another school, located 150 km from the town, two weeks before the school year. The Ombudsman interceded. In the course of his intervention, he consulted education officers, the court and managers of both schools.

It was concluded that the divorce conflict was the reason of the misunderstanding. The court, when dissolving the marriage, entrusted both parents with parental authority and defined the child's place of stay at the mother's place of stay.

The father did not accept that and kept his daughter with him. The child could not attend school on a regular basis. The court ordered the father to give the child to the mother but he did not follow this order. Finally the child was taken from the school by the court appointed guardian who took the girl to her mother. The child started education in the new school. She received psychological and pedagogical assistance adjusted to her emotional needs. Also, together with her mother, she participates in a therapy provided by a psychological and pedagogical clinic.

- **the impact of divorce conflict on the child's progress at school**

An important problem that has reappeared regularly was non-provision of safety for children in kindergartens and at schools.

The Ombudsman for Children had also a case of improper care of children in one of primary schools<sup>515</sup>. He was addressed by a student's mother who informed him that her son, after regular classes, was not allowed to the day care room (or was turned out of it) by a teacher, because he did not eat meals at school. During the meals, children turned out of the day care room (or not allowed to enter it) were allegedly left unattended.

The Ombudsman for Children addressed the competent education officer with a request for investigation into the case. As a result of the Ombudsman's intervention the education officer inspected the school. The inspection revealed irregularities in organisation of day care room activities – lack of division into

<sup>514</sup> ZEW.441.1043.2016.EM

<sup>515</sup> ZEW.441.1038.2016.KD

groups and incorrect keeping of school records. Also the school statute needed to be adjusted to currently binding regulations of law. The manager was given post-inspection recommendations. The Ombudsman for Children is monitoring the way the school is realising them.

The Ombudsman for Children was also addressed<sup>516</sup> by a mother of a 6 year old girl, who reported that the school provided care of children in an incorrect way. The daughter had once left the school with her friend and went to another child's house, though she had been supposed to be in the school's day care room at that time. The mother told the Ombudsman that when she had come to school to take her child, nobody had even noticed that the child had disappeared.

As a result of the Ombudsman for Children's intervention, an education officer inspected the school 'ad-hoc' and found many irregularities. The school manager was given the post-inspection recommendations to adjust the rules and regulations and procedures in terms of safety, care and daily operation of the school, the needs of students and expectation of the parents and increasing the pedagogical supervision over teachers in their performance (particularly with respect to provision of safe conditions at school, including care after the regular classes) and to adjust the statute of the facility to actual needs of the students, considering the school's care and education assignment and amended education law.

The Ombudsman for Children is monitoring the process of implementing the recommendations.

Another case<sup>517</sup> was taken by the Ombudsman for Children ex officio, having received the information that a student had been beaten in a lower secondary school. The boy was so much injured that he needed inpatient hospital treatment, had to have a number of surgeries and his condition was deemed critical by the physicians. It was said that the school manager did not call the ambulance after the fight.

The Ombudsman for Children addressed the competent education officer and asked for relevant inspection. It revealed many irregularities in safety and hygiene procedures at the school. Additionally, the manager did not provide necessary medical assistance to the child the moment he learned about the accident.

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<sup>516</sup> ZEW.441.1450.2016.KD

<sup>517</sup> ZEW.441.1242.2016.AP

Thus, due to such serious negligence that could have directly endangered children at school, the Ombudsman for Children decided to monitor the manner in which the manager would be realising the recommendations.

In another case of this category, a student of lower secondary school had an accident<sup>518</sup> during physical exercise class. After a collision with another student, the boy's pancreas broke. No one called an ambulance. The child, suffering great pain, was waiting in the nurse's room for 1,5 hour. The parents took the boy to a hospital where he had two surgeries to save his life.

The Ombudsman for Children addressed the competent education officer and asked for relevant inspection. The inspection protocol said clearly that actions of the school were against the law – the student did not receive relevant help, also the school tried to change the content of the post-accident protocol. The school manager was given the post-inspection recommendations.

The Ombudsman for Children is monitoring the way the school is realising them.

The Ombudsman for Children received information about a problem with modernisation of buildings of associated schools during the school year<sup>519</sup>. The parents who sent the complaint pointed also to improper organisation of regular school classes. The Ombudsman took action together with the competent education officer, sanitary inspector, construction site inspector and fire brigade chief and the supervising body and the school manager. As a result, construction works were planned in such way so as not to collide with the life of the school. The weekly schedule of educational classes, valid from 01 September 2016 in both schools included in the complex of associated schools, took into account the necessity to distribute the classes equally in particular days of the week, the need to diversify the classes on each day and the rule of non-arranging classes in several hours long blocks of the same subjects. Mandatory classes in the lower secondary school and in grades IV-VI of primary schools are scheduled from 8:00 to 14:10 and in grades I-II – from 8:00 to 12:30. Measures taken by the school manager contributed to improvement in the way the facility operated.

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<sup>518</sup> ZEW.441.161.2016.JBR

<sup>519</sup> ZEW.441.1550.2015.EM

- **Organisation of the school's daily operation**

The Ombudsman was notified about incidents in which improper organisation of the school's daily operation had considerable influence on students.

For example, there was a case in which a teacher was replaced during the cycle of early education. Parents asked<sup>520</sup> the Ombudsman for help to bring the teacher back. The Ombudsman interceded with relevant education officer, the body that supervised the activity of the school and the school manager.

As a result of multi-dimensional action undertaken by the Ombudsman, the teacher came back to his class.

In another case, parents, teachers and school manager asked<sup>521</sup> the Ombudsman for Children for help because there was a problem with rearrangement of departments in the lower secondary school. The school environment implied that the supervising body suggested the manager that he should make three departments of II grade out of four departments of I grade. The Ombudsman interceded with relevant education officer, the body that supervised the activity of the school and the relevant sanitary inspector. As a result of the intervention, children continued their education in the same departments they had started it.

- **School insurance**

The Ombudsman for Children received questions regarding obligatory insurance introduced by schools for students against accidents<sup>522</sup>.

In one of such cases the Ombudsman for Children was notified<sup>523</sup> that in one of primary schools parents were informed that children who did not have the accident insurance could not be admitted to participate in events for which the organizer would require such insurance. The Ombudsman addressed the school manager, stating that such activity is wrongful. On making representations the manager made reference to a provision in the school's statute which said that the insurance was intending to insure all students against the effects of accidents and in case the students had an event scheduled out of the school's territory, the teachers were entitled to leave those students within the territory of the school who were not insured against accidents.

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<sup>520</sup> ZEW.441.850.2016.EM

<sup>521</sup> ZEW.441.814.2016.EM

<sup>522</sup> ZEW.441.1334.2015.JR

<sup>523</sup> ZEW.441.1479.2015.JR



The Ombudsman stressed that the above mentioned provisions violated the rule of the parents' freedom in deciding about insuring their children. He stated that according to education law, it is the manager who provided safe and hygienic conditions of stay at school or other facility, as well as safe and hygienic conditions of participation in events organised by the school or facility outdoors and out of the territory of those units. Insuring a child is not the same as providing safe conditions by the school.

As a result of the Ombudsman for Children's intervention, the provision in the statute was changed. In the new provision it was stated that insurance was voluntary.

- **Activity of parents' councils**

In 2016, the Ombudsman for Children still received notifications about parents' councils acting beyond their powers.

In one of such cases the Ombudsman was addressed<sup>524</sup> by a student who told him about a problem that repeated year after a year and regarded the so called 'clearance slip', on which signatures were collected for specific actions (e.g. Returning a book to a library etc.) One of the elements of the clearance slip referred to payments to parents' council fund. Payments, in the opinion of the petitioner, were treated as mandatory, and if they were not paid, the students were refused to have their clearance slip undersigned. The students were also threatened that they would have their school certificates and other documents given to them if contributions to the fund were not paid.

Parents' council – in order to support the statutory activity of school or other facility – may collect funds from contributions or other sources but the contributions must be voluntary. Parents' council may adopt regulations under its mandate but their scope must not go beyond the binding regulations of law. In case it is found out that the activity of a parents' council breaches the regulations of the act on the education system, the manager should take relevant measures to inform the parents' council about the regulations currently in force. The Ombudsman undertook intervention in the case. The manager informed the Ombudsman that after the issue had been discussed with the council, the point regarding payments was removed from the clearance slip to that the payments would not be perceived as mandatory.

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<sup>524</sup> ZEW.441.430.2016.ES

In another example of such irregularities, students could only participate in a carnival party on condition that their parents pay a contribution of 10 zlotys for each child to the parents council fund<sup>525</sup>. The parents council adopted a regulation in that matter (a copy was submitted to the Ombudsman). In the statement of reasons, a provision was formulated: *There are classes contributions by which had already exceeded the limit of 70% and it is not their intention to finance the party (and other things like book for libraries, equipment of nurse's room, school security service or books at the end of the school year) for other classes.* The Ombudsman addressed to the school manager and the chairman of the parents council and reminded them of the regulations of law in force and asked to take measures in accordance with it. Finally, recovery measures were taken up with respect to the operation of parents' council. All children could participate in the carnival party.

- **Transport of children to education facilities**

The Ombudsman for Children still received complaints with respect to inappropriately organized transportation of children to schools and educational facilities.

The Ombudsman was informed about irregularities in transportation of children to schools (including vulgar behaviour of a driver against children, not taking children from bus stops, transporting dangerous material with children)<sup>526</sup>. The parents stressed that they had been informing the school and municipal authorities (orally and in writing) for 5 years which did not bring any effects, so they asked the Ombudsman for help.

The Ombudsman interceded with the competent education officer and commandant of the police and the municipal authorities. The driver was punished. Transport provider was changed. Arrangement of transportation was adjusted to children's class at school. Currently it meets the requirements defined by law with regard to organised transportation of children (appropriate cars, labelling of cars, qualifications of drivers, care, number of transported children and carer in accordance to the number of seats in a bus.

In another case connected with transportation of children, there was a problem of transporting a disabled child to and from a primary school<sup>527</sup>.

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<sup>525</sup> ZEW.441.56.2016.ES

<sup>526</sup> ZEW.441.1433.2015.EM

<sup>527</sup> ZEW.441.169.2016.EM

The Ombudsman interceded with the school manager, education officer, supervising body, psychological and pedagogical clinic and the disability evaluation board and local social service centre. As a result, a relevant disability certificate was issued for the child, as well as an recommendation to adjust the educational requirements to individual needs and psychophysical potential of the students, and the transportation was adjusted to his needs.

A similar case was reported<sup>528</sup> to the Ombudsman for Children by a mother of a 15 year old boy diagnosed with autism. The municipal authorities refused to provide care for the boy for the time of the transport when his condition deteriorated. Then the transport provider refused to transport the child. The boy was taking medicines which could be given to him only in presence of a physician in the facility the boy attended to. If he was not transported to school, it meant that he could not regularly take them.

After the Ombudsman for Children's intervention, the supervising body arranged for transportation of the child with relevant care. The boy now regularly attends school and realises his right to education.

The Ombudsman for Children was also addressed<sup>529</sup> by a mother of a 14 year old girl with disability. The municipal authorities provided for transport to the school, but collecting the girl from the school was to be organised by the parents, and the authorities reimbursed its costs. Because of the bus schedule the mother and the daughter had to wait for the bus home for a couple of hours. The parents had been trying to change the situation for 6 years. The mayor of the commune (gmina) did not agree to arrange for transport in both directions, claiming that there had been no financial resources for that and that the parents were unemployed. As a result of the Ombudsman's intervention, the mayor decided that from 01 February 2017 the girl would be taken from the school to her home by a car provided by the municipal authorities.

Another case of this category referred to a schedule of transportation to school of a child with disability<sup>530</sup>. The Ombudsman undertook measures in cooperation with relevant education officer, the body that supervised the activity of the school. Transport provider was changed. Currently the child was transported by the municipal authorities on an individual basis, according to his needs and in cooperation with the parents and the school (and is adjusted to the student's timetable).

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<sup>528</sup> ZEW.441.249.2016.JBR

<sup>529</sup> ZEW.441.1171.2016.AP

<sup>530</sup> ZEW.441.565.2016.EM

The Ombudsman for Children was also notified<sup>531</sup> about a case regarding organisation of transport of children to one of the facilities of associated schools. The parent indicated that first routes of buses start very early – it was connected with great number of students who had to be transported by the municipal authorities. As a result, the youngest children were waiting in the day care room already from 7:00 in the morning before the regular classes started – at 8:10 in the morning. The Ombudsman interceded with the school manager and the supervising authority. He pointed to the perception abilities of such young children and their daily rhythm of activity which translated into their participation in regular classes. He requested that other solutions be considered, so that the children would not be forced to get up so early (e.g. Increasing the number of buses). As a result of the Ombudsman's intervention, the authorities declared to rearrange the transportation of children starting from the second semester. The mayor put the transportation services for 2017 to tender. Higher number of buses was scheduled to take children to schools which would result in their waiting time becoming shorter.

The Ombudsman for Children inspected the question of transportation of an intellectually disabled boy (severe mental disability) to a therapy and education centre<sup>532</sup>.

The mother of the boy addressed the mayor with a request for provision of transportation to the centre for his son. She said that the boy had attended school but was admitted to the centre from September. She also mentioned that the centre provided the children with an 8-hour (not 4-hour, as was the case in the previous centre) every day and variable physical therapy, hippotherapy, sensory integration and alternative communication. The centre offered also use of salt cave, which was very important for the minor – as he suffered from chronically from inflammation of lower respiratory tract. The minor was enrolled in the centre yet he could not attend the classes because of the problem with transport.

The mayor argued that the centre was not the closest facility to the child's domicile, and, in effect, "the municipal authorities were not obliged to provide a transportation for a disabled child to a facility located in a considerable distance from the minor's domicile or located out of the commune (gmina)'s borders.

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<sup>531</sup> ZEW.441.1114.2016.ES

<sup>532</sup> ZSS.442.25.2016.SK

The Ombudsman for Children filed a complaint to a district administrative court, appealed against the action of the mayor and motioned for deeming this action ineffective and for obliging this authority to start providing transportation of the minor to the physical therapy and education centre in two weeks from the moment the court statement became legally binding.

The Ombudsman pointed out that, first, the authority applied wrong legal basis, made it impossible for the minor to be transported to a centre chosen by the parent, and second – the distance from the minor's domicile to the first centre was 12,1 km and to the second centre – 14 km. The difference was only 1.9 km. Thus, it could not be called "a considerable distance" from the minor's domicile.

The mayor considered the Ombudsman for Children's complaint in its full scope and provided relevant transport for the child to the centre.

The Ombudsman received also a complaint from a parent whose child had to go 3 kilometres to a bus stop from which the child took a bus to school<sup>533</sup>.

The Ombudsman addressed thus the Public Transport Authority with a request for arranging for an additional bus stop so that students who lived nearby could go to school by city buses. As a result of the Ombudsman's intervention, the Public Transport Authority arranged for an additional bus stop.

The Ombudsman intervened also in a case reported<sup>534</sup> by a mother of children living in a housing estate located 10 kilometres from the city centre. The estate was located nearby railway which the children had to cross to reach the bus stop. Additionally the timetable of the bus was not adjusted to school timetable and the children could not get to school on time.

The Ombudsman addressed thus the city president who informed that the timetable of bus routes had been adjusted to the timetable at school. He also informed that the city would file a request to the railway manager for building a railway crossing. The municipal authorities would also undertake measures to modernise the traffic infrastructure so that an additional bus line could be launched. These actions will surely positively influence the life and convenience of pedestrians.

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<sup>533</sup> ZSS.441.883.2016.MW

<sup>534</sup> ZSS.441.845.2016.MW

- **Organisation of recreation for children and youth**

Another category of cases reported to the Ombudsman for Children were complaints about recreation of children and youth.

In 2016 – similarly as in previous years – the Ombudsman for Children conducted inspections of the state of observance of child's rights in places of recreation for children. In the course of one of the inspections it was found out that not all participants of the holiday centre had their qualification charts which meant that educators who had not reviewed the charts did not have any information about children who took part in the undertaking<sup>535</sup>. Neither was any plan of recreation, rules and regulations and education group work developed. Thus, the case was referred to the relevant education officer with a request for inspection.

The education officer confirmed the irregularities in keeping records. The provider was cautioned that it was necessary to follow the regulations of law and to keep full documentation.

The Ombudsman for Children took ex officio a case regarding possible use of violence by one of the teachers against a participant of summer holidays<sup>536</sup>. The Ombudsman immediately addressed the education officer who was supervising the undertaking and the competent chief of regional (poviat) police.

The education officer conducted an inspection of the undertaking. The participants reported improper conduct of one of educators that violated their dignity. The provider of the undertaking was obliged to replace the educator and did so immediately. The information given by the poviat chief of the police said that investigation was in course with respect to psychical and physical maltreatment of the participants.

As the case is subject to criminal proceedings, it is regularly monitored by the Ombudsman for Children..

The Ombudsman for Children took ex officio a case of summer camp participants who were taken to a hospital with symptoms characteristic for food poisoning<sup>537</sup>. The Ombudsman addressed the competent education officer, sanitary inspector and chief of the city police.

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<sup>535</sup> ZEW.441.785.2016.JK

<sup>536</sup> ZEW.441.834.2016.JK

<sup>537</sup> ZEW.441.900.2016.JK

It was found out that sanitary inspection revealed irregularities for which the manager of the camp was punished with a fine. Medical inspection showed that symptoms in children were caused by being exposed to the sun for a long time which resulted in dehydration of the body and fainting.

Currently investigation is being carried out with respect to exposing participants of the camp to direct hazard of severe bodily injury. The Ombudsman for Children is monitoring the case.

In another case the Ombudsman for Children checked the conditions in which children were staying during summer holidays<sup>538</sup>. He had received information that the facility did not provide appropriate hygienic and sanitary conditions. The Ombudsman for Children addressed the competent education officer and sanitary inspector. The facility was inspected a couple of times both by the education officer and the sanitary inspection. Irregularities that were concluded regarded uncleanness and mess all over the facility and its living rooms, and improper sanitary and hygienic condition of the eating room, kitchen and its equipment.

The Ombudsman was monitoring the way the recommendations were being realised. This process was fully completed.

Another example can be the case reported by a mother<sup>539</sup> of a 11-year-old boy who took part in a recreation undertaking. She claimed in her complaint that the participants were not provided with relevant care. The Ombudsman for Children conducted an inspection on the spot. As a result of it, the manager of the facility and holiday provider were obliged in writing to follow the regulations of the ordinance of the Minister of National Education of 30 March 2016 on recreation for children and youth.<sup>540</sup>

The Ombudsman for Children was also informed<sup>541</sup> by a parent about a holiday camp organised illegally (it was not reported to an education officer and not registered in the database of holiday camps). The parent informed also that pedagogical supervision authority did not take relevant measures in the case apart from cautioning the recreation provider. The Ombudsman addressed the education officer and requested explanation. In response he received information that only after the Ombudsman's intervention did the education officer

<sup>538</sup> ZEW.442.13.2016.JK

<sup>539</sup> ZEW.441.799.2016.J.K.

<sup>540</sup> Dz. U. poz. 452

<sup>541</sup> ZEW.441.1358.2016.ES

take measures according to the Article 96a item 1 of the Act of 07 September 1991 on education system, that is he notified the police to make it possible for prosecuting authorities to carry out proceedings under the Act of 24 August 2001 – Code of Procedure for Petty Offences<sup>542</sup>.

- **Safety of children during after school activities organised by non-state actors**

Undoubtedly lack of legal settlement with respect to liability for a child staying in actual care of persons acting under the Act on freedom of economic activity is a serious problem<sup>543</sup>.

The Ombudsman for Children was addressed<sup>544</sup> by parents of an 11 year old girl, who had died a tragic death during classes in a non-state language school. She was supposed to be taken care of by a language teacher but the teacher announced a break, during which unattended children left the building and crossed a very busy street.

When they were coming back, the girl had a car accident and died. The school did not react to the fact that she had not come back to the class for a long time. The case was subject to criminal proceedings, instigated by the mother of the child, for the act under Article 160 § 2 of the Penal Code, that is for exposing to direct danger of losing life or severe bodily injury. The investigation was dismissed as it was concluded that the act did not bear the notions of prohibited act.

The Ombudsman for Children addressed the regional Prosecutor's Office competent in the case and asked for the case files. They were submitted to him along with an information that the investigation could be reopened.

Analysis of the cases revealed a number of negligence and irregularities in the dismissed proceedings. The Ombudsman for Children submitted his comments to the proceedings to the Minister of Justice – the Prosecutor General and asked for taking official supervision over the proceedings by the State Prosecutor's Office.

In his letter the Ombudsman pointed i.a. To the fact that as a result of the investigation, existence of the obligation of the school and language teacher to provide care of the child during the classes and the break in between them was incorrectly denied and the cause and effect relation between lack of care of the

<sup>542</sup> Dz. U., Journal of Laws, Item 395 with subsequent amendments.

<sup>543</sup> Dz. U., Journal of Laws of 2015, Item 584 with later amendments.

<sup>544</sup> ZEW.441.1037.2016.KD



child during the break and the fact of her death in a car accident was ignored. The Ombudsman is monitoring the criminal proceedings in the case. Additionally the Ombudsman officially joined as an observer the proceedings against the driver for causing a car accident.

The problem of responsibility and liability of non-state actors which organise activities for children remains within the scope of interest of the Ombudsman for Children.

## 5. RIGHT TO BE PROTECTED AGAINST VIOLENCE, CRUELTY, EXPLOITATION, DEMORALISATION, NEGLIGENCE AND OTHER FORMS OF MALTREATMENT

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

(Article 19 of the Convention on the Rights of the Child)

In 2016, the Ombudsman for Children received in general 4,972 notification of cases pertaining to protection against violence, cruelty, exploitation, demoralization, neglect and other forms of maltreatment.

The Ombudsman for Children referred to other authorities and institutions with a request to initiate actions or provide information in cases pertaining, among other things, to:

- ▶ neglect and violence in domestic environment,
- ▶ physical, mental and sexual violence,
- ▶ bullying,
- ▶ violence against children at schools, kindergartens, crèches and other forms of care,
- ▶ violence in facilities of education, social therapy and social rehabilitation,
- ▶ maltreatment.

### 5.1. General addresses of the Ombudsman for Children with respect to the right to be protected against violence, cruelty, exploitation, demoralisation, neglect and other forms of maltreatment

- **Helplines managed by non-governmental organisations – address of 12 January 2016**

The Ombudsman for Children stressed the important role of helplines managed by i.a. Dzieci Niczyje [Children of No-one Foundation] or ITAKA Foundation in his address<sup>545</sup> to the Minister of the Interior and Administration.

<sup>545</sup> ZSS.421.2.2016.KK

The Ombudsman pointed out that the activity of helplines comprises search for minors and psychological support for carers of missing persons. He stated that NGOs cooperated very closely with enforcement bodies and the justice system and that helplines cooperated also with the Helpline of the Ombudsman for Children, Child Helpline of the Ombudsman for Children.

The activity of helplines in previous years was subsidised by the Ministry of the Interior as a means of supporting public duties accomplishment. Thus, the Ombudsman asked whether the above mentioned initiatives would be supported financially by the ministry similarly as the previous years and when was the tender invitation scheduled.

In response<sup>546</sup> the Minister of the Interior and Administration informed that terms, procedure and level of subsidy from the Ministry of the Interior and Administration for fulfillment of public duties in the field of security and public order and prevention of social pathology would be included in the call for tenders prepared by the ministry.

In March 2016 the Ministry of the Interior and Administration called for tenders for fulfilment of public duties entitled: "Activity connected with searching for missing persons and providing support for their families" with a subsidy in the amount of 90 000 for NGOs with registered activity of public service in the field of security and public order and prevention of social pathology.

- **Protection of minors against harmful content in cinemas – address of 21 January 2016**

Following his address of 14 December 2015, the Ombudsman for Children submitted to the Minister of Culture and National Heritage a draft act on the rules of qualification and labelling movies to protect minors against harmful content and amending some other acts<sup>547</sup> and made a request for subjecting the draft to further legislative procedure.

The document was elaborated by the working team for regulation of age labels of films appointed by the Ombudsman for Children. The team was made up of representatives of the Minister of Culture and National Heritage, the National Broadcasting Council, Polish Film Institute, Institute of Competition Law and the Office of the Ombudsman for Children.

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<sup>546</sup> BMP-0791-1-1/2016/PS/EW

<sup>547</sup> ZSS.422.40.2015.MW

At the same time, the Ombudsman for Children declared to provide full support in the works over solutions to protect the rights of children.

In response<sup>548</sup> the Minister of Culture and National Heritage informed that he agreed with the demand of the Ombudsman for Children regarding the need to regulate the issue at legislative level. He also concluded that it was necessary to continue the consultation with all interested parties, particularly with the National Media Council and the Office for Competition and Consumer Protection.

- **Tightening up the penalties for violence against minors – address of 04 February 2016**

The progressing brutalisation of conduct against human life and health that reveals often lack of even minimum level of empathy in the perpetrators required, according to the Ombudsman for Children, reaction on the part of the legislator by introducing changes in the regulations governing criminal liability of perpetrators. Furthermore the Ombudsman saw gross disproportions in the limits of penalties for violating various goods that were protected under law.

In his address<sup>549</sup> to the Minister of Justice the Ombudsman for Children presented a proposal of amendment of Article 156 of the aAct of 06 June 1997 – the Penal Code<sup>550</sup>.

The draft was developed because of the necessity to reinforce legal and penal protection in case of crimes against fundamental goods of a man, that is human life and health.

In his address the Ombudsman stressed that the currently binding state of law did not meet the demand that penal law should have a protective function and, in this way, it did not offer effective tools for limiting criminality and increasing public safety, particularly safety of children and of inept persons due to their mental or physical condition. It neither provides for more severe liability when the perpetrator acts with particular cruelty. Also penalties for the crime of severe bodily injury of the harmed person, the limits of which are set by court, do not fully reflect the harmfulness of the crimes, leading in effect to lenient sentences.

The Ombudsman pointed out that penalties as set forth in the binding regulations of law had been and were the subject of well-grounded criticism by legal

<sup>548</sup> DWIM/950/16

<sup>549</sup> ZSR.422.5.2016.MK

<sup>550</sup> Dz. U., Journal of Laws of 1997, Item 553 with later amendments.

circles, including the circle of judges and prosecutors and the society and media which many times commented on the problem, presenting shocking acts of violence ended with severe disability or death of a child, pointing that the legislator violated the social sense of justice.

The amendment of Article 156 of the Penal Code suggested by the Ombudsman changed the qualification of the crime of severe bodily injury from misdemeanour to crime under penalty of deprivation of liberty from 3 to 15 years and formulated a qualified type of this crime, under the penalty of deprivation of liberty for not less than 5 years.

The limits of statutory penalty for this type of crime as provided by currently binding regulations of law, even if the perpetrator was deemed to not have acted intentionally, was, according to the Ombudsman, disproportionate to the weight of the act, measured by the weight of a legal good destroyed by the perpetrator.

The ombudsman's proposal made the penal liability on committing a crime more extended in its basic form if the the crime resulted in human death and in case the crime had been committed unintentionally. As far as inadvertence is concerned, the Ombudsman proposed to raise the lower limit of statutory penalty range from 1 month to 6 months of deprivation of liberty, and the upper limit from 3 to 5 years of deprivation of liberty. Also the lower limit of penalty range in case of human death was raised from 2 to 8 years of deprivation of liberty and the upper – to 15 years of deprivation of liberty.

The project of the Ombudsman for Children introduced also a type of qualified crime of severe bodily injury, pointing to the necessity to have an alternative of the condition of the harmed person's age of minority, incapability due to mental of physical condition and particular cruelty in the perpetrator's manner of acting. The court – in such case – as the suggested change said – could adjudicate a sentence of deprivation of liberty for not less than 5 years.

The Ombudsman stressed the providing more extended criminal liability of a perpetrator of crime under Article 156 of the Penal Code would possibly make the relevant penalty more severe, extending the range of circumstances in which it could be treated as a means of penal reaction adequate to the realities of a specific case and, at the same time, the possibility to adjust the level of the penalty individually would still be maintained. In the opinion of the Ombudsman, the necessity to modify the statutory penalty resulted also from the need to keep the intended changes consistent internally with respect to the

subject matter of crimes against health and life. He stressed that so far, there had been no such internal consistency.

W odpowiedzi<sup>551</sup> Minister Sprawiedliwości poinformował, że obecnie zaangażowany jest w prace legislacyjne dotyczące nowelizacji ustawy – Kodeks postępowania karnego<sup>552</sup> oraz ustawy – Kodeks karny wykonawczy<sup>553</sup>. He assured that analysis of the currently binding regulations of Penal code was to follow, both of its general and specific sections, including the rationalisation of criminal liability. Then also the Ombudsman for Children's ideas as mentioned above could be considered and analysed.

• **Counteracting the threat of sexual criminality – address of 04 February 2016**

In reference to the governmental draft of Act on counteracting the threats of sexual crimes (printed matter no. 189), after presentation of preliminary opinion during the 9. Meeting of the Sejm of the Republic of Poland, the Ombudsman for Children submitted<sup>554</sup> to the Speaker a statement which included specific comments on the draft in question.

The draft act introduced additional means of protection for the citizens, particularly children, against sexual crimes. It provided for example making up a register of sexual criminals, with limited access and a public register with unlimited access for all.

The Ombudsman for Children stressed that sexual criminals against children often came back to crime – despite their earlier sentence – and the adjudicated sentence of deprivation of liberty did not have its effective preventive role. So, every change in the regulations of law, increasing protection of children against sexual criminality, deserved appreciation.

The Ombudsman pointed out that the drafted regulations: on collecting data on criminals against sexual freedom and morality mentioned in chapter XXV of the Penal Code, committed to the detriment of a minor, and obliging persons who worked with children, in education sector or children's health care sector or in child care to obtain information of persons registered in the database – were – as to the rule – in line with the Convention of the Council of Europe on pro-

<sup>551</sup> DL-III-072-13/16

<sup>552</sup> Dz. U., Journal of Laws, Item 555 with subsequent amendments.

<sup>553</sup> Dz. U., Journal of Laws, Item 557 with subsequent amendments.

<sup>554</sup> ZSR.422.6.2016.MK

tection of children against sexual exploitation and sexual abuse<sup>555</sup>. He stressed that the right of the child to special care and protection was also guaranteed by other international instruments, including particularly the Convention on the Rights of the Child<sup>556</sup>, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and pornography<sup>557</sup>, CM Recommendation R(91)11 concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults<sup>558</sup>, Guidelines of the Council of Ministers on Child Friendly Justice<sup>559</sup>, implemented to our system of law: Directive of the European Parliament and Council 2011/36/UE of 05 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA<sup>560</sup> and the Directive of European Parliament and Council 2011/92/UE of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA<sup>561</sup>.

According to the Ombudsman, the current state of law does not provide for legal instruments that would allow to supervise perpetrators of sexual crimes committed to the detriment of a minor, living at large. On the other hand, referring to the possibility to obtain information on previous sentences of candidates to work/volunteer and have personal and regular contact with children, the right of the employer to verify the requirement of having no criminal record was introduced only in specialist acts of law.

Establishing a separate database of sexual criminals and obliging the employers and other service providers in the sector of education, health care and care of children to verify the criminal past of candidates applying for a job – in Ombudsman for Children's opinion – could provide additional means of protection for children against sexual crimes. Also the obligation to obtain information about persons who are about to be employed or before allowing them to perform other activity connected with personal and continuous contact with children as provided by the draft act will allow to standardize the requirements

<sup>555</sup> Dz. U., Journal of Laws of 2015, Item 608.

<sup>556</sup> Dz. U., Journal of Laws of 1991, Item 526.

<sup>557</sup> Dz. U., Journal of Laws of 2007, Item 494.

<sup>558</sup> Adopted by the Committee of Ministers on 09 September 1991 at the 461. Meeting of Deputy Ministers

<sup>559</sup> Adopted by the Committee of Ministers on 17 November 2010 at the 1098. Meeting of Deputy Ministers

<sup>560</sup> Official Journal of the European Union L101 of 15 April 2011

<sup>561</sup> Official Journal of the European Union L26/1 of 28 January 2012

for applicants for a job/volunteer work and tighten up the system of care and work with children.

Yet some of the solutions raised doubts.

The register with limited access was supposed to include data about persons sentenced validly for crimes under Article 2 of the draft act, that is about all sentenced persons, regardless of the type of penalty. The draft act provided also that the register with limited access would include information that the harmed person was a minor under 15 but only in case of sentence for crime against sexual freedom and morality of deprivation of liberty without conditional suspension of its execution. The register would not include information about the age of the harmed minor under 15 in case a valid decision against the perpetrator on the penalty of semi-liberty or fine, which, in Ombudsman's opinion, would be less effective. Condition suspension of execution of penalty and non-custodial penalty sentence were not- in the Ombudsman's opinion – major circumstances to justify the non-inclusion of minor's age, a very important datum. The reason why the information in the Register should have been completed was – according to the Ombudsman – the drafted amendment of extension of the obligation to issue a decision that prohibited taking positions, perform the profession or activity connected with education, teaching, treating minors or taking care of them in case of being sentenced for a crime against sexual freedom or morality to the detriment of the minor, regardless of what kind of penalty was administered against the perpetrator.

In the Ombudsman for Children's opinion, apart from the regulations that introduce the obligation to obtain relevant information by employers about their candidates for positions connected with education, teaching, treating or care of children before employing them it would be reasonable to introduce straight the requirement of clear criminal record (lack of criminal record) for a violent crime against a child for all persons who perform any profession or activity based on contacting children.

The draft provided also that the limited access Register would collect data on minors against whom legally binding decisions on application of educational, corrective or educational and therapeutic measures had been issued or who had been sentenced under Article 94 of the Act of 26 October 1982 o juvenile delinquency<sup>562</sup>.

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<sup>562</sup> Dz. U., Journal of Laws of 2014, Item 382 with later amendments.



Referring to the above mentioned proposal, the Ombudsman stressed that the well-being of a child is the superior rule governing all juvenile procedures. The Act on juvenile delinquency has a protective role in the first place, not repressive. In a juvenile case, a judge is motivated, first of all, by the well-being of the minor, trying to achieve positive change in the child's personality. The Act on juvenile delinquency abandons punishment to the benefit of education. Hence, not repression, despite the weight of the committed act, but educational means should be applied in such cases in the first place.

The Ombudsman pointed out that in his opinion collecting data about the minor if educational means had been applied against him seemed to be improper and violating his well-being. The proposed regulation would mean then that the Register would collect information about a minor who had committed a punishable act under Article 200b of the Penal Code – promotion of paedophilia, and this crime is liable to a fine, semi-liberty or deprivation of liberty up to 2 years.

In case of a minor, the data of the minor – as to the rule – would be stored in the Register with limited access until the minor reached the age of majority, that is for 5 years. Additionally the draft provided for another, 10-years' time of displaying data in the Register, starting from the moment the minor reached the age of majority. Yet if a juvenile or other adult perpetrator in case of having been sentenced to fine, semi-liberty or deprivation of liberty were entered into the Register, he or she would appear there for a year, three years or maximum ten years respectively.

Solution provided by the draft act with respect to a minor perpetrator of prohibited act – in the Ombudsman's view – was then extremely unfavourable for the child, as it was more severe with respect to the minor than to the juvenile or adult criminal.

Additionally the Ombudsman pointed out that some of the solutions provided by the draft act led to unreasonable stigmatisation both of a minor, particularly against whom a judge had adjudicated educational or educational and corrective measures, and of his or her family. According to the Ombudsman, the Register could be an additional means of repression against minors which would make it harder for such children to start living a normal life again. Also terms and definitions used in the Register was not adequate to the worldwide tendency to treat a minor perpetrator of a prohibited act with special care.

The Ombudsman noted then that though keeping a register of sexual criminals could be an important element of the system of sexual criminality prevention, yet the drafted act would not sufficiently protect victims of sexual crimes nor families of those victims, particularly children. Public display of personal data, domicile of the perpetrator or the date and place of the criminal event could facilitate identification of the harmed person by local community and, in the same way, to re-victimisation of the victim. It would be also possible to identify family members of the perpetrators and expose them to ostracism of local community. For the Ombudsman the fact that the court could decide whether to publish such data or not was not enough to prevent such situations from taking place. He stressed that further work on the act should include the need to protect minor victims of sexual crimes and, if they were family members – children of the perpetrator. Such children had already been harmed by the perpetrator and should not be harmed for the second time by society.

With reference to proposed amendment of Article 41 § 1a of the Penal Code, the Ombudsman pointed out that institutions that carried out criminal proceedings in connection with suspected violence applied measures that isolated the perpetrator from the harmed family much too rarely. Very often sentences of deprivation of liberty with conditional suspension of their execution are issued against perpetrators of violent crimes against children. The court practice shows that courts very rarely use probation and penal measures which could both secure the victims, also minor victims, and guarantee sustainable change in the perpetrators' attitudes.

Analysis of cases reported to the Ombudsman shows that courts too rarely prohibit in their decisions to take jobs or perform activities connected with education, teaching, treating or taking care of minors. The reason was that the decision on prohibition was optional.

The Ombudsman for Children had already indicated the problem in 2013 in his address<sup>563</sup> to the Minister of Justice, pointing to the need to extend the scope of trainings for judges adjudicating in criminal cases to make them more sensitive to the aspect of minors' security. The Ombudsman pointed out that the penal measure in question fully, comprehensively and independently of other factors protected minors against perpetrators of such cruel and heavy crimes also by giving employers a possibility to really verify the identity of persons applying for a job that involved children. The Ombudsman had already then asked to consider the option to amend the regulations of law under Article 41 § 1a of

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<sup>563</sup> ZSR/500/16/2013/MM

the Penal Code in such way that the measure would become obligatory if the perpetrator was sentenced for act of sexual nature committed to the detriment of a child. Such a regulation would protect many children against perpetrators of this type of crimes.

Thus, the Ombudsman approved of the proposal to extend the obligation to adjudicate prohibition of taking job positions, performing activity connected with education, teaching, treating or taking care of minors in case the perpetrator was sentenced to any punishment under Article 32 of the Penal Code, as the draft act provided.

The Ombudsman's suggestions were partially taken into account in the course of further works on the Act of 13 May 2016 on counteracting the threats of sexually motivated crimes prevention<sup>564</sup>.

- **The right of minors to defend – address of 08 April 2016**

The Ombudsman for Children addressed<sup>565</sup> the Minister of Justice with a request for legislative measures to provide children involved in juvenile proceedings with full realisation of their right to have a defence counsel assigned and for relevant measures to make this right realistic, that is to have it exercised correctly in juvenile detention centres.

The Ombudsman stressed that the role of a defence counsel was extremely important in such cases. He also pointed out that though the institution of court assigned defence counselling was introduced in 2014 to juvenile proceedings yet it was made dependent on additional conditions. A juvenile can apply for a court assigned defence counsel but on condition that a private defence counsel cannot be afforded by the juvenile and the court's president agreed to it, if deemed it necessary.

In the Ombudsman's opinion, such regulation did not fully realise the child's right in question.

He additionally pointed out to the fact that the scope of mandatory defence is wider in the Code of Criminal Procedure than in the Act on juvenile delinquency. He stressed that the right to defence counsel must be realistic, that is a minor should be provided with assistance of a professional counsel already at the moment of first contact with prosecuting authorities. The presence of a defence counsel at this stage of proceedings is the condition for realisation

<sup>564</sup> Dz. U., Journal of Laws of 2016, Item 862.

<sup>565</sup> ZSR.422.12.2016.ER

of all other procedural guarantees granted to the juvenile, including the right to refuse to testify or answer to specific questions. He stressed that it had been pointed many times in case law of the European Court of Human Rights in Strasbourg<sup>566</sup> that access of the arrested person to defence counsel, also allowing this person to prepare to defend him- or herself is crucial from the point of view of accuracy of court proceedings and should be guaranteed already at the moment of arrest. Only exceptional circumstances legitimize the refusal to be provided with professional defence counselling or limiting the scope of defence. Also the UN Committee on the Rights of the Child was alarmed by the fact that children in conflict with law were interrogated, had to give declarations or undersign documents without their legal advisor or other person of trust being present, which was expressed by the Committee in Recommendations to implementation of the regulations provided by the Convention on the Rights of the Child by Poland.

In response<sup>567</sup> the Minister of Justice did not agree with the Ombudsman and informed that in his opinion the currently binding regulations, considering the type of proceedings in juvenile cases as educational, sufficiently secured the juvenile's right to defence, including the right to defence counsel. The Minister informed that the ministry was not going to initiate any legislative change in that matter.

- **Legal and penal protection of a child against domestic violence – address of 19 April 2016**

The Ombudsman for Children addressed<sup>568</sup> the Minister of Justice with a request to consider whether it was reasonable to extend the subject matter of trainings for adjudicating judges in criminal departments as well as prosecutors, by special focus on the value and legitimacy of using in the course of proceedings measures that guaranteed safety to persons who had experienced domestic violence, which would surely upgrade the standard of protection provided to minors against criminals.

The Ombudsman pointed out that dynamically changing social and legal conditions in the field of counteracting domestic violence impose on criminal justice agencies a necessity to constantly upgrade their skills and competences so that they could react fast and effectively to secure harmed persons, especially

<sup>566</sup> m.in.: Adamkiewicz v. Polska, complaint no. 54729/00, Soykan v. Turcja, complaint no. 47368/99

<sup>567</sup> DL-III-072-28/16

<sup>568</sup> ZSR.422.16.2016.MK

children. He stressed that protecting children's rights is one of the top values guaranteed by the Constitution.

In his opinion, the obligation to protect the rights of the child imposed on public authorities should be performed in way that guaranteed due diligence in caring for the well-being of a child, so he pointed to practical aspects of protecting a child against violence.

And so, the Ombudsman for Children was alarmed by the conclusions arising from the report on implementation of the State Programme of Counteracting Domestic Violence. They indicated a too small number of applications for prolonged preventive measure under Article 275a § 1 of the Code of Criminal Procedure as compared to number of application filed for the first time. the Ombudsman for Children stated that courts much too rarely applied also the penal measure under Article 39 point 2e of the Penal Code and the probation measure under Article 72 § 1 point 7b of the Penal Code which did not provide the harmed minors with due protection against violence inflicted by adults<sup>569</sup>. Separating the perpetrator of violence against the harmed person is possible also under the Act of 29 July 2005 on counteracting domestic violence. Pursuant to Article 3 item 1 point 3 of the above mentioned act, a person who experienced domestic violence is provided with assistance free of charge, and in particular with protection against further harm by not allowing persons who inflicted violence to use and live in apartment or house shared previously with harmed members of family and by prohibiting those persons from contacting or approaching the harmed person.

The Ombudsman stressed that in case domestic violence was found to have taken place, state's help must be immediate. Removal of a person who inflicts violence from a shared apartment is favourable to the person who experiences it. A situation in which the harmed person has to run away out of fear for his or her life or health, often with children, is unacceptable. The Ombudsman

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<sup>569</sup> As says the report on the implementation of the State Programme of Counteracting Domestic Violence for the years 2014 – 2020, for the period from 1 January until 31 December 2014, in 2014 2 341 preventive measures under Article 275a § 1 of the Penal Code were applied. Only in 90 cases an application for prolongation of the preventive measure was filed (Article 275a § 1 of the Code of Penal Procedure in connection with Article 275a § 4 of the Code of Penal Procedure), 76 of which were allowed by courts. Domestic violence protection order (Article 39 point 2e of the Penal Code) was issued 482 times in 2014. The same order was issued 522 as probation measure (Article 72 § 1 point 7b of Penal Code). In 2014, 14,309 persons were sentenced in general for acts qualified as domestic violence and bearing all hallmarks of a crime under statutory law.

reminded also that the European Court of Human Rights in its judgement of 15 September 2009 in case of E.S and others v. Slovakia had stated that a situation in which persons harmed by violence were forced to leave their home and seek shelter meant that the state had not fulfilled its positive duties with respect to provision of protection to victims of domestic violence and, thus, it was infringement of Article 3 of the Convention on Protection of Human Rights and Fundamental Freedoms, which guarantees protection against inhuman or humiliating treatment or punishment<sup>570</sup>.

In response<sup>571</sup> the Minister of Justice informed that a copy of the Ombudsman for Children's addressed would be sent over to the National School of Judiciary and Public Prosecution to allow for the fullest realisation of demands included in it. He also assured that the topic in question was the subject of numerous activities carried by the National School of Judiciary and Public Prosecution both as preliminary training for applicants for the office of judge or prosecutor and as further education courses for persons employed in courts and prosecutor's offices. He added that the topicality of legal and criminal protection of a child against violence, particularly issued related to application of preventive measures, penal and probation measures, is addressed in the course of judge's internship. It is also addressed in other courses and trainings in the field of preliminary further education.

The Minister assured that the ministry was working on development of a schedule of trainings of the National School of Judiciary and Public Prosecutor for the year 2017, which would also include domestic violence prevention.

- **National Strategy for Counteracting Violence against Children – address of 29 April 2016**

In his address<sup>572</sup> to the Prime Minister, the Ombudsman for Children appealed for action to develop a national strategy for counteracting violence against children, and declared his full readiness to cooperate in establishing most beneficial solutions for children. He pointed to Article 19 of the Convention on the Rights of the Child<sup>573</sup> and reminded that the European Network of the Ombudspersons for Children together with Mrs Marta Santos Pais – Special Representative of the UN Secretary General on Violence Against Children – issued their

<sup>570</sup> E.S. and others v. Slovakia. Complaint no. 8227/04, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805a32ae>

<sup>571</sup> DSO-VII-1512-6/16

<sup>572</sup> ZSR.422.17.2016.MK

<sup>573</sup> Dz. U., Journal of Laws of 1991, Item 526 with later amendments).

common statement on 24 September 2015 in which they had expressed their deep concern at the occurrence and great scale of the phenomenon of violence against children in Europe. They called for elaboration of reliable, comprehensive national agenda for prevention of and reaction to all forms of violence against children.

At the conference of the Council of Europe (4-6 April 2016) in Sofia, the Special Representative of the Secretary General on Violence against Children called all member states to develop national strategies of counteracting violence against children.

In the Ombudsman's opinion, such a strategy is very needed and should clearly appoint the state as the primary actor in eliminating violence against children. He concluded that development of such strategy was subject to government's decision.

He stated that the government, while working on the strategy, should be supported not only by subordinate administrative units but also by the Parliament, local self-governments, the justice system, NGOs and other institutions dealing with elimination of violence against children. Also public approval would be favourable, thanks to awareness-raising campaigns and actions to make the public opinion more sensitive to the problem of violence against children.

The Ombudsman then stated that detectability of the phenomenon of violence against children is too low and the level of social approval for corporal punishment – still too high. The national services and institutions obliged to counteract violence against children must be assigned with specific tasks to be accomplished on a current basis, and their effectiveness – supervised. Fight against all forms of violence against children requires elaboration of a comprehensive approach oriented towards key issues like prevention, protection, victim support, exchange of information and practices and prosecution of criminals.

In his address the Ombudsman reminded also that he had been monitoring social attitudes towards violence in child rearing from the year 2011 on a regular basis. Still the percentage of persons who approved of corporal punishment was too high. The research conducted by the Ombudsman for Children in 2015 revealed that approval for violent upbringing was declared by 58% of Polish citizens and almost 26% believed that beating was an efficient educational method. The research showed also that only one third of Poles was aware that application of corporal punishment in education was forbidden in Poland.

The Ombudsman stressed that Poland was positively mentioned in the UN Report on limiting violence against children of 2013 developed on the basis of UN Secretary General's Global Study on Violence against Children. Our country was mentioned in the report – next to Sweden, Austria, Germany, Finland, the Netherlands – as an example of good practice of introducing the absolute prohibition of beating children in 2010.

The Ombudsman pointed out that out of almost 50,000 cases reported to him in 2015, 5,172 were connected with protection against violence, cruelty, exploitation, demoralisation, neglect and other kind of abuse. The cases concerned i.a.: domestic violence and violence in other settings, sexual violence, violence against children placed in foster care, educational, social therapy, day support and social rehabilitation facilities, psychical and physical violence inflicted by adults against children at school, in kindergarten, crèche and other forms of care of children up to 3 years old, bullying, neighbour conflicts, and treating children as objects in various institutions.

According to the Ombudsman, interventions undertaken in the above mentioned cases argued for the need to develop and adopt a national strategy of counteracting violence against children, which would address the problem in a comprehensive way.

He pointed that though there were already programmes of prevention against specific types of violence, a general strategy that would address the phenomenon in a complex and exhausting way was missing. To give more reasons, he reminded that acknowledgement of Poland's achievements on the international arena and awarding Poland with the honorary title of the Motherland of Children's Rights was a special distinction as well a special obligation to undertake widely interpreted and innovative actions to improve the observance of child's rights. He added that it was Poland who initiated the adoption of the Convention on the Rights of the Child, which is one of the country's greatest international achievements in the field of child's rights protection.

The Prime Minister informed<sup>574</sup> the Ombudsman for Children that the address on development of a national strategy for counteracting violence against children was sent over to the Minister of Family, Labour and Social Policy with a request for analysis of the issue, provision of answer to the Ombudsman and, possibly, in cooperation with relevant bodies, sending its copy to the Secretary of the Council of Ministers.

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<sup>574</sup> SPRM.7.3.2016.JP



The Minister of Family, Labour and Social Policy informed<sup>575</sup> that the currently binding acts of law in the field of counteracting violence addressed all categories of persons who experienced violence, particularly children, and a system of counteracting domestic violence was already started to be developed in 2005 when the Act on counteracting domestic violence was adopted. He informed about other actions performed by the state in that field.

According to the Minister of Family, Labour and Social Policy, owing to wide range of strategic measures in currently binding legal acts in the field of counteracting violence against children, there was no need to develop a national strategy to counteract violence against children.

- **Legal and penal protection in crimes committed to the detriment of a minor – address of 07 May 2016**

The continue his endeavour to provide proper legal and penal protection of minors and considering he content of response given by the Minister of Justice to his demands, the Ombudsman for Children addressed<sup>576</sup> the President of the Republic of Poland with a request for legislative initiative to amend the regulations on crimes to the detriment of minors as well as with respect to lack of penalisation of reprehensible conduct that violated the rights and well-being of a child.

The Ombudsman for Children concluded that the currently binding system of law did not provide sufficient and effective tools to fight crimes of severe bodily injury and to protect the society, in particularly children and weak persons against this type of crimes. The Ombudsman for Children submitted a set of amendments to the President that would increase considerably the scope and effectiveness of protection for children against the heaviest crimes under the Penal Code and the Act on juvenile delinquency.

The draft reclassified the crime of severe bodily injury from the category of offences to the category of crime, penalised with deprivation of liberty from 3 to 15 years and introduced two new types of this qualified crime – on the grounds of the person harmed (a child or a mentally or physically vulnerable person) or on the grounds of the manner in which the perpetrator acted (acting with special cruelty), penalised with deprivation of liberty for not less than 5 years.

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<sup>575</sup> DPS.X.5132.64.2016.IM

<sup>576</sup> GAB.422.3.2016.BS

The draft provided also wider penal liability (extended upper and lower limit of the penalty) for committing a crime of severe bodily injury in its basic form, if it resulted in a man's death and in case the crime was committed unintentionally.

The draft introduced a new type of qualified crime under Article 189 of the Penal Code in case the harmed person was a minor under 15 – the crime [przestępstwo] would become a felony [zbrodnia]. In the Ombudsman's opinion, due to victim's age – minority – criminal activity of the perpetrator should be addressed in a special way. Depriving a minor of liberty or keeping a minor in detention is far more harmful in result than doing the same, even illegally, to an adult.

The draft introduced also the qualified crime of trafficking in humans if the victim was a minor under 15 and penalty of deprivation of liberty for 5 years or more (draft of Article 189a of the Penal Code). In that matter, the proposal of the Ombudsman for Children met the recommendations of the UN Committee on the Rights of the Child of 02 October 2002 and of 29 October 2015, which told about the necessity to introduce into our legal system special protection for children against trafficking in human beings. In the Ombudsman's mind, adoption of qualification for the crime of trafficking of human beings – an attempt, accomplishment and penalisation – is justified by the extremely reprehensible conduct of the perpetrator, extremely high degree of social harm and the nature of the crime, which should be particularly condemned.

The draft addressed also penalisation for two crimes belonging to the category of crimes against family and care: abandoning a minor or a vulnerable person and the qualified type of crime of abandonment – by result – death of a man (drafted Article 210 of the Penal Code) and abduction or keeping a minor or a vulnerable person by force (drafted Article 211 of the Penal Code). In the opinion of the Ombudsman, the currently binding penalty for those crimes was inadequate to the severity of social harm and did not fulfil the requirements of legal and penal protection of not only the family and care but also health, safety and life of a minor under 15 or a person vulnerable due to his or her mental or physical condition.

The draft introduced furthermore penalisation of failure to notify on the heaviest crimes committed to the detriment of a minor, particularly sexual crimes, trafficking in human beings, rape in its most cruel form (rape of a person under 15, rape of the closest member of family, group rape) and the crime of severe bodily injury in its basic form and all qualified forms (special cruelty, to the det-

rimment of a minor or a vulnerable person, resulting in death) – drafted Article 240 § 1 of the Penal Code.

Introduction of a new crime – parental abduction in a limited sense – was supposed to criminalise negative conduct to the detriment of a minor, that is hindering contact or making it impossible by one of the parents against family court's decision in case the other parent was exercising full parental authority. Due to effects in the field of rights and well-being of a child and high incidence of such acts, in the Ombudsman for Children's opinion, should be covered by legal and penal protection by the state, sanctioned by the standards of the Penal Code. A narrow perspective on the subject of penal protection guarantees that penal law interferes into family and private life of the citizens only in the necessary, minimum extent, being by the way an important action oriented to improve the situation of the child in case contacts with the parent would be hindered.

Regulations elaborated by the Ombudsman for Children took a comprehensive perspective on the issue. The changes are well-grounded and necessary, met the social expectation and offered a set of tools to the prosecuting authorities and criminal justice agencies to effectively eliminate criminal acts against the child. Yet above all the changes increased the courts' freedom in adjudicating which meant that now they could adjudicate, in every case, a sentence more adequate and fair and relevant to the directives of the code and considering all circumstances of a specific criminal event.

The President of the Republic of Poland accepted those proposals and decided to refer them to further processing by the Bureau of Research at the President's Chancellery. Out of all proposals, the penalisation of parental abduction in its narrower sense (draft Article 244 of the Penal Code) was excluded from further analysis. The Ombudsman presented an additional suggestion in that matter, a regulation of negative conduct against children, pointing to their possible regulation by Article 211c of the Penal Code. The remaining proposals of the Ombudsman, after certain modifications, were entered as the President of the Republic of Poland's right of legislative initiative and passed to the Sejm (printed matter no. 846).

- **Promotion of information on forms of support and assistance for domestic violence victims – address of 17 May 2016.**

The Ombudsman for Children addressed<sup>577</sup> the Minister of Family, Labour and Social Policy with a request to extend the scope of trainings for employees of local social service units, members of interdisciplinary teams and working groups in the field of regulations concerning the obligation to leave an apartment – Article 11a of the Act on counteracting domestic violence<sup>578</sup> and to undertake other measures to promote awareness on the above mentioned preventive measure that provided security to persons who experienced violence.

The Ombudsman pointed out that pursuant to Article 3 item 1 point 1 and 3 of the Act on counteracting domestic violence, free assistance is provided, particularly psychological, legal, social and family counselling and protection against further harm by preventing the perpetrators from using the residence shared with other members of family. Pursuant to Article 11a item 1 of the above mentioned Act, if a family member living in the same place of residence makes living together really difficult because of this person's violent conduct, a person who suffers violence may demand that the court oblige the other person to leave this shared place of residence. The decision is issued after a hearing which should be scheduled not later than within one month from the day the request is submitted and becomes enforceable from announcement and may be altered or repealed in case of any new circumstances.

The report on the implementation of the National Programme of Counteracting Domestic Violence said that though the number of requests for occupation order slightly increases, persons who suffer from domestic violence still do not know their rights and if they know it, they are not able to enforce them<sup>579</sup>.

And so, the Ombudsman asked the Minister of Family, Labour and Social Policy to undertake far-reaching informative and awareness-raising action to inform

<sup>577</sup> ZSR.422.19.2016.MK

<sup>578</sup> Dz. U., Journal of Laws of 2015, Item 1390 with later amendments).

<sup>579</sup> As shown by the report on implementation of the National Programme for Counteracting Family Violence for the years 2014–2020 for the period from 1 January do 31 December 2014 r., in 2014 regional courts received 1.152 complaints under Article 11a of the above mentioned Act (2013 – 1.114, 2012 – 730, 2011 – 197, 2010 – 353), of which 1.134 were settled (2013 – 879, 2012 – 620, 2011 – 105), whereas in 487 (2013 – 387, 2012 – 268, 2011 – 49, 2010 – 138) the request was allowed, and in 136 cases it was dismissed (2013 – 118, 2012 – 74, 2011 – 10). The allowed – dismissed request ratio was 43% in 2014, quite similar as in previous year (2013 – 44%, 2012 – 43,23%, a w 2011 – 46%).

about violence, possible channels of support and how to react to violence. According to the Ombudsman, persons who experience violence must be aware that they have the right to demand that the court oblige the perpetrator to leave the shared house/apartment. Such information should be passed in the course of the supportive activity such as the “Blue Cards” procedure or during a meeting with the harmed person or in the information included in the B form “Blue Card”.

In response<sup>580</sup> the Minister of Family, Labour and Social Policy informed that trainings for employees who implement the tasks in counteracting violence were organised under the Programme and gave the number, topics and forms of those trainings. He informed that trainings were also run on the basis of the Operational Programme which was being implemented entitled “Counteracting domestic violence and gender-related violence” under the Norwegian Financial Mechanism. The trainings were for members of interdisciplinary teams and referred to legal aspects of counteracting violence and violence as phenomenon in general, intervention-like, supportive reacting in case of violence, and methodology of work with persons harmed and persons inflicting violence.

According to the Minister, there was no need to extend the scope of topics of the trainings with Article 11a of the Act on counteracting domestic violence, as it had been already included in the existing trainings.

- **Protection for children against using them to beg – address of 10 June 2016**

The Ombudsman for Children addressed<sup>581</sup> the Minister of the Interior asking him to undertake measures to provide minors, including foreigners, with increased protection against using them to beg. The Ombudsman stressed that using minors to beg is a special form of violence which caused degradation of the child’s personality and had negative influence on the child’s development. The phenomenon violated the fundamental rights of the child, particularly the right to be protected against violence, cruelty, exploitation, demoralization, neglect and any other form of maltreatment, guaranteed in i.a. the Constitution of the Republic of Poland or the Convention on the Rights of the Child. The Ombudsman appealed for intensified measures to provide minors with relevant protection and asked for information about the effects on the initiatives undertaken last year.

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<sup>580</sup> DPS.X.5132672016.IM

<sup>581</sup> ZSM.422.7.2016

In response<sup>582</sup> the Minister of the Interior and Administration informed that the ministry was undertaking various measures to recognize and eliminate the phenomenon of using children in begging, also measures of preventive and supportive nature. The activity were performed in close cooperation with institutions of state administration, local self-governments and social organizations. The Ministry had also developed numerical evidence on minors exposed to being used to beg. Then the Minister informed that as compared to previous years, the scale of the problem within the country was not that big.

- **Placing minors in mental hospital – addressed of 4 July and 23 November 2016**

The Ombudsman for Children addressed<sup>583</sup> the Minister of Justice with a request for widely interpreted measures to organise a series of courses for judges in correct application of the regulations of the Act on juvenile delinquency and to provide for sufficient number of court experts in child and adolescent psychiatry.

The Ombudsman stressed that pursuant to Article 25a § 1 of the Act on juvenile delinquency, in case an opinion on health condition was necessary, family court ordered medical examination of the minor by at least two expert psychiatrists. Upon request of the experts, the court could also appoint experts of other specialities to contribute to the opinion.

In case the experts found it necessary, mental health examination of the minor might be connected with observation during in-patient treatment in a medical facility which was not an entrepreneur only when the evidence implied high probability that the minor would display demoralisation to a high level or perpetrated the act prohibited under law<sup>584</sup>.

Pursuant to Article 25a § 3 of the Act on juvenile delinquency,§ it is the decision of the court whether such observation in a medical facility is necessary, after hearing the minor, and if so, the court defined place and duration of the observation.

Introduction of the rule ordering to clarify any doubts as to the mental health condition of the minor by way of opinion issued by two court experts was one of the guarantee of protection for the minor. The mental health diagnosis was

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<sup>582</sup> BMP-0791-4-3/2016/MJ

<sup>583</sup> ZSR.422.21.2016.MK

<sup>584</sup> Article 25a § 2 of the Act on juvenile delinquency.

important before all because of the need to find out what measures should be applied to him.

As the Ombudsman for Children analysed cases he received, it appeared that there had been situations in which the court, to secure the claims for the time of the ongoing proceedings, placed a minor in a mental hospital without having ordered and heard the evidence of experts' opinion or based on an opinion ordered by the court and made by only one expert psychiatrist, for example by an opinion made by opinion-giving team of court experts – pursuant to Article 25 § 1 of the Act on juvenile delinquency. Such practice infringed the regulations of law.

The Ombudsman pointed out that Article 25 § 1 of the Act on juvenile delinquency referred only to a diagnosis of the minor's personality whereas Article 25a § 1 referred to a diagnosis of minor's mental health condition, which was a completely different thing.

Another important issue raised in the address was the problem of missing court experts in child psychiatry, which surely added up to unnecessary delays in court proceedings in case the circumstances required immediate action to determine the minor's health condition. The Ombudsman gave the example of the District Court in Łódź, where there was only one professionally active court expert in child and adolescent psychiatry, whereas the District Court in Poznań did not have any.

In the Ombudsman's opinion, this resulted in much prolongation of proceedings which violated the constitutive right to have one's case heard without undue delay.

As the Ombudsman for Children did not receive any answer to that address, he again sent it<sup>585</sup> to the Minister of Justice.

The Ombudsman for Children is waiting for relevant answer.

- **Questionnaires used to estimate the threat of violence and algorithms of procedures for employees of social service units – addresses of 05 July 2016**

The Ombudsman for Children addressed<sup>586</sup> the Minister of Family, Labour and Social Policy and the Minister of Justice with a request to take measures to col-

<sup>585</sup> ZSR.422.21.2016.MK

<sup>586</sup> ZSR.422.26.2016.MK

laborate in development of tools to counteract domestic violence to be used by employees of social service units, namely questionnaires used to estimate the threat of violence and algorithms of procedure in case of violence.

As the report on implementation of the National Programme of Counteracting Domestic Violence for the years 2014 – 2020, employees of social service units acted intensely as far as the procedure “Blue Card” was concerned, yet the institution which most often opened this procedure was the Police<sup>587</sup>, for which relevant tools were developed to estimate health and life risks in connection with domestic violence and algorithms that indicated how to proceed in case violence was suspected. Similar tools and algorithms were developed for school, education facilities and health care personnel.

The aim of the tools and algorithms in proceedings was to increase the level of efficiency in performance of policemen and social workers in situation when life and health was endangered with domestic violence. The results of statistical data showed that education and health care system workers, whose participation in filling the questionnaires “Blue Card – A” was so far quite low, identified and diagnosed the problem better and better everyday.

The Ombudsman stressed the the tools in question, developed also for representatives of social service would result in more, and more successful interventions undertaken by social workers when faced with domestic violence. These tools would facilitate recognition of a risky situation for child (and an adult) because of domestic violence and determination of method of counteraction. He also indicated that another reason for introducing such tools for social workers was that they were appreciated and used by all European Union member states under relevant regulations of European Law.

In response<sup>588</sup> the Minister of Justice informed that the Ministry of Family, Labour and Social Policy appointed a Working Team to develop recommendations for amendment of the Act on counteracting domestic violence. The Plenipotentiary of the Minister of Justice for Constitutional Rights of Family who participated in the works of the Team was obliged to pass to the Team all comments made by the Ombudsman for Children.

<sup>587</sup> The Report on implementation of the National Programme of Counteracting Violence in Family for the years 2014-2020 for the period from 1 January do 31 December 2014 r., s. 100.

<sup>588</sup> DSRiN-072-4/16/2, UNP:160713-01571



The Minister of Family, Labour and Social Policy informed<sup>589</sup> that under the project implemented by means of European Social Fund resources, a guide entitled “Child’s fate under control – standard procedures for social workers – a tool for protection of children against domestic violence” was issued for “personal contact” workers, namely those who work in local institutions and have direct contact with children and their parents. The guide was addressed to social workers, family assistants, psychologist, health care personnel, teachers, court appointed guardians, pedagogues and policemen. It included useful guidelines how to diagnose and identify critical and violent situations at an early stage. The Minister said that since the questionnaires were introduced to estimate the risk for health and life due to domestic violence, the number of persons arrested for being suspected of violent conduct grew.

He also informed that over the years, supplementary materials had been developed which can be used by services and actors who implemented the tasks connected with violence prevention, also local social workers.

- **Placing minors in state health care facilities – address of 03 August 2016**

The Ombudsman addressed<sup>590</sup> the Minister of Justice following the information about obstacles in executing decisions on placing a minor in a state health care facilities, issued under Article 12 on juvenile delinquency.

Pursuant to § 6 item 1 of the Ordinance of the Minister of Health of 20 April 2005 on detailed rules of referring, admitting, moving, discharging and in-patient treatment of minors in state health care facilities<sup>591</sup> before a minor is placed in a state mental hospital of highest security level, in state mental hospital of increased security level or state detoxification centre of increased security level, the court may address the Institute of Psychiatry and Neurology in Warsaw with a request to indicate the competent facility. For that purpose the court sends a decision on medical measure to the Institute together with all medical records collected in the case. Pursuant to § 6 item 3 of the above mentioned act, the Institute indicates to the court the relevant facility within 14 days from reception of the above mentioned documents.

Until 2006, family courts were substantially supported by the Commission for referring, moving and in-patient treatment of minors in state health care fa-

<sup>589</sup> DPS.VII.5132.86.2016.IM

<sup>590</sup> ZSR.422.24.2016.MK

<sup>591</sup> Dz. U., Journal of Laws of 2005, Item 692.

cilities, operating at the manager of the Institute of Psychiatry and Neurology. Yet its activity was suspended on 10 November 2006 because there was no detailed statutory regulations and ordinances.

Since then, the Institute of Psychiatry and Neurology in Warsaw does not perform tasks appointed to it, which is harmful to the quality of qualifying minors to state health care facilities. The problem had already been raised by ombudsmen in Poland, as courts were in this way deprived of their supportive body.

The Ombudsman for Children pointed out that the Minister of Health in his letter<sup>592</sup> of 06 April 2016 addressed to the Under-Secretary of State at the Ministry of Justice had focused on the necessity to amend the Act on juvenile delinquency as it should include in particular definitions of types of health care facilities competent in implementing the medical and educational measure and rules under which minors would be referred to them, with consideration of relevant levels and conditions of security and appointing a commission to indicate the specific facility, the mandate, rules of operation and financing of the commission. At the same time the Minister of Health found the Ombudsman for Patient's Rights's proposal reasonable as it referred to appointing a working team at the Minister of Justice for development of comprehensive and best available legal solutions, and composed of representatives of the Ministry of Justice, the Ministry of Health, the Ombudsman for Children, the Ombudsman for Patient's Rights and medical facilities in which the medical and educational measure would be applied.

Considering the above, the Ombudsman for Children asked what actions had been taken to amend the Act on juvenile delinquency, to let the Institute of Psychiatry and Neurology in Warsaw perform its tasks defined under § 6 of the Ordinance, or possibly to indicate another body which would support family courts in determining the right health care facility for a juvenile.

In response<sup>593</sup> the Minister of Justice informed that on 18 August 2016 a working meeting had taken place in the Ministry to develop solutions in the field of referring, admitting, moving, discharging and in-patient treatment of juveniles in health care facilities. Also the representatives of the Ombudsman for Children participated in it. At the meeting, proposals were discussed given by the Ministry of Health, the Ombudsman for Patients, the Ombudsman for Patient's Rights and managers of hospitals to which juveniles were referred to under Article 12 of the Act on juvenile delinquency.

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<sup>592</sup> ZPP.073.11.2016

<sup>593</sup> DSRiN-II-072-3/16

These proposals were currently under discussion and analysis of the Ministry of Justice and should be subjected to consultations and agreements with the Ministry of Health.

- **Amendment of the Act on juvenile delinquency address of 24 August 2016**

The Ombudsman for Children, following the address to the President of the Republic of Poland of 07 May 2016 in which he wrote about lack of appropriate legal and penal protection of children's rights and well-being, addressed<sup>594</sup> the Secretary of State at the Chancellery of the President of the Republic of Poland by which he asked whether it would be reasonable to introduce a new regulation to Article 11 § 3 of the Act of 26 October 1982 on juvenile delinquency.

He pointed out that the currently binding Article 240 § 1 of the Penal Code and draft article 240 § 1 of the Penal Code were partially reflected in the currently binding Article 11 of the Act on juvenile delinquency. As the Bureau of Research at the Chancellery of the President of the Republic of Poland approved the final wording of draft Article 240 § 1 of the Penal Code, it was necessary to amend Article 11 § 3 of the Act on juvenile delinquency by defining penal acts which, if committed by a juvenile -with no grounds to hear the case by a competent court under regulations of the Code of Penal Procedure, might result in repealing the conditional suspension by a family court and placing the minor in a juvenile detention centre, with consideration of the content of draft Article 240§ 1 of the Penal Code.

To illustrate the need to amend Article 11 § 3 of the PC, regulations of Article 11 of the Act on juvenile delinquency and Article 240 of the PC in their current wording and draft Article 240 § 1 and § 2a of the Penal Code were presented.

Analysis of the catalogue of penalised acts, systemic coherence of the regulations, and, before all, the purpose by which the Ombudsman for Children was guided with respect to increased protection of children in material law, indicated the need also to amend Article 11 § 3 of the Act on juvenile delinquency.

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<sup>594</sup> GAB.422.4.2016.BS

- **Protection of unborn children exposed to the danger of health and life loss due to consumption of alcohol by their mothers – addresses of 24 August 2016**

The Ombudsman for Children, following his previous activity in that matter, called<sup>595</sup> the Minister of Justice, the Minister of Family, Labour and Social Policy and the Minister of Health to undertake integrated, multidimensional action to protect children exposed to life and health danger because of their mothers' consuming alcohol or other psychoactive substances when pregnant.

In response<sup>596</sup> the Minister of Justice informed that he fully agreed with the Ombudsman for Children as to the need to undertake measures to secure the widely interpreted well-being of a child exposed to health or life danger because of their mothers' consuming alcohol and other psychoactive substances when pregnant. He also informed that: "The Ministry of Justice started to analyse the problem to assess the above mentioned conduct in the context of possible reactions with use of currently applicable legal regulations of civil and penal law." The Minister of Justice informed also that the problem should be subject to evaluation in case a decision was made on potential legislative changes in the context of a broader discussion on acts that harmed legal goods, namely the life and health of a man.

Moreover, the Minister informed<sup>597</sup> that the ministry was going to appoint a team for demographic policy of the state which should be guided by multidisciplinary approach to the problem in its work. One of the tasks appointed to the team would be to develop a comprehensive strategy for families and children, following an in-depth analysis of their needs.

The Minister of Health informed<sup>598</sup> that the ministry was going to undertake many measures to more effectively diagnose FASD and to start interministerial collaboration, the purpose of which would be to increase public awareness on the influence of alcohol consumed on the life of children and provision of wider access to assistance for persons with FASD and their carers. He also informed that the problem raised in the Ombudsman's previous address still remained valid. Mass media regularly reported cases of pregnant women who were taken to obstetrics under influence of alcohol or drugs. There are very many children who are born with FASD in its full form, or with other disorders resulting from

<sup>595</sup> ZSR.422.23.2015.MK

<sup>596</sup> DL-III-072-37/15

<sup>597</sup> DSR.I.071.5.2015.AK

<sup>598</sup> MD-P.073.4.2016

alcohol consumptions. He added that the State Agency for the Prevention of Alcohol-Related Problems (PARPA) estimated the every year about 9 thousand children with developmental disorders resulting from their contact with alcohol during their foetal life were born in Poland and the state had to its best to decrease this number.

Having in mind the responses he received, the Ombudsman again addressed<sup>599</sup> the Minister of Family, Labour and Social Policy, the Minister of Health and the Minister of Justice, and asked for information about the stage of work connected with protection of children exposed to alcohol or other drugs in their foetal life and when could he expect any results.

The Minister of Health informed<sup>600</sup> that the tasks connected with FASD problem and with awareness raising in the field of damaging influence of alcohol consumed by pregnant women, performed by the State Agency for the Prevention of Alcohol-Related Problems (PARPA), were performed by running a campaign "Pregnancy without alcohol", trainings for educators – gynaecologists and midwives and various groups of public: psychologists, pedagogues, court-appointed guardians, social workers and youth and biological, adoptive and foster parents as well as in the form of trainings for educators in social therapy day care centres and other residential institutions that prepared to do medical and physical therapy for children with FASD. Also other activities were carried out, in particular development and dissemination of the preventive programme of youth of upper secondary school entitled: "Biorę odpowiedzialność" [I take responsibility], cooperation with various actors, including NGOs and supporting scientific research. The Minister added also that activity was undertaken to establish a FASD clinic in Warsaw which, apart from diagnosing and providing therapies for FASD children, would run a detoxification programme for pregnant women who could not stop drinking alcohol, at the neurological ward of Paediatric Hospital of Warsaw Medical University, and a clinic for diagnosing, treating and physical therapy of children with FASD. Also a film guide was made addressed to persons who diagnose FASD on measuring key dysmorphias of FASD, and assessment of side physical alterations characteristic for FAS, and new [www.ciazabezalkoholu.pl](http://www.ciazabezalkoholu.pl) site. It would be addressed to pregnant women and those who were planning to have a baby. It would be a source of information on FASD for parents, educators, experts and adult persons with FASD. The Minister added also that in the Ordinance of the Council of Ministers on Nation-

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<sup>599</sup> ZSR.422.23.2015.MK

<sup>600</sup> MD-P.073.4.2016.JK

al Health Programme for 2016-2020 adopted on 04 August 2016, a national programme of alcohol-related problems prevention and solving.

The Minister of Family, Labour and Social Policy informed<sup>601</sup> in the letter of 04 October 2016 that the ministry still worked to appoint a team for demographic policy of the state.

The Minister of Justice informed<sup>602</sup> that he agreed with the Minister of Health and the Minister of Family, Labour and Social Policy.

- **Continuing activity to promote peer prevention in the context of youth taking psychoactive agents – address of 07 October 2016**

In his address<sup>603</sup> to the Minister of the Interior and Administration, the Ombudsman for Children asked for information about the ministry's activity following the peer preventive programme "Profilaktyka a Ty" [Prevention and you] in the context of very wide-spread and serious problem of young people who took psychoactive substances and the phenomenon of violence.

The Ombudsman stressed that every initiative that could protect life and health of even one child was invaluable, so he was carefully following the development and directly taking part in the programme initiated and run by the General Commandment of the Police. He reminded that more than 10 years' programme brought great result in peer prevention among secondary school students by promoting a life free from violence and addictions. He also noticed that the yearly work of the so called PaTparty and youth leaders and organisation of regional and central meetings for youth under the name "przystanek PaT" [PaT stop] was possible owing to direct support provided by governmental programmes "Razem bezpieczniej" [Together safer] by the Ministry and "Bezpieczna i przyjazna szkoła" [Safe and friendly school] by the Ministry of National Education.

The Ombudsman declared to provide any possible support for that kind of initiatives in peer prevention that could have really improve safety by shaping responsible attitudes among children and youth and asked for answers to question posed by young people about activities connected with continuance and development of the PaT programme.

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<sup>601</sup> DSR.I.071.6.2016.AK

<sup>602</sup> DL-III-072-43/16

<sup>603</sup> GAB.422.5.2016.BS

In response,<sup>604</sup> the Minister of the Interior and Administration informed that counteracting criminality was one of the priorities in the list of tasks to be accomplished by the ministry. In that context the importance of peer prevention could not be overestimated in the perspective of preventing such pathologies as drug addiction and taking alternative substances and alcohol consumption. He informed that the Ministry was working on new programmes which would engage young students from secondary schools in more comprehensive way than in the PaT programme. He agreed that peer prevention was one of the most important methods to build correct attitudes among the youngest citizens. He added that the ministry had already developed a “Władysław Stasiak programme for limiting criminality and antisocial behaviour Together Safer for the years 2016 and 2017”. The programme consisted of supporting activities to improve safety in local communities, and included tasks addressed to youth. Moreover, in 2016 the Ministry settled 4 open competitions for realisation of public tasks by NGOs. Also a programme “Dzielnicowy bliżej nas” [Community policeman closer to us], owing to which common citizens also the youngest would have better contact with local policemen. In the preventive activity, the map of risks called “Mapa zagrożeń bezpieczeństwa” proved to be a very useful instrument, used also at police stations. The Minister was also satisfied to receive a declaration by the Ombudsman to support initiatives of creative prevention among peers in education of schoolers.

- **Protection of rights and well-being of juveniles in police youth emergency centres – address of 28 October 2016**

The Ombudsman for Children addressed<sup>605</sup> the Minister of the Interior and Administration following numerous signals of irregularities in police youth emergency centres, that indicated that the rights of minors were not respected. The Supreme Audit Office (NIK) conducted inspections in the Ministry of the Interior and Administration, the General Commandment of the Police, the Commandment of the Police in Warsaw, 14 voivodeship commandments and in all active police youth emergency centres, to assess whether the child’s rights were respected.

The results of the inspection<sup>606</sup> revealed that this was not always the case. NIK revealed a number of irregularities, in particular cases in which minors had limited contact with parents, defence counsel or carer, their right to free and

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<sup>604</sup> DKSP-0748-6/2016

<sup>605</sup> ZSR.422.32.2016.MK

<sup>606</sup> nr P/16/085

confident communication was infringed, as well as their right to intimacy and free communication of requests, complaints and applications as well as cases in which the time of detention was prolonged beyond the limits of time defined in the Act on juvenile delinquency.

In the evaluation of NIK, those irregularities resulted mainly from the fact that executive legal acts were not adjusted to statutory law, also to the Constitution of the Republic of Poland, lack of procedures and uniform standards for emergency centres and well known practices in providing care of minors. In some cases, problems resulted from lack of resources to modernise and maintain the centres.

NIK stressed in its report that supervision over the emergency centres did not well enough secure protection of children's rights and facilitated arbitrary interpretation and selection of solutions with respect to care and observance of children's rights by those centres. They had not been properly inspected, though organisations that dealt with assessing the level of rights observation indicated such irregularities for many years.

Hence, NIK addressed a request to the Minister of the Interior and Administration for measures to amend the regulations of law and to regulate issues related to: respect for the right to intimacy and privacy in sanitary rooms and during personal check; contact between the minor and the parents, carer or defence counsel; the option to serve a meal to minors in emergency centres earlier than after 5 hours from arrest, in case the time from being arrested till the moment of placing in the centre was long. At the same time, NIK recommended to the General Commandant of the Police in Poland that uniform standards of operation and procedure and care of minors at the police youth emergency centres be developed.

The Ombudsman for Children had already pointed this problem out<sup>607</sup> in 2012, informing that the rights of children placed in emergency centres were not observed, especially with respect to illegal prolongation of time spent at the centre beyond the time span defined in the Act on juvenile delinquency and lack of proper conditions in rooms where the children were kept.

The NIK reported however said that though legal regulations were introduced along with some organisational changes, no conditions were created to allow for a safe and legal stay of minors.

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<sup>607</sup> Address to the Minister of Justice on lengthy stay of juveniles in the Police emergency centres of 23 November 2012 (Ref. No.: ZSR/500/31/2012/UZ).



Having in mind the necessity to provide to arrested minor full respect for their rights, the Ombudsman addressed the Minister of the Interior and Administration and asked him for his position in that matter, and for information on what the ministry had done to eliminate the above mentioned irregularities.

In response<sup>608</sup> the Minister informed that the ministry had taken up legislative work to develop a draft ordinance of the Minister of the Interior and Administration amending the ordinance on rooms dedicated for persons arrested or taken to become sober, interim rooms, temporary interim rooms and police youth emergency centres, rules and regulations of such places, rooms, other premises and the procedures of processing the recorded material from CCTV. He informed that the project – currently at the stage of interministerial consultations – provided changes in the way those centres operated by facilitating contact between the minor and the parents, carer or defence counsel by eliminating the condition of obtaining manager's, court's or the policeman's consent before being allowed to have the contact and change in the procedure of serving meals to minors.

With reference to the problem of policemen present during a meeting with parents, defence counsel or carer, he explained that as to the rule, a minor in a police youth emergency centre was there for the time of investigation, namely time when both the police and the court are performing necessary procedures against the minor. Allowing a minor to have contact with persons he/she indicated without presence of a policeman could result in disturbances in the course of proceedings. And so, one could not, for example, exclude a situation in which the minor, offender, trying to evade liability, would encourage witnesses to give false testimony. Moreover it could happen that at such visitations, minors would receive forbidden objects from their visitors and which could be used in assault on the life or health of a minor or other persons in the centre. Hence, in the opinion of the Ministry of the Interior and Administration, probability of the above mentioned risks did not substantiate adoption of a solution under which a policeman could not be present at such a visitation.

The Minister informed also that in 2015 the manager of the Bureau of Prevention Traffic of the General Commandment of the Police addressed a letter that recommended the Voivodship Commandants to equip the police youth emergency centres with necessary items to provide minors with sense of intimacy. Those recommendations were implemented by consequentially adding relevant equipment to sanitary rooms (like curtains or partition walls) according

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<sup>608</sup> BMP-0791-4-5/2016/MJ

to available financial reserves. The Minister concluded that in the light of information presented by the Police, the fact that NIK found irregularities in 61% of emergency centres resulted probably from the fact that recommendations of the General Commandment had not yet been implemented in all emergency centres, but was not the result of missing legal regulations. This would be additionally supported by the fact that in part of the centres, the expectations as to the standards were met. It might be then assumed that accomplishing of the process of implementing recommendations could be enough to meet the effect expected by NIK.

The Ombudsman was informed that the Minister of the Interior and Administration in his letter of 08 November 2016 addressed to the Vice-President of NIK obliged himself to monitor the progress in realisation of the above mentioned recommendations by the manager of the Bureau for Prevention and Traffic of the General Commandment of the Police. And so, possible legislative initiative in that field would be considered depending on the rate of implementation of standards in emergency centres. The Minister informed also that a minor placed in a centre was provided with the option to submit requests, complaints and application to the manager of the centre or a relevant policeman. This was regulated by rules of administrative proceedings. He added also that the addressee of potential complaint of a minor or his legal carer could also be the family court.

He admitted though that practice showed incidents of prolonged time of arrest beyond statutory time spans. This resulted mostly from the fact that the court had difficulties with indicating a relevant facility for the minor or that the court procedures took long time. He assured that all cases mentioned by NIK and referring with prolonged time of arrest were consulted with relevant courts and were allowed by them and that the minor got clothes, underwear and shoes for free for the time of arrest, all suitable for a given season, unless his or her own clothes could not be used for hygienic reasons or because of its bad condition. As far as technical condition of the rooms in youth emergency centres was concerned, the minister explained that those rooms (also outdoors) were consequently being adjusted to technical requirements and according to financial reserves of the Police, and in line with a schedule developed in 2012.

- **Amendment of regulations on police youth emergency centres – address of 28 October 2016**

In his address <sup>609</sup> to the Minister the Ombudsman for Children presented his comments to the draft ordinance of the Minister of the Interior and Administration amending the ordinance on rooms dedicated for persons arrested or taken to become sober, interim rooms, temporary interim rooms and police youth emergency centres, rules and regulations of such places, rooms, other premises and the procedures of processing the recorded material from CCTV.

The Ombudsman expressed his positive opinion about action to guarantee protection of rights of minors placed in such centres.

The inspection <sup>610</sup> carried out by NIK revealed a number of irregularities, in particular cases in which minors had limited contact with parents, defence counsel or carer, their right to free and confident communication was infringed, as well as their right to intimacy and free communication of requests, complaints and applications as well as cases in which the time of detention was prolonged beyond the limits of time defined in the Act on juvenile delinquency.

Paragraph 8 item 1 point 9 of the rules and regulations of stay at police emergency centre for minors (hereinafter: regulation), attached as Appendix 12 to the ordinance of the Minister of the Interior of 04 June 2012 on rooms dedicated for persons arrested or taken to become sober, interim rooms, temporary interim rooms and police youth emergency centres, rules and regulations of such places, rooms, other premises and the procedures of processing the recorded material from CCTV, and conditioning the option to submit requests, complaints and application to the manager of the centre or a relevant policeman upon consent of court, manager of the centre or the leading policeman was contradictory to Article 32g § 3 of the Act on juvenile delinquency pursuant to which a minor, upon his or her request was allowed to make contact with a parent, carer or legal counsel.

In the Ombudsman for Children's view, the issue of presence of a policeman during a visit paid by the parents, defence counsel or carer had to be regulated. As NIK informed in its post-inspection report, in most of the emergency centres, contact with parents, defence counsel or carer took place in presence of a policeman. Such practice surely infringed the right of the minor to contact his or her closest persons and a defence counsel. In principle, visitations should

<sup>609</sup> ZSR.422.33.2016.MK

<sup>610</sup> No. P/16/085

take place without the presence of a policeman, unless necessary for safety reasons. It had to be noticed also that legal regulations ignored the issue of phone contact between minor and a parent, defence counsel or carer.

With respect to change in § 8 item 1 point 1 of the regulation, in the Ombudsman for Children' view, it was not enough, from the point of view of a minor's right to receive a meal in time, to serve him a meal within 5 hours from being placed in the centre, in justified cases. The right of a minor to receive a meal in time should a rule, whereas the notion of "justified case" meant a special exception from the rule. The minors should have the possibility to satisfy their hunger and thirst in any situation, if some time had already passed from the moment of arrest/ participation in hearing to the moment of placement/return to the centre.

The Ombudsman for Children agreed with demands included in NIK report that some issues regarded legislative intervention. He additionally mentioned: lack of official procedure that allowed minors to exercise their right to file a complaint or request; the necessity to respect the minors' right to intimacy and privacy in sanitary rooms and during personal check.

The Minister of the Interior and Administration submitted<sup>611</sup> to the Ombudsman a new version of the draft ordinance of the Minister of the Interior and Administration amending the ordinance on rooms dedicated for persons arrested or taken to become sober, interim rooms, temporary interim rooms and police youth emergency centres, rules and regulations of such places, rooms, other premises and the procedures of processing the recorded material from CCTV, developed on the basis of comments collected in the course of interministerial and social consultations.

With respect to the Ombudsman's comment about the need to specify § 8 item 1 point 9 of appendix 12 to the ordinance (rules and regulations of stay at a centre) by indicating the option for a minor of making contact with his or her parents, also by phone, was, according to the Ministry of the Interior, unnecessary. The Minister pointed out that according to the rules of legislative drafting, the drafted ordinance could modify the regulations of the Act of 26 October 1982 on juvenile delinquency. Article 32g § 3 of the Act on juvenile delinquency said clearly that a minor was allowed to make contact with a parent, carer or legal counsel. The Act did not mentioned phone as a channel of contact nor limited the contact to such form. Hence, the drafted § 8 item 1 point 9 of the regulation

<sup>611</sup> DP-WL-0231-12/2016 WR/JG

of stay at a centre did not exclude the option to use phone when making contact with a relevant person.

With respect to the proposal of guaranteeing intimacy during visitations and phone conversations, the Minister still did not agree as to its reasons, arguing that the proposed procedure could result in disturbance of the proceedings. The Minister stressed also that it was necessary to provide for safety of minors in a centre.

The demand presented by the Ombudsman for Children that legislative work should be taken up to specify more precisely the official procedures of complaint or request was – in the opinion of the Minister – unjustified.

- **Limiting the number of advertisement involving and addressed to minors – address of 25 November 2016**

The problem of using a child in and by media is a topic of the Ombudsman for Children's special interest. And so, the Ombudsman presented his positive opinion about the Desideratum No 10 of the Sejm Commission for Petitions to the Minister of Culture and National Heritage on limiting advertisements involving and addressed to minors along with his position<sup>612</sup> in that matter. The petition in question touches a very important problem connected, on one hand, with protection of image and well-being of a minor as an actor in an advertisement, and, on the other – addressing messages to minors which have great power of influence that may disturb the delicate structure of minors' mental system. According to the Ombudsman for Children, children should be better protected in that a ban on such advertisements should be introduced that humiliate the child or show the child in an uncomfortable situation, and may make the children decide to act riskily. The Ombudsman stressed that when developing solutions in that matter, changes must be considered carefully and precisely, so as not to introduce limits or ban on broadcasting materials that were beneficial to the child, e.g. awareness-raising campaigns.

- **Prosecuting perpetrators of crimes committed to the detriment of the child – address of 14 December 2016**

The Ombudsman for Children addressed<sup>613</sup> the Minister of Justice with a request for action to upgrade the qualifications of persons who run criminal proceedings involving children and to develop standards of efficient collection of

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<sup>612</sup> ZSS.422.49.2016.JW

<sup>613</sup> ZSR.422.20.2016.MK

evidence so that any procedures with minors could be carried out quickly and successfully. He pointed to the very important issue, that is prosecuting perpetrators of crimes committed to the detriment of minors, including, particularly, crimes under Article 185a of the Code of Criminal Procedure.

According to the Ombudsman, the consequences of harm done to the child depended on how quickly, professionally and effectively the child would receive help. It was important to take specialist care of the child as quickly as possible and undertake effective and efficient action under the criminal proceedings. An immediate intervention was absolutely necessary, especially when the suspect is someone close to the child.

The Ombudsman reminded of the content of Article 23 of the CCP (in a case of a crime to the detriment of a minor, the court, and – at the stage of investigation – the prosecutor – notifies the family court, which is obliged then to investigate the situation of the child and make decision as to the parental authority and custody of the child).

The Ombudsman stressed that in case the harmed person is a child, there was a need to immediately take steps by the relevant body responsible for investigation, to collect and secure the body of evidence, necessary to bring charges against the suspect, and to take other measures to secure the well-being of the child, i.a. in custodial proceedings. Fast and efficient process of collecting evidence was crucial in relation to the procedure of hearing the minor.

In his opinion, legal protection of minors was currently indeed wide, yet apart from good law – to minimize the negative effects of hearing for a child – a good will on the part of prosecuting bodies was needed, along with empathy, openness to collaboration and knowledge in developmental psychology of the child. It was then necessary to constantly upgrade the skills and competences of persons responsible for collecting evidence.

In response<sup>614</sup> the National Prosecutor's Office informed that after in-depth analysis of the above described problem, it could be concluded that it remained within the scope of high interest of both prosecutors appointed to specific cases and their superiors who made relevant decision if necessary. It was said that hearings of minors harmed or minor witnesses to crimes with violence or illegal threat or under 23rd, 25th and 26th section of the PC, were conducted according to the rules and procedures defined by the Ordinance of the Minister of Justice of 18 December 2013 on procedure of preparing a hearing under Ar-

<sup>614</sup> PKIIP 431.2.201

title 185a – 185c, with consideration of guidelines of the Prosecutor General of 22 February 2016 on the rules of conduct for common organisational units of the prosecution in the field of counteracting domestic violence and regulations of the Act on domestic violence prevention. It was also stressed that arrangement of that procedure was in fact the responsibility of court which scheduled time and place and that rules governing the establishment of court-appointed guardian were followed.

The Ombudsman was then informed that considering the importance of the problem, an inspection was scheduled in the District Prosecutor's Office in Łomża with respect to proceedings suspended in regional Prosecutor's Offices that involved hearing procedure under Article 185a and 185b of the Code of Criminal Procedure. The results of the inspection would be the premise to collaborate more closely with relevant presidents of regional courts in improving the procedure of scheduling hearings of harmed minors, more active cooperation with expert psychologists and definition of demand for professional trainings as to their form and content.

At the same time it was stressed the prosecutors participated in trainings in this topic , i.a. domestic violence or sexual abuse of children during which the problem of methodology in court hearing of minor victims or witnesses were discussed at least partially.

- **Development and implementation of uniform standards for youth police emergency centres – address of 27 December 2016**

Following numerous irregularities revealed by inspection conducted by NIK and its post-inspection recommendations to the Chief Commandant of the Police, the Ombudsman for Children addressed<sup>615</sup> him and asked for information what was the stage of implementation of the recommendations and when he could receive the results.

In response<sup>616</sup> the Chief Commandant of the Police informed that the Police did their best to make the stay of minors in emergency centres as comfortable as possible, and safe at the same time. He informed that steps had been taken to amend the regulations of the Ordinance on the possibility for a minor to make contact with a parent, carer or defence counsel upon consent of a policeman. Upon the initiative of the police, legislative action was undertaken, as a result of which visitations would only require to be first agreed with the manager of

<sup>615</sup> ZSR.422.32.2016.MK

<sup>616</sup> EK-369/17

the centre. Such procedure was dictated by, on the one hand, the necessity to allow the minor exercise his or her right to have contact with the parent or legal counsel, and, on the other – the need to allow for fluent operation of the centre.

As far as the charge of missing official free and uncensored complaint procedures was concerned, the Commandant did not agree with the conclusion that very low number of complaints, that is one complaint over the years, was caused by badly formulated procedures. According to the Commandant, such low number of complaints was caused only by the fact that minors in centres were serviced professionally and not because they were prevented from filing complaints or requests. He also informed that standards of equipment and operation of youth emergency centres were based on regulations common for all police organisational units and that the Police systematically completed necessary pieces of equipment or furniture (like curtains or partition walls) to secure minors' intimacy or privacy. The Chief Commandant of the Police added that to meet the expectations of institutions dealing with human rights, the Police took up measures to move the regulations on detailed personal check upon arrest and reception at the centre from the Ordinance to an Act of law.

He admitted though that practice showed incidents of prolonged time of arrest beyond statutory time spans. He explained that this resulted most often from the fact that courts found it difficult to indicate an appropriate facility for the minor or prolonged procedures under the proceedings.

Referring to the following problems: bad technical condition of emergency centres for children, lack of possibility to benefit from outdoor activities by minors and lack of separate places for visitations, he informed that both provision of widely understood security and safety as well as convenience was one of the priorities for the Police. Hence, all rooms for minors (also outdoor spaces) were systematically adjusted – according to available financial resources.



## 5.2. Individual cases connected with the right to be protected against violence, cruelty, exploitation, demoralization, neglect and other forms of maltreatment

- **Domestic violence**

The Ombudsman for Children, similarly as in previous years, took cases ex officio which involved minor victims of physical violence inflicted by their parents or actual carers.

For example, there was a case<sup>617</sup> of a 3-month old minor who, due to violence inflicted by her mother and father, suffered numerous injuries, including forehead bone fracture. The abuse was revealed thanks to vigilance and sensitivity of health care personnel who demanded that the mother immediately contacted the health care facility. The mother needed a medical certificate of provision of custody of the child. The doctor knew the environment in which the girl was raised as she took medical care also of her closest family. Knowing that this was a pathological setting, she and a nurse were put on guard and called the mother to come to the clinic. She refused to issue a certificate without having examined the girl. The family doctor, after the examination of the girl and noticing clear signs of violence on her body, decided to call prosecuting authorities immediately. The prosecutor's office was conducting an investigation against the minor's parents. Interim measures were applied against them in the form of provisional detention.

At the same time, guardianship court instituted ex officio proceedings pertaining to parental authority. Under the proceedings, the court decided to place the minor in an institutional form of care immediately. The Ombudsman for Children reported officially his participation in court proceedings. Upon his request, the court deprived the parents of their parental authority. The decision is legally valid. The child was entered into adoption.

The Ombudsman for Children took also measures in the case of 11-year-old minor who was beaten so heavily that he had severe injuries all over his body and had to be taken to hospital<sup>618</sup>. The prosecutor instituted the proceedings against the father of the boy pertaining to act under Article 207 of the PC and

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<sup>617</sup> ZSR.442.186.2016.AP

<sup>618</sup> ZSR.442.27.2016.MA

filed a motion for preventive measure of isolation in the form of provisional detention. At the same time, the regional court instituted *ex officio* proceedings pertaining to depriving the parents of their parental authority over the minor and his brothers. To secure the children for the time of the proceedings, the court placed them in foster care. The Ombudsman for Children reported officially his participation in court proceedings. The court deprived the father of their parental authority and limited the parental authority of the mother and decided that children should remain in foster care. The Ombudsman for Children is monitoring the criminal proceedings against the father.

In another case, the Ombudsman participated in proceedings pertaining to assault on a 6-month-old boy who was taken to hospital in critical condition<sup>619</sup>. Physicians diagnosed him to have been losing consciousness, have had convulsions and no reactions to stimuli. A CT scan showed fracture of occipital bone. The prosecutor instituted the proceedings against the mother for the act under Article 156§ 1 point 2 of the PC. The court applied preventive measure in the form of provisional detention. The investigation was concluded with indictment against the mother charged with multiple hitting with the boy's head against a baby changing table, which cause numerous injuries resulting with severe bodily injury.

The family court instituted proceedings to deprive the parents of their parental authority and placed the harmed boy and his brother in foster care in the person of paternal grandmother. The Ombudsman for Children reported officially his participation in court proceedings and motioned for admission of evidence of supplementary opinion issued by a court experts team to define the emotional bond between the children and the father and the children and the paternal grandmother, their competences in child raising and to indicate whether after possible trainings in parental skills they would be able to care for the children correctly, with support of court-appointed guardian and the coordinator of family foster care or whether the children should stay with the grandmother and whether she should be entrusted with the role of their foster family or maybe whether the 3-year-old boy should be raised by his father.

The Court considered the Ombudsman's motion. Having reviewed the opinion of experts, the Ombudsman will present his position. Both the situation of the children and the course of the criminal proceedings remain within the scope of the Ombudsman's interest.

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<sup>619</sup> ZSR.442.76.2016.MA

In another case in which the Ombudsman for Children interceded ex officio was undertaken upon information about death of a 4-year-old girl, whose body had numerous signs of assault, concluded by a doctor and paramedics<sup>620</sup>.

Investigation was opened and the autopsy proved that the girl had severe multiple injury and major polytrauma. The cohabitant of the mother was accused of the murder and abuse with extreme cruelty. The mother was charged with exposing her daughter to direct danger of loosing life and causing bodily injury that resulted in death. Both suspects were temporarily arrested. The criminal proceedings are in course and the Ombudsman is monitoring it on a current basis.

Another example of an ex officio case resulting in a minor's death was the case of a minor who was heavily beaten by his mother's cohabitant<sup>621</sup>. The inspection conducted by the Ombudsman allowed to determine that family assistant who was supposed to support the boy's family, failed to perform his duties and did not notify relevant bodies of numerous bruises he had seen on the child's face before. Negligence in the assistant's work led to notification of the prosecutor's office on suspected crime. Investigation in the case was at first dismissed as there were no features of crime concluded. The Ombudsman did not agree with this opinion of the Prosecutor and filed a relevant appeal against it. The court allowed the complaint in its full scope. The criminal proceedings against the assistant were concluded with an indictment under Article 231 of the PC. The Ombudsman is monitoring its course on a current basis.

The Ombudsman took another case ex officio, in which a 5-month-girl was taken to hospital because of assault resulting in her critical condition<sup>622</sup>. The minor was diagnosed to have been losing her consciousness, having convulsions caused by brain damage. She had two neuro-surgeries and was treated in induced coma. The prosecutor instituted the proceedings against the child's father pursuant to Article 156 § 1 point 2 of the PC, Article 207 of the PC and other. The court applied preventive measure in the form of provisional detention. Family court instituted proceedings pertaining to parental authority. The Ombudsman for Children, having analysed the case files and all circumstances of the case, officially joined the proceedings. Before they are closed, the Ombudsman will take his position in the case.

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<sup>620</sup> ZSR.442.185.2016.AP

<sup>621</sup> ZSR.442.512.2016.SU

<sup>622</sup> ZSR.442.54.2016.MA

The criminal case was concluded with sentencing the girl's father to 6 years and 6 months imprisonment. The court adjudicated also a ban on any contact with the harmed girl and on approaching the girls for the next ten years.

In another case in which the Ombudsman for Children participated was the case of a 4-month-old minor who was badly assaulted at home<sup>623</sup>. As a result, the child had her both parietal bones fractured, had intracranial brain hemorrhage, cerebral oedema, injuries of the face and subconjunctival hemorrhage of the left eye. At the time she was admitted to hospital, her condition was defined as critical. The prosecutor instituted the proceedings against her father, against whom the preventive measure was applied in the form of provisional detention. The guardianship court instituted the proceedings ex officio pertaining to deprivation of parental authority of the parents and, to secure the claims, appointed a guardian over execution of parental authority by the mother over a minor sister of the harmed girl. The hospital management was informed not to discharge the minor without prior consent of the court. The custody proceedings were suspended, for the reason of ongoing divorce proceedings. The minor, under the decision of the court, was placed in a residential and medical facility.

The Ombudsman took also relevant action after he received information about death of an only couple of weeks old child who suffered major injury due to physical violence<sup>624</sup>. At the moment of admission to emergency room, the child was unconscious, did not react to stimuli nor pain, and did not breathe on his own. A CT scan revealed a big haematoma and cerebral oedema. Despite efforts of the physicians, the child's condition did not improve. The child died. The court instituted the proceedings pertaining to custody decisions with respect to the elder brother of the boy and obliged the mother to cooperate with family assistant. The Ombudsman for Children reported officially his participation in court proceedings. The court, after hearing of evidence, found no grounds to issue any custody decision. The Ombudsman applied for making and delivering a statement of reasons. After reviewing it the Ombudsman will decide on possible appeal. The Ombudsman is monitoring the course of criminal proceedings on a current basis.

The Ombudsman joined also proceedings pertaining to parental authority over an assaulted child<sup>625</sup>. As the Ombudsman found out, the boy was taken to

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<sup>623</sup> ZSR.442.176.2016.MA

<sup>624</sup> ZSR.442.172.2016.MA

<sup>625</sup> ZSR.442.25.2016.SU.

hospital with severe bodily injury, which was inflicted by his mother and her cohabitant who abused him. The effect of this maltreatment appeared to be irreversible and the minor obtained a certificate of disability. Considering the circumstances of the case, the Ombudsman appealed against the legally invalid court decision on limiting the parental authority of the mother by placing the minor in a foster family and motioned for full deprivation of parental authority.

The District Court allowed the appeal in its full scope and altered the decision. At the same time, the Ombudsman was monitoring the investigation against the mother and her cohabitant, concluded with indictment of act of abuse with special cruelty and causing severe bodily injury. The Ombudsman reviewed the motion filed by the prosecutor to sentence the accused under Article 335 § 1 of the CCP and stated that the proposed penalties are disproportionately mild. So he addressed the Prosecutor General with a request for official supervision over the case. Moreover, the Ombudsman addressed the president of the criminal department with a request to consider the legitimacy of not allowing the motion under Article 335 § 1 of the CCP. The court returned the case to the prosecutor and told him to complement the evidence towards the crime of murder. The criminal case is being monitored by the Ombudsman.

The Ombudsman took also a case of a 4-month-old boy<sup>626</sup> whose life was in danger because of extreme neglect on the part of his parents. Physicians who took care of the child at the hospital diagnosed extreme undernourishment in him, dehydration and numerous skin lesions in the form of bedsores and chafes. Investigation was opened in the case pertaining to crime of exposing a child to direct danger of life or health loss. Simultaneously, the family court conducted ex officio proceedings pertaining to custody decision against the harmed boy and his elder brother. As interim measures, the court appointed a guardian over the manner of performing the parental authority and obliged the parents to enter immediately into cooperation with a family assistant. The Ombudsman for Children reported officially his participation in court proceedings.

After in-patient treatment, the minor came back home. In the course of supervision provided by the guardian and the family assistant, no further irregularities in care of minors were found out. Finally the regional court decided to limit the parental authority of the parents by establishing permanent supervision of a court-appointed guardian. It also obliged the parents to collaborate with the family assistant on a regular basis and to accomplish a course in parental skills.

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<sup>626</sup> ZSR.442.150.2016.MA

The Ombudsman is monitoring both the custodial situation of the minors and the course of preparatory proceedings.

In another case<sup>627</sup> reported to the Ombudsman by a minor, it appeared that the minor was a victim of mental and physical violence. The 17-year-old boy called the Ombudsman through the Child's Help line and informed that he had run away from home out of fear of his father. An adult friend of the minor had helped the boy and confirmed his claims.

The Ombudsman immediately addressed the Police with a request for relevant steps to secure the boy and provide him with support and assistance. The minor was placed in a emergency care centre. Then, as the boy's mental condition deteriorated, he was taken to a mental ward for children and youth. The case of the boy was monitored by the Ombudsman on a current basis. As the boy reached the age of majority, the Ombudsman for Children passed the case to the Human Rights Defender.

Also proceedings pertaining to mothers neglecting their children in connection to their abuse of alcohol belong to the category of cases that involve violence against children.

The Ombudsman took up legal measures *ex officio*<sup>628</sup> in case of a newborn who was diagnosed to have had the blood alcohol level of 0.177 per cent. The Ombudsman was informed that the mother abused alcohol also during pregnancy and led an unsettled life. She had no habitual place of residence and maintained contact with persons of pathological background. At the moment of labour, which took place in a forest, she was also under influence of alcohol. The newly born girl was taken to the hospital in condition of hypothermia and with peripheral cyanosis.

The Ombudsman for Children submitted a request to the court for immediate institution of custody proceedings against the minor and issuing relevant decision to secure the child. The family court did so, first to limit the parental authority of the mother, then, *ex officio*, to deprive her of it. The Ombudsman for Children reported officially his participation in court proceedings. To secure the minor the court decided to place her immediately in foster care. Then the court deprived the mother of her parental authority.

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<sup>627</sup> DTZ.402.2016.MR

<sup>628</sup> ZSR.442.156.2016.MA

The Ombudsman for Children took also ex officio a case<sup>629</sup> of a minor whose mother abused alcohol when pregnant. At the moment of labour, she was also under influence of alcohol. The minor was born with blood alcohol level of 0.08 per cent. It appeared that her parents failed to display any relevant parental skills. The regional court instituted proceedings pertaining to deprivation of parental authority of the parents and secured the minor by issuing a decision on placing her in foster care.

The Ombudsman for Children officially joined the court proceedings and was monitoring the activity of the court. The regional court deprived the parents of their parental authority and placed the girl in a non-professional foster family. The child was entered into adoption. Relevant proceedings are in course.

In another case, a child was born in similar circumstances, with alcohol in blood<sup>630</sup>. After the Ombudsman took legal steps ex officio it was found out that the mother consumed alcohol both during the period of pregnancy and shortly before labour which took place at home. The court decided to place the newborn in a foster family – emergency type. The Ombudsman for Children reported officially his participation in court proceedings. The court deprived the parents of their parental authority. The adoption procedure was opened.

The Ombudsman for Children investigated also into individual cases of children who were victims of sexual violence inflicted by their close relatives.

For example there was a case reported to the Ombudsman by one of the NGOs<sup>631</sup>. The notification sent to the Ombudsman for Children said that there was high probability of a violent offending of sexual nature committed against a child. It was supposed that the minor could have been cruelly abused by his mother's cohabitant. The NGO claimed also that the investigation in the case was conducted incorrectly and finally dismissed.

The Ombudsman found out that the decision of the prosecutor on dismissing the proceedings was upheld by a court which heard the appeal filed by the boy's grandparents who took actually care of him.

As the Ombudsman found out numerous deficits in the hearing of evidence, he addressed the relevant superior unit of prosecution with a request for re-opening of the investigation under official supervision and for position as to the le-

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<sup>629</sup> ZSR.442.83.2016.MA

<sup>630</sup> ZSR.442.149.2016.MA

<sup>631</sup> ZSR.441.2598.2015.KT

gitimacy of this re-opening. The Ombudsman filed also a motion for appointing an expert psychologist who would definitely assess the reliability of testimony of the minor, especially in the context of two previous opinion which were contradictory to each other. The regional prosecutor agreed with the Ombudsman for Children and ordered to re-open the dismissed investigation to complete the body of evidence also with the essential psychological opinion. The pre-trial proceedings are in course. The Ombudsman for Children is monitoring the proceedings.

In another case, the Ombudsman was addressed by a minor<sup>632</sup>. In her letter to the Ombudsman she described her difficult situation and violence she experienced from her father, especially sexual abuse.

The girl informed the Ombudsman also about the divorce proceedings involving her parents and her fears that she would have to maintain contact with her father under a court decision. The minor asked the Ombudsman, on behalf of her sister and her own, for help in exercising their rights.

The analysis of case files allowed to conclude that the expert psychologist found the girl's testimony reliable. He also found reasons to issue a decision against the father on prohibition of any contact with the girls. Having considered this opinion, the district court adjudicated prohibition for the father of personal and indirect contact with the minors.

Following the circumstances revealed already after reception of the letter, the Ombudsman for Children concluded that there were premises to file a notification of suspected crime. As a result, investigation was opened, which was then dismissed – both with respect to the act of abuse against the minor and to the act of other sexual activity performed against the minor.

The Ombudsman, having received the information that the guardian who represented the minors in criminal proceedings did not intend to appeal against that decision, appealed against it, charging it with offence against procedural law and requested that the decision be repealed. He also filed a motion to the court that was hearing the motion for establishing a professional court-assigned attorney, as they had been represented by a guardian so far. Having heard the complaint, the court repealed the decision on dismissal and referred the case to the prosecutor for further investigation. It is now being continued in line with the recommendations of the court and is being monitored by the Ombudsman.

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<sup>632</sup> ZSR.441.19.2017.KT



In another case<sup>633</sup> the Ombudsman was informed that an investigation was dismissed under a legally binding decision by a prosecutor. The case concerned a minor who was forced many times to have sexual interaction and was subject to other sexual activity, that is the crime under Article 200 § 1 of the PC in connection with Article 12 of the PC, in the face of missing data that would sufficiently justify the suspicion of crime.

The analysis of case files conducted by the Ombudsman, particularly review of the minor's testimony and the opinion of court expert in gynaecology indicated her uncle as the person who might have committed the alleged crime against her. The court expert in gynaecology did not exclude in his opinion the possibility that the child was subject to other sexual activities.

It must be mentioned here that the minor was diagnosed with mild mental disability and the expert psychologist pointed in his opinion that such disability was often connected with logical memory deficits, both in short and long-term memory. Despite that fact, the account given by the minor included crucial information that should have been looked into with scrutiny. As it appeared, the bodies responsible for investigation ignored the information provided by the minor. The Ombudsman for Children, having analysed the case files, concluded that no procedural actions were taken in the course of the proceedings that involved the minor's uncle, whom she identified as the perpetrator.

Hence, the Ombudsman addressed, pursuant to Article 327 § 1 of the CCP, the competent prosecutor with a request for opening proceedings which had been dismissed and for completing the body of evidence.

As a result of this intervention, the prosecuting authorities took steps to determine the current place of the uncle's stay to continue the investigation. The proceedings are in course.

The Ombudsman had to intervene in a similar way in an investigation into the act of making a minor under 15 have sexual interaction with her father<sup>634</sup>.

In the face of the fact that the proceedings in question were dismissed by power of a decision, due to lack of data that would legitimize the suspicion of the crime and that numerous deficits were concluded with respect to collecting evidence, the Ombudsman addressed the competent district prosecutor and asked for analysis of the case files and possibly for reopening the case. In the

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<sup>633</sup> ZSR.442.23.2016.SU

<sup>634</sup> ZSR.441.1296.2015.AP

motion filed in that matter, the Ombudsman brought the charge of incompleteness of the body of evidence, first of all the withdrawal from hearing the minor under Article 185a of the CCP, and the charge of incorrect assessment of the medical certificate issued after relevant gynaecological examination of the minor.

The superior prosecutor agreed with that logic and decided to continue the case. The criminal case is being monitored by the Ombudsman.

In another case<sup>635</sup> undertaken by the Ombudsman, the court proceeded in case of minor siblings against whom the mother and cohabitant inflicted physical and sexual violence. The Ombudsman for Children reported officially his participation in court proceedings. Under first decision, the court decided to place the minors in foster care and regulated their contact with the mother, the stepfather and paternal grandparents in the place of children's stay and in line with the recommendations of the local Family Support Centre. The the court entrusted the custody of children to paternal grandparents of the eldest child. This decision was issued as interim measure despite negative opinion about the candidates for foster parents. The opinion said straightforwardly that the grandparents were not capable of providing care to the minors. What is more, psychological opinions in the case implied gross negligence in caring of the children which resulted in deficits in emotional bond and considerable retardation in psychomotor development of the 6-year-old boy whose condition required to urgently and carefully analysed by specialists. Additionally – according to the experts – the minor should be placed in a specialist professional foster family and – for the time until the experts completed their examinations – isolated from the stepfather and the parents.

The Ombudsman appealed against the decision on placement in custody of the grandparents. The appeal was fully allowed by the district court. After a couple of days after the decision by court of second instance was issued, the court of first instance again decided to entrust custody of the eldest boy to his paternal grandparents. The court also established supervision of the municipal social service centre over this temporary custody. And so, the Ombudsman addressed a request to this court for written statement of reasons for this decision and at the same time, addressed the president of the court for taking internal administrative supervision over the proceedings, indicating that the measures taken by the court of first instance did not secure the well-being of minors correctly. The case is in progress. Simultaneously the Ombudsman is monitoring the

<sup>635</sup> ZSR.441.719.2016.MA

course of investigation against the stepfather for acts of child abuse and sexual abuse against his stepson.

There was also a case of violating physical inviolability of an 8-month-old boy<sup>636</sup> whose mother left home having entrusted care of the boy to a woman employed by her and her husband for that purpose. Hitting and other conduct of the woman against the minor were recorded on a videotape, registered by a camera installed by the parents. The woman was brought to justice, accused of child abuse. The Ombudsman participated in the hearing under criminal proceeding as an observer. The carer was found guilty of the charges under Article 207 § 1 of the CCP and sentenced to one year imprisonment conditionally suspended for three years. The court also fined the convict and adjudicated compensatory damages to the harmed boy along with a life-long ban on taking any positions or jobs or professional activity connected with upbringing, educating, treating or taking care of minors.

As in previous years the Ombudsman, in the course of hearing cases pertaining to the use of violence against children, observed irregularities in providing proper representation for minors in criminal proceedings.

For example, there was a case of minors<sup>637</sup> for whom – as persons harmed by violent offending by their father – a guardian for conflict of interest was appointed. In the course of legal steps taken by the Ombudsman it was concluded that the District Bar Association appointed an attorney for the minors who was at the same time the attorney for their father, that is the suspect in the case. For that reason the Ombudsman addressed the competent court asking for explanations and urgent measures to secure the rights of harmed children. The Ombudsman found it unacceptable that one person took two roles in proceedings - due to the conflict of interest and real threat of disrespect for minor's rights in the criminal proceedings. The court agreed with the Ombudsman and appointed a new guardian ad litem for the minors.

- **Mental and physical violence against children inflicted by adults in kindergartens and schools**

Just like in previous years, parents addressed complaints to the Ombudsman for Children about improper conduct of teachers against their children. Such cases were observed both in kindergartens and at school.

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<sup>636</sup> ZSR.442.2016.MA

<sup>637</sup> ZSR.441.409.2016.AMIK

In one of them, the Ombudsman was informed that a teacher violated the well-being and rights of the child by humiliating students, yelling at them and calling them names<sup>638</sup>. The school manager ignored the problem. As a result of the Ombudsman for Children's intervention, the school was inspected by an education officer. The school manager was given the post-inspection recommendations referring to lack of appropriate supervision and to provide psychological and pedagogical support. The representative of teacher disciplinary proceedings instituted proceedings to clarify the situation but was forced to dismiss them, as the manager punished the teacher with a disciplinary penalty pursuant to Article 108 § 1 item 2 of the Act of 26 June 1974 the Labour Code<sup>639</sup>, which, under Article 85 item 4 point 2 of the Act of 26 January 1982 the Teacher's Charter<sup>640</sup> excluded the possibility to instituted disciplinary proceedings<sup>641</sup>. Despite premises indicating violation of well-being and rights of the child by the teacher, the disciplinary penalty disqualified the option to institute disciplinary proceedings against her.

The situation of the child at school is now being monitored by the Ombudsman for Children.

In another case the Ombudsman for Children, having received a notification on violent conduct by a teacher in a kindergarten, addressed the relevant education officer and the supervisory body with a request for legal action<sup>642</sup>. The education officer inspected the facility as a result of which many irregularities were revealed. It was concluded that the right of the child to be protected against all forms of violence was violated and the manager did not provide for relevant conditions of stay in the facility. Based on information collected during the inspection, a motion was addressed to the representative of teacher disciplinary proceedings for investigation with respect to the teacher who was suspected of violent conduct<sup>643</sup>. She was suspended in her professional duties until the end of the proceedings, and disciplinary commission for teachers decided to punish her by dismissing her. The problem of violence against the child was reported to the Police (proceedings are in progress). At the beginning of the 2016/2017 school year, the school manager was replaced. At the same time, the City Council adopted a regulation on expressing opinion about the situa-

<sup>638</sup> ZEW.441.897.2016.JBR

<sup>639</sup> Dz. U., Journal of Laws of 2016, Item 1666 with later amendments).

<sup>640</sup> Dz. U., Journal of Laws of 2016, Item 1379 with later amendments).

<sup>641</sup> ZEW.441.896.2016.JBR

<sup>642</sup> ZEW.441.656.2016.MP

<sup>643</sup> ZEW.441.952.2016.MP

tion in the kindergarten by the Ombudsman for Children. In its statement of reasons, the teacher's conduct and the managers' activity were subject to criticism. It was pointed out that the supervisory body had to intensify its activities connected with education units monitoring.

Another example of violence against a child inflicted by a teacher was the case reported to the Ombudsman by one of parents of a primary school student<sup>644</sup>. The Ombudsman was told that a teacher pulled a boy's hand, then put his hands under his armpits, lifted him and moved with him a couple of steps. As a result the minor was injured in his right forearm. The teacher's conduct was recorded by school CCTV. The complainants reported the case to the prosecutor and filed a motion to the representative of teacher disciplinary proceedings. Both proceedings were finally dismissed. The prosecutor argued in his decision that the act committed by the teacher was an act prosecuted under private law. The parents brought an indictment against the teacher to the competent court.

Using his authority granted under recent amendment of regulations on disciplinary liability of teachers, the Ombudsman for Children appealed against the decision of the representative of teacher disciplinary proceedings. In opinion of the Ombudsman, investigation against the teachers was defective in that the obligation to collect and review all body of evidence, the assessment of the evidence was arbitrary and facts were not accounted for. The Ombudsman's appeal was allowed, and so disciplinary proceedings against the teacher are in course.

The above mentioned new mandate of the Ombudsman for Children obliges the representative of teacher disciplinary proceedings to send a notification on institution of all proceedings against a teacher who violated the dignity of his or her profession by offending the rights of the child. These regulations are part of the important activity of child's rights monitoring in schools, kindergartens and other educational facilities, also the child's right to protection against violence. From 31 May 2016 (the date the Act entered into force) until 31 December 2016 the Ombudsman received 96 such notifications. Many of them referred to various types of violence, including mental violence (i.a. Humiliating, laughing at the child<sup>645</sup>) and violating child's physical inviolability (i.a. Taking by the neck and pushing out of the classroom<sup>646</sup>, pushing, punching, hitting with

<sup>644</sup> ZEW.441.477.2016.JF

<sup>645</sup> ZEW.441.796.2016.JF

<sup>646</sup> ZEW.441.1300.2016.JF

a pointer, pulling student's hand<sup>647</sup>). Not all proceedings of representatives of teacher disciplinary proceedings were concluded with referring a motion by the disciplinary commission for institution of proceedings against the teacher. In five cases, the Ombudsman for Children was forced to appeal against the decision of the representative of teacher disciplinary proceedings. Most often the decisions issued by the representatives were criticized by the Ombudsman for failure to examine or consider all circumstances in order to conclude whether a conduct that violated the dignity of teaching profession took place or not. The referred especially to failure to hear direct witnesses of the incidence and failure to consider the importance of camera records and, also issuing decisions on the basis of testimonies of persons who were not direct witnesses of the conduct of teacher against the student<sup>648</sup>.

The Ombudsman for Children, each time he received a notification from the representative of teacher disciplinary proceedings that such proceedings had been instituted, was also monitoring realisation of children's rights at school.

For example, there was a case of primary school pedagogue who – as the representative of teacher disciplinary proceedings informed – violated the physical inviolability of a girl student and forced her to stay in a room<sup>649</sup>. As a result of his intervention, an inspection was conducted in the school. The school manager was obliged to eliminate the irregularities<sup>650</sup>. At the same time, after the investigation was closed, the representative of teacher disciplinary proceedings addressed a motion to the disciplinary commission for institution of disciplinary proceedings of the school pedagogue, who he accused of: mental abuse by threatening, telling to stay in a room despite in the classroom next door regular classes took place in another classroom, violating a students' inherent inviolability by jerking, holding or keeping children in day care room unattended. He appealed for the penalty of dismissal. The proceedings are in course.

- **Bullying at school**

The Ombudsman for Children took also interventions in connection with bullying.

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<sup>647</sup> ZEW.441.756.2016.JF

<sup>648</sup> ZEW.441.477.2016.JF, ZEW.441.756.2016.JF

<sup>649</sup> ZEW.441.690.2016.JBR

<sup>650</sup> ZEW.441.721.2016.JBR

For example, there was a case<sup>651</sup> reported by parents who informed about bullying among students of primary school and improper reaction of the school to it. The petitioners informed that their son experienced mental and physical violence, especially on part of one of his schoolmates. The boy was diagnosed to have had the ADHD, so he could not manage the provocative conduct of the 'friend'. As the situations repeated for many times the problem was discussed during a parents's evening. Then, sensitive data of the minor were revealed.

The Ombudsman interceded with the school manager and addressed the relevant education officer with a request for control and presentation of its results along with further recommendations. As a result of this intervention, both the minor and other students received proper psychological and pedagogical support. Also the penalty which was not mentioned in the school status (the child was not allowed to participate in extra classes, for a time), was also abandoned. Furthermore, collaboration with specialists from the psychological and pedagogical consultation centre was scheduled in: trainings for teachers in improving their cooperation with parents; recognising the risks of and work methods for students with ADHD and the Asperger's Syndrome. Also a series of activities for children was organised base on the latest publications and ART – Training of Aggression Substitution. The situation at school stabilised.

In another case, the Ombudsman for Children was asked for help by the parents who reported the situation of their sons – students of a lower secondary school (gymnasium)<sup>652</sup>. The elder brother was the student of 3rd grade of the lower secondary school and as soon as he started learning there, his classmates started to inflict verbal and physical violence against him. The parents claimed that the had may times reported this to school management who, in their opinion, did not take any action to secure the child. The parents stressed that for the three years of learning in the school, the manager did not take any educational steps against the perpetrators, who went unpunished. In the opinion of the manager, the problem was with the teenager, his lack of his adaptive skills (the boy attended social therapy class under the psychological and pedagogical support). Also his younger brother was a victim of bullying, as the boys stalked him during breaks and threatened to beat him up. The problem was noticed by one of the teacher, but he did not react to this. As a result the boy was heavily assaulted. His facial bones were crushed, his nose broken and crooked, the frontal nerve damager for ever. The boy was treated in neurology ward for two weeks.

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<sup>651</sup> ZEW.441.79.2016.ES

<sup>652</sup> ZEW.441.1140.2016.KD

As the parents informed, the school was a place where violence among students was quite a common phenomenon. They also said that a system was established upon the manager's consent based on which persons who were socially unadjusted or demanding help from teachers or manager were marginalised.

The Ombudsman for Children intervened. He ordered relevant education officer to conduct an inspection to verify the level of safety at school and adequacy of steps taken by the school manager to provide for safety and relevant psychological and pedagogical work. The inspection confirmed the phenomenon of bullying and lack of effective preventive measures applied by the school. The manager received relevant recommendations. The Ombudsman for Children is monitoring the way the school is realising them. The Ombudsman is also interested in court proceedings pertaining to assault of a boy, instituted under the Act on juvenile delinquency.

Another case referred to a girl student from the upper secondary school<sup>653</sup>. The mother who reported the case informed that her child had been pushed and hit hardily in the head by an aggressive classmate. The classmate was the holder of special education certificate but the school could not perform the duty of care in a relevant way nor provision of safety to other children. The boy was very often aggressive against his classmates. The incident took place when no teachers were around.

The Ombudsman for Children addressed the relevant education officer with a request for inspection how the school manager provided safety to his students and what was the way the school accomplished the tasks in psychological and pedagogical support to the children, including to the troublesome boy. The Ombudsman asked also for investigation of the course of the event as a result of which a girl was injured, and the actions taken by the school after the incidence.

The inspection revealed that the school took measures to provide safety to students, yet some irregularities were also found out with respect to organisation of psychological and pedagogical support, realisation of the recommendations issued by a psychological and pedagogical consultation centre, care taken of the students, diagnosing conflicts in the class and methods used to solve them, collaboration between the school and supportive institutions, including the psychological and pedagogical consultation centre. Hence, the school manager was given the post-inspection recommendations, regarding i.a. employing assistance teachers with qualifications in special education to co-organise the

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<sup>653</sup> ZEW.441.1145.2016.KD



education of students with disabilities; realising all recommendations listed in the decision on special education need; including the psychological and pedagogical consultation centre; paying special attention to diagnosing education situations and providing safety to students by never leaving the students unattended by a teacher.

The Ombudsman for Children is monitoring the activity of the supervisory bodies with respect to the problem of safety of the students.

The Ombudsman for Children received also a case of a suicidal attempt made by a girl student of a primary school<sup>654</sup>. The reason of the attempt was supposed to be bullying. The girl was moved to a different class but it did not solve the problem. The Ombudsman interceded with the school manager.

The manager informed that he had been informed about the problem of bullying two months before the suicidal attempt. The diagnosis conducted by the school confirmed occurrence of incidence which could have involved mental violence, and so preventive measures had been taken. Unfortunately they proved to be ineffective.

The Ombudsman, considering the explanations provided by the manager, addressed the education officer with a request for inspection under pedagogical supervision. As a result, the manager was given post-inspection recommendations regarding i.a. Supervision over performance of duties by the educator, increasing the frequency of class observations and specialist observation, correct keeping of records of educational work and the work of specialists.

Before the child came back to school, the manager and specialists discussed the situation with her mother and offered psychological and pedagogical assistance. Unfortunately, after the first talk with the psychologist, the child refused to continue the meetings. The school concluded that the reason for such attitude was the mother's reluctance to cooperate and referred the case to a family court. The court conducted the proceedings, as a result of which the problem of peer mobbing was revealed. It was also confirmed that it was the behaviour of the peers that made the girl try to commit suicide. The court obliged the manager to undertake anti-violence measures as a matter of urgency within the territory of the school, to increase the conditions of didactic, educational and custodial activity of the school staff, to undertake educational measures, to provide special educational activities with the class of the girl with the school pedagogue and psychologist and provide special care for the girl and her set-

<sup>654</sup> ZEW.441.1244.2016.ES

ting. The school manager informed the girl's parents on the content of the family court's letter. This information triggered a violent reaction on the part of the parents. They wrote a letter to the Ombudsman for Children. On interceding the Ombudsman pointed to the need to provide such activity at the school that do not produce further problems and provide stability in relation both between the children and the adults. He also concluded that it was necessary to identify the needs of teachers and listed institutions prepared to provide relevant assistance. He gave reasons why it was necessary to monitor the girl's situation and peer relations and the institutions of support for teachers and increase the supervision of the manager over reliable performance of tasks appointed to the educator and school experts. The manager realised the recommendations and subsequently took further measures.

Cases suicidal attempts or suicides committed by students investigated by the Ombudsman revealed the phenomenon of bullying – specific type of violence based on long term and regular harassment of a victim by a person or a group.

There is an example of two students of lower secondary school (gymnasium) who died a tragic death. The reasons for violence experienced by a boy and inflicted by his peers was his look – his special care for clothes and hair<sup>655</sup>. In case of the other deceased, it was found out that his classmates wrote offensive comments about him on benches, called him names, teased him (e.g. Threw his books out of his backpack, damaged the pencil box), pushed in the school corridor and beat him (in the toilet and in the dressing room before the physical exercise classes)<sup>656</sup>. This took place both during classes and during breaks. The school CCTV confirmed that there was violence also among other students.

The analysis of court files, result of an ad-hoc inspection as well as records of the CCTV proved that the manager knew about the problem but did not take any effective steps to secure the well-being of children, especially taking account of activity to secure them against further bullying. In the face of those facts, the Ombudsman for Children filed a motion for institution of disciplinary proceedings against the school manager. Yet this did not happen because the representative of teacher disciplinary proceedings dismissed the investigation against the teacher. In the light of the currently binding regulations the Ombudsman was not entitled to bring an appeal.

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<sup>655</sup> ZEW.441.437.2015.JF

<sup>656</sup> ZEW.441.817.2016.JF

The Ombudsman for Children, having in mind the importance of the problem, addressed the relevant education officers<sup>657</sup> with a request for – under their pedagogical supervision over operation of school and education system facilities and teacher training centres – action to increase the effectiveness of school educational and prevention programmes and of widely interpreted realisation of the rights of a child, a student and a human. In his address the Ombudsman for Children asked for consideration of the above mentioned issues in the plans of pedagogical supervision for the year 2016/2017 and presentation of results of the undertaken activity and conclusions formulated with respect thereto. More details are to be found in the Chapter entitled “The child’s right to education. General addresses with regard to the right to education”.

- **Violence against children placed in foster care and educational facilities**

The problem of violence against children under foster care remains still unsolved. The analysis of the problem shows that violence is inflicted both by adults and children themselves – in the form of bullying.

The Ombudsman for Children took up ex officio a case of minor pupils of a residential institution<sup>658</sup>. The information obtained by the Ombudsman revealed that the manager of the facility was charged with sexual abuse against the pupils. The Ombudsman immediately started his investigation and addressed the competent municipal Social Service Centre asking for detailed information about the situation, including a report on what actions had been taken to provide for relevant care and support for the pupils. It was also necessary to address the regional Prosecutor’s Office and ask on the progress of the ongoing proceedings in that matter. The Ombudsman was assured that minor pupils of the facility were taken fully care of. As the problem was very serious, the Ombudsman for Children is still monitoring the situation of the children and the course of the proceedings.

Another example of this category was another case undertaken by the Ombudsman for Children ex officio, concerning taking care of pupils of a residential institution by carers under influence of alcohol<sup>659</sup>. Two children had to be seen by a doctor because they had signs of assault on their faces. The Ombudsman immediately addressed the relevant supervisory authority, the competent voivodeship office and social service centre, asking for actions to secure the

<sup>657</sup> ZEW.422.26.2016.JF

<sup>658</sup> ZEW.441.1128.2016.JK

<sup>659</sup> ZEW.442.15.2016.JK

children in the facility. All pupils were isolated from the perpetrators of violence. They were placed in another residential institution and provided with specialist help. The Ombudsman is monitoring their situation and the ongoing investigation.

The Ombudsman for Children received also a complaint which indicated that violence could have been inflicted by an educator of a family-type residential institution<sup>660</sup>. Inappropriate conduct of the teacher consisted of tying up a child's hands with a rope and tying this child to a tree. The Ombudsman undertook intervention. He asked the Voivode for immediate reaction to secure the well-being of the minor and other pupils of the facility. The voivode took up relevant measures. The Ombudsman supervised also the course of criminal proceedings which concluded with legally binding sentence under Article 191 of the Penal Code.

In another case, the Ombudsman received information that carers of a family children's home inflicted physical and mental violence against their pupils<sup>661</sup>. In the course of the undertaken intervention the Ombudsman addressed the relevant voivodeship office and the local Family Support Centre and asked for investigation into the situation of the children. The Ombudsman found out that due to the nature of the case and the irregularities, the children were moved to other places. Prior to placing them in foster families and facilities, a detailed analysis of their situation had been conducted and of emotional bonds between them and their carers. Two of the children who were friends were taken to a residential institution and another two – to a foster family. One child moved to a facility in which his siblings were living. The children were provided with appropriate psychological help due to the trauma they had experienced. The Ombudsman is also monitoring the course of investigation in the case.

In another case the Ombudsman for Children received complaints about irregularities in a residential institution in the form of mental violence inflicted by educators against their pupils<sup>662</sup>. In the course of the undertaken intervention the Ombudsman addressed the relevant voivodeship office and asked for investigation into the situation of the children. The inspection confirmed the alleged irregularities. The manager of the residential institution received recommendations, which were implemented and the situation of the pupils improved. The Ombudsman for Children is also monitoring the course of the proceedings

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<sup>660</sup> ZEW.441.80.2015.JK

<sup>661</sup> ZEW.441.69.2016.AS

<sup>662</sup> ZEW.441.429.2016.AS

pertaining to mental abuse and physical violence against the pupils. The case is in progress.

A similar complaint was submitted to the Ombudsman for Children by a person who was a friend to pupils of a residential institution and regarded mental and physical violence against its pupils<sup>663</sup>. Due to the gravity of the charges, the Ombudsman for Children decided to inspect the state of affairs in the centre in situ. The inspection referred in particular to methods and quality of educational measures applied against the pupils. As a result, information was obtained which said that carers did apply violence against their pupils, both mental and physical. The rules governing the life of the facility did not foster correct formulation of a system of values which was decisive of positive development of pupils. The Ombudsman for Children notified the prosecutor about suspected crime.

The Ombudsman received also information that another facility run by the same actor had the same problems. Hence, the Ombudsman charged the relevant voivodship office to conduct an inspection in the case with respect to observance of the child's rights. Its results confirmed the alleged irregularities of educational methods which violated the rights of the child. The voivodship office notified the relevant bodies of suspected crime. For the time of the proceedings, children from both facilities were moved to other places. The case is in progress. The Ombudsman is monitoring their situation in new homes and the course of criminal proceedings.

In subsequent case the Ombudsman for Children investigated in situ the problem of violence in youth education centre<sup>664</sup>. The results of a survey conducted among children implied that they had been subject to mental and physical violence inflicted by other pupils and the employees of the centre. Hence, the Ombudsman obliged the manager of the centre to investigate the problem of violence and undertake relevant measures to eliminate it. The results of inspection conducted by the Ombudsman for Children were passed to the pedagogical supervision authority to be verified in terms of comments and conclusions provided by the Ombudsman. The Ombudsman addressed also the manager of the centre, asking him to present his intended action in connection with the results of the survey. The case is in progress.

In another case, the Ombudsman for Children, alarmed by the information that carers could have inflicted violence against children, inspected the problem

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<sup>663</sup> ZEW.43.10.2016.ZA

<sup>664</sup> ZEW.43.2.2016.JK

in situ at the youth education centre<sup>665</sup>. An anonymous survey was conducted among pupils during the inspection. Their answers confirmed that the centre faced the problem of violence. Hence, the Ombudsman for Children obliged the manager of the centre to immediately undertake relevant measures to make an in-depth diagnosis of the problem of mental and physical violence against the pupils (both by educators and the pupils themselves) and to eliminate the undesired behaviours. At the same time, he addressed the relevant education officer with a request for inspection whether the centre manager implemented the comments and recommendations of the Ombudsman. The education officer committed himself to carry out an ad-hoc inspection in the facility. The Ombudsman is waiting for results.

The Ombudsman took also intervention following complaints he received from pupils of another youth education centre. The irregularities referred to violence inflicted by educators and bullying<sup>666</sup>. Every time he received such information, the Ombudsman notified the relevant supervisory body and demanded in-depth investigation into the problem. Also the prosecutor's office took legal steps in seven proceedings regarding violence against pupils of the centre. The Ombudsman is monitoring the investigations and the activity of the supervisory body.

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<sup>665</sup> ZEW.43.5.2016.JK

<sup>666</sup> ZEW.441.870.2015.JK, ZEW.441.1240.2016.JK, ZEW.441.1317.2016.JK, ZEW.441.1577.2016.JK

## 6. PROTECTION OF CHILD'S RIGHTS IN INTERNATIONAL CONTEXT

The Ombudsman for Children took up legal steps *ex officio*, referred to other authorities and institutions with the request to initiate actions or provide information in cases pertaining, among other things, to:

- ▶ protection of rights of minor foreigners,
- ▶ Polish citizens living abroad,
- ▶ children being kidnapped by parents,

At the same time, the Ombudsman for Children undertook activity to protect the rights of the child in the international context, in connection with:

- ▶ Cooperation under European Network of Ombudsmen for Children (ENOC) and meetings promoting the institution of the Ombudsman for Children around the world,

Cooperation with representatives of European and international institutions and meetings for promotion of the rights of the child all over the world

### 6.1. General addresses in the context in international protection of children's right

- **Customs clearance of families with children – address of 10 February 2016**

In his address<sup>667</sup> to the Minister of the Interior and Administration the Ombudsman for Children asked for consideration of an option of changing the currently binding legal regulations referring to customs clearance.

Recalling the main principle of child's well-being, the Ombudsman stressed that it was necessary to treat families with children with special care during check-in procedures. In particular, such families had to be allowed to go through the customs out of turn. According to the Ombudsman, such rule should be directly incorporated in the regulations of the ordinance on customs control<sup>668</sup>.

In his letter, he argued that parents complained about difficulties when they crossed eastern and northern borders of the country. He pointed out that the time of waiting before the clearance is long and the regulations forbid the travellers to leave the vehicle before the procedure is accomplished. Feeding, wash-

<sup>667</sup> ZSM.422.1.2016.AJ

<sup>668</sup> Dz. U., Journal of Laws of 2006, Item 1729 with amendments.

ing or changing clothes of little children is then a big problem, especially in winter time.

In response<sup>669</sup> the Minister of the Interior and Administration informed that the problem had been analysed many times already. He concluded that the currently binding regulations did provide for the option to do the customs clearance out of turn, in special, well-reasoned cases. The Minister stressed that a situation in which a family with children is crossing the border was very often perceived to be a special case by the bodies of Border Guard. In his opinion there was no need to amend the regulations on border control.

- **International protection of minor refugees – address of 25 February 2016**

The Ombudsman for Children in his address<sup>670</sup> to the Prime Minister pointed to the situation of minor refugees who, due to unstable political situation of the countries of Middle East and migration crisis were looking for international protection in member states of the European Union, including Poland.

The basis of the address was the report entitled “SAFETY AND FUNDAMENTAL RIGHTS AT STAKE FOR CHILDREN ON THE MOVE” developed by the European Network of the Ombudspersons for Children – ENOC. The report is the effect of work of a Working Group for Children on the Move appointed at the 19th General Assembly of ENOC in Hague, of which the Polish Ombudsman was also the member. Its tasks are to monitor the observance of rights of children who travel through Europe and studying the worst threats and problems connected with travelling children’s access to their rights. The report submitted by the Ombudsman is an account of studies in that field. It is also a form of a calling to governments of all states, UN agencies and NGOs for any and all action to eliminate dangers that minor foreigners are faced with during their journey.

The report is attached to this Information as Appendix no. 16.

In response<sup>671</sup> the Prime Minister thanked for the report and assured that it would be used in the current work of the government.

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<sup>669</sup> BMP-0791-4-1/2016/MJ

<sup>670</sup> ZSM.422.2.2016.JW

<sup>671</sup> BPRT.ZAP.0411.1.2.2016.RKT



- **Ratification of the Convention relating to the Status of Stateless Persons of 1954 and the Convention on the Reduction of Statelessness of 1961 – address of 29 April 2016**

The Ombudsman for Children addressed<sup>672</sup> the Minister of the Interior and Administration, asking him to bring about, as soon as possible the undersigning and ratification of the Convention on the Status of Stateless Persons and then the Convention on the Reduction of Statelessness.

The Ombudsman pointed out that there was a group of minors living in Poland whose nationality was not defined and who could not fully use the rights guaranteed in the Polish Constitution and the Convention on the Rights of the Child for that reason. These persons found themselves in a particularly difficult situation, as on the one hand, they did not benefit from protection provided by the state, and on the other, they faced difficulties when trying to make their stay in Poland legal, for the reason that their status of stateless person could not be confirmed and they could not become holders of a valid document that would prove their identity. Persons who did not have any nationality could not i.a. Receive social support benefits or health benefits.

In Ombudsman's opinion, such status of a stateless person (in case the convention was ratified) would make the stay of such foreigner legal. It would also guarantee favourable treatment with respect to access to education and social service benefits.

In response<sup>673</sup> the Minister of the Interior and Administration informed that the Interministerial Team for Migration Affairs adopted a recommendation for Poland to become the party of the Convention on Reduction of Statelessness. Hence, the Ministry was working to collect all necessary documents and analysing possible reservations to the Convention.

As far as the Convention relating to the Status of Stateless Persons was concerned, the Minister informed that the ministry was carrying out an in-depth analysis of this international agreement, which meant that no decision was yet made as to its possible ratification.

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<sup>672</sup> ZSM.422.3.2016.AJ

<sup>673</sup> BMP-0791-4-2/2016/MJ.

- **Appeal in cassation against decisions in proceedings under the Hague Convention on Civil Aspects of International Child Abduction – address of 23 May 2016**

The Ombudsman for Children again addressed<sup>674</sup> the Minister of Justice with a request to consider the possibility to undertake legislative initiative with respect to amendment of Article 519 § 2 of the Code of Civil Procedure to extend the catalogue of cases heard on the basis of the Hague Convention on Civil Aspect on International Child Abduction against which complaint in cassation is possible.

The Ombudsman pointed out that as he had analysed cases reported to him, he concluded that courts, motivated by the principle of immediate action, defined in Article 11 of the Convention, did not investigate carefully enough to see whether there were any premises against giving the child out back to the country the child was taken from.

This resulted in situations in which, despite the fact that returning the child could expose the child to the risk of serious physical or mental damage or put the child in any other unbearable situation, the court ordered that the child should return to his or her habitual place of residence.

The Ombudsman stressed that introducing the system of control over decisions by the Supreme Court is a proper solution that would allow to eliminate the erroneous decisions concerning issues important for the child as the place of residence. He added that such solution would provide consistency in interpretation of law and court practice in the course of hearing cases pertaining to release of a child.

In response<sup>675</sup> the Minister of Justice agreed with the Ombudsman and informed that the ministry was working on legislative modification of the Code of Civil Procedure in the scope of extending the catalogue of family cases against which an appeal in cassation is possible with cases under the Hague Convention.

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<sup>674</sup> ZSM.422.5.2016.JW

<sup>675</sup> DL-I-4190-10/16

- **Trainings for judges of family courts responsible deciding upon cases concerning civil aspect of international child abduction based on the Hague Convention – address of 22 June 2016**

The Ombudsman for Children in his address<sup>676</sup> to the Minister of Justice asked whether it would be possible to conduct specialist trainings for judges of family departments adjudicating in cases pertaining to returning a child under the Hague Convention on Civil Aspects of International Child Abduction.

The Ombudsman noticed that as the time passed he received more and more petitions regarding court proceedings in cases pertaining to international child abduction. In his opinion, analysis of decisions issued in those cases showed that Polish courts many times did not consider the circumstances of the cases thoroughly and comprehensively enough, though they were important in the context of premises under Article 13 b of the Convention to refuse to adjudicate child's return. He added that situations in which courts dismissed motions for evidence filed by parties were especially alarming, as this evidence could probably prove such premises. The Ombudsman stressed that application of the Hague Convention was still a challenge to Polish courts, which was reflected in the number of cases heard by the European Court of Human Rights in that field.

In response<sup>677</sup> the Minister of Justice informed that the Hague Convention was one that was considerably rarely applied in Polish courts. This did not facilitate well-grounded practice of courts. Yet he assured that the ministry was considering some changes to Polish law so that cases falling under the Hague Convention could be heard by courts specialising in that field. The Minister agreed with the Ombudsman that in order to apply the Convention correctly, regular education in its regulations was necessary. He also informed that for that purpose, the Ministry of Justice organised regular trainings run by persons employed in Polish central authority appointed for affairs connected with the Convention.

- **Ratification of the Convention on Contact concerning Children – address of 06 July 2016**

The Ombudsman for Children addressed<sup>678</sup> the Minister of Foreign Affairs requesting for information about works over ratification of the Convention of the Council of Europe of 15 May 2003 on Contacts concerning children.

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<sup>676</sup> ZSM.422.8.2016.AD

<sup>677</sup> DWMPK-VII-072-5/16/6

<sup>678</sup> ZSM.422.4.2016.JW

The Ombudsman pointed out that although on 23 April 2009 the Sejm adopted the Act on ratification of the Convention on Contacts concerning Children, allowing that the Republic of Poland be committed by the international agreement, no ratification paper had been submitted so far to the depositary of the Convention.

In response<sup>679</sup> the Minister of Justice (the letter of the Ombudsman was passed to him by the Minister of Foreign Affairs) informed, that Poland had made an effort to reach an agreement in the European Union Council with respect to unanimous adoption of the Council's decision on entering into the Convention by the European Union. Yet due to objection of two delegation, no compromise was possible so completion of the ratification procedure was not possible. In the face of this, the European Commission withdrew its draft act on signing the above mentioned instrument by the European Union. The Minister of Justice informed that for that reason there was no possibility to continue further work in the European Union Council on signing the Convention by the European Union.

- **Protection of the rights of the child in transborder proceedings – address of 22 July 2016**

The Ombudsman for Children presented<sup>680</sup> to the Minister of Justice his comments to the draft act amending the Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (Brussels II Bis).

The Ombudsman for Children pointed out that the suggested changes were positive in terms of realisation of the rule of best interest of the child and protection of the rights of the child as compared to the currently binding regulations of the Regulation Brussels II bis. In that context, the Ombudsman especially positively evaluated the introduction of a clear requirement of hearing a child in all proceedings pertaining to designed regulations.

The Ombudsman referred also to the suggested regulations related to proceedings pertaining to motions for returning a child under the Hague Convention on Civil Aspects of International Child Abduction. Here the Ombudsman for Children noticed that the regulations that provided focused hearing of motions in specialised courts and imposing an obligation on the courts to inspect whether

<sup>679</sup> DWMPC-VII-072-6/16/3

<sup>680</sup> ZSM.422.9.2016.AD

persons were ready to start mediation and defining separate, 6-week-periods for each instance, were in line with the previous comments and demands of the Ombudsman for Children. The Ombudsman stressed also that some problems arising from the regulations of the Brussels II bis had not been solved in the presented draft. The Ombudsman pointed to the regulations that provided that a decision on child's return to previous place of residence must have an enforcement clause appended and a clause on limiting the number of measures of appeal to only one.

- **Access of minor foreigners to child-support benefit – address of 12 August 2016**

Based on analysis of the regulations of the Act on state support in child education and negative decisions refusing child-support benefit to foreigners (500+), the Ombudsman for Children addressed<sup>681</sup> the Minister of Family, Labour and Social Policy with a request for legislative initiative which would lead to standardisation of the catalogue of foreigners entitled to this benefit.

In his address the Ombudsman pointed out that the regulations of the Act on state support in child education (upbringing) were not precise in defining whether child support was to be provided to foreigners who received supplementary protection in Poland, the status of refugee or a stay permit for humanitarian reasons. According to the Ombudsman, their current wording made the bodies of first instances (borough leaders, mayors, city presidents) and the bodies of second instance (local Government Appeal Councils) often groundlessly refuse to grant the child-support benefit to those foreigners.

They have a permanent right to stay in Poland, use the Polish labour market on the same rules as Polish people, that is they do not need a work permit. For various reasons (but not on the part of foreigners) the documents they were given did not include the notice "access to labour market". According to the Ombudsman, putting or not such information could not itself be a factor that decided on granting a child-support benefit or not.

The Ombudsman pointed out also that differentiating the legal status of foreigners by administrative bodies only for a minor technical reason – a notice on a stay permit – violated the principle of equal treatment by public authorities of similar actors set forth in Article 32 as well as Article 71 item 2 and Article 72 item 1 of the Constitution.

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<sup>681</sup> ZSM.422.10.2016.AJ

In response<sup>682</sup> the Minister of Family, Labour and Social Policy agreed with the Ombudsman and informed that foreigners holding the status of refugee in Poland, having the supplementary protection and a stay permit for humanitarian reasons were entitled to receive the 500+ benefit. He assured that he would consider the Ombudsman for Children's proposals in the course of the scheduled monitoring of the implementation of the regulations provided by the Act on state support in child education (upbringing) from the moment it entered into force.

- **Protection of minor foreigners against sexual abuse – address of 19 August 2016**

**The Ombudsman for Children in his address<sup>683</sup> to the Minister of Justice presented proposals concerning action to increase the efficiency and effectiveness of the system of sexual abuse detection committed to the detriment of minor foreigners and the system of support for minor foreigners who fell victims of sexual crimes.** In the Ombudsman's opinion, success in that field depended in particular from cooperation and substantive training of officers and public institution employees having direct contact with minor foreigners, that is: Office for Foreigners, Border Guard, the Police, social service centres, family support centres and educational facilities to which the minors attended.

According to the Ombudsman, employees and officers of the above mentioned institutions should be extremely sensitive to this problem, as some signals implying that a child had been sexually abused could be observed already at the point of customs clearance, procedures for international protection or returning order, e.g. on filing an application for international protection or in the course of hearing. Sensitivity of persons who have contact with children every day to signals those children produce as well as the ability to carefully watch the setting of the child (family and peers) are necessary to make the Polish system of sexual abuse detection work effectively and efficiently.

The Ombudsman, on presenting his solutions in that field, expressed his hope that these suggestions would help the government to develop its position for the Committee of State Parties of the Convention of the Council of Europe on protection of children against sexual exploitation and sexual abuse, made in Lanzarote on 25 October 2007 and would be the premise to start legislative work with the purpose of increasing the level of child's rights protection.

<sup>682</sup> DSR-IV.071.12.2016.AW

<sup>683</sup> ZSM.422.11.2016.AC

- **Securing the rights of minor foreigners – address of 26 September 2016**

**In the course of works on the amendment to the Act on foreigners<sup>684</sup> the Ombudsman for Children presented<sup>685</sup> to the Minister of the Interior and Administration a set of legislative proposals which could contribute to more effective protection of rights and fuller realization of the rule of child's well-being in the context of administrative proceedings involving minor foreigners.**

The solutions included a regulation according to which the minor child of a foreigner who was granted a permanent stay permit or a long-term EU-resident permit, could – in every case, without any additional requirements) – be granted a permanent residence permit in Poland. According to the Ombudsman, whenever the child's parent was granted a permanent stay permit, the same would be granted to his or her child. Such a rule would secure the whole family of foreigners staying in Poland.

The Ombudsman pointed out also to the need to regulate the issue of guardian who represented a minor staying in Poland unattended in proceedings in cases pertaining to: granting international protection, granting stay permits and issuing return order.

The Ombudsman suggested that a list of persons be created who could be appointed by the court for the function of a guardian and requirements be defined to be met by those persons (e.g. unblemished reputation, legal education, experience in working with foreigners). At the same time he suggested introduction of remuneration for the function of guardian and guarantee of reimbursement of costs born in connection with his/her performance.

The Ombudsman further proposed that a rule be introduced to the regulations of the Act on granting protection to aliens within the territory of Republic of Poland, according to which court procedures requiring personal presence of the child could be conducted only by employees/ officers of administrative bodies who specialized in work with children (e.g. having education in psychology, pedagogy or law and having experience in work with children or participating in proceedings involving minors. He pointed out that such procedure should be carried out in the presence of a psychologist.

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<sup>684</sup> Nr UC – 77

<sup>685</sup> ZSM.422.12.2016.AC

The Ombudsman for Children again appealed for introducing a ban on placing children in guarded centres for aliens into both the Act on foreigners and the Act on granting protection to aliens within the territory of Republic of Poland. According to him, in case of unattended minors and families with children there were other measures that allowed to secure the correct course of proceedings pertaining to provision of international protection or pertaining to return order. Measures like: obligation to report to the body in regular periods of time, the obligation to reside in a specific place or financial security were obviously much less nagging and less invasive to child's mental condition than detention.

The position of the draft provider against the proposals of the Ombudsman for Children was presented in a list of comments reported in the course of interministerial consultations and public consultation and during a conference which was held on 09 December 2016 at the Ministry of the Interior and Administration.

Legislative proposals presented by the Ombudsman for Children were not at first taken into account in the course of works over the draft act amending the Act on foreigners and some other acts. The reason was that introduction of such regulations would bear financial costs not scheduled in the draft budget for 2017. As it was stated in the summary document, including most of the above mentioned comments of the Ombudsman for Children could be considered in the future.

During further works over the draft the demand of the Ombudsman on granting permanent stay permit to minors was taken into account.

- **Protection of minor Polish citizens in the Netherlands – address of 28 October 2016**

**The Ombudsman for Children addressed<sup>686</sup> an equivalent office of the Ombudsman for Children in the Netherlands – following the information about alarming practices of Dutch institutions of care.**

He stated that he was addressed by Polish people who were living in the Netherlands with their children and who asked him for help in getting their children back, as they had been taken away from them by local institutions of care. In his address the Ombudsman pointed out that considering limited mandate of the Polish Ombudsman with respect to foreign institutions, he usually takes advantage of consular agencies. Yet Polish consular facilities did not always have the

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<sup>686</sup> ZSM.422.14.2016.MC



possibility to obtain full information on the situation of a given child separated from his or her parents.

He stressed that analysis of such cases known to him indicated that siblings were separated and children were seriously limited in contacting their parents (e.g. With respect to communicating with children in Polish during meetings). He presented his view that even if it was absolutely necessary to remove a child from the family, this child had to be provided with the option to stay with their siblings and keep in contact with parents – if not prohibited by parents – and free communication in their mother tongue.

In response<sup>687</sup>, the Ombudsman for Children in the Netherlands, thanked for this information about Polish children. He stressed that such signals were an important source of knowledge on the society. He also informed that his office was authorised to investigate complaints about the operation of services responsible for protection of children only after the complainant had exhausted all possible measures of appeal. He also indicated that he had no mandate to intercede in court proceedings, but the interested parties could contact his office to receive information on available procedures. The Ombudsman referred to regulations of the Convention on the Rights of the Child and expressed his belief that children had to be placed in foster care only if necessary and all one's best had to be done to prevent the children from losing contact with their biological families, culture and language.

- **Ratification of the 3rd Optional Protocol to the Convention on the Rights of the Child – address of 15 November 2016**

The Ombudsman for Children in his address<sup>688</sup> to the Prime Minister asked for measures to be taken to ratify the 3. Optional Protocol to the Convention on the Rights of the Child on communications procedure.

In the opinion of the Ombudsman, signing this Protocol by Poland is necessary for full realisation of children's rights guaranteed by the Convention on the Rights of the Child and other optional protocols to it. The Ombudsman stressed also that the 3rd Protocol provided an institutional and procedural guarantee of protection of children's rights and its ratification would provide for children falling under jurisdiction of Polish state the possibility to use an international mechanism of individual complaint in case the domestic mechanisms would prove ineffective.

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<sup>687</sup> 2016/01580

<sup>688</sup> ZSM.422.16.2016.AD

The Prime Minister passed this letter to the Minister of Family, Labour and Social Policy. In response<sup>689</sup> the Minister informed that negative opinion of the Ministry presented in the letter of 14 December 2015 with respect to ratification of the 3rd Optional Protocol was still valid. According to the Minister, divergences described in that letter with respect to interpretation of the Convention by the Committee on the Rights of the Child and declarations to the Convention submitted by Poland at the moment of its ratification and the judicature of Polish courts and state policy were confirmed and reflected in final remarks addressed by the Committee to Polish Government after reviewing Poland's report on implementation of the Convention in September 2015. In opinion of the Minister, a possible decision on signing the Protocol would mean that some responsibilities would be passed to the Committee which, in the communications procedure, was the only authority authorised to interpret the Convention.

At the same time the Minister assured that the fact that Poland had not ratified the Protocol on communications procedure did not mean the Poland could withdraw from guaranteeing rights to children provided by the Convention on the Rights of the Child. In this context, the Minister pointed to the possibility to claim the guarantees of the Convention in Polish courts in the scope in which rights arising from the Convention created individual entitlements. He also stressed that Poland was party to the European Convention on protection of human rights and fundamental freedoms, guarded by the European Court of Human Rights which heard individual complaints submitted also by children. He added that the Council of Ministers took widely interpreted actions and measures to fully realise the rights of children.

- **Immediate enforceability clause of decisions issued by courts of first instance in cases concerning civil aspect of international child abduction based on the Hague Convention – address of 24 November 2016**

The Ombudsman for Children again addressed<sup>690</sup> the Minister of Justice with a request to consider the possibility to undertake legislative initiative with respect to amendment of the Code of Civil Procedure to extend the catalogue of enforceable decisions only after decision issued by courts heard on the basis of the Hague Convention on Civil Aspect on International Child Abduction became legally valid.

The reason why the Ombudsman interceded in that matter was a high increase of the number of cases reported the previous year with respect to proceedings

<sup>689</sup> DWM.II.6401.8.2.2016.JM

<sup>690</sup> ZSM.422.17.2016.JW

instituted upon complaints of parents who demanded that his or her child return from abroad in situation when the proceedings under the Hague Convention was not concluded with a legally valid decision. Parents many times told the Ombudsman that due to the activity of a court-appointed guardian which was aimed at removal of the child and handing the child over to the other parent, they were forced to hide with the child and wait until the case was finally settled.

The Ombudsman pointed out that decisions of guardianship court issued under the Hague Convention were effective and enforceable at the moment of announcement or issuance. The reason for such regulation was the fact that cases heard by guardianship courts were usually urgent and any delay in enforcement would be harmful to minors. Yet the legislator provided for exceptions from that rule and in decided that in some cases the decision would be enforceable only after the decision became legally valid. According to the Ombudsman for Children, decisions issued under the Hague Convention should also be enforceable after becoming valid. In situation when proceedings pertaining to returning the child were not finally settled, exposing a minor to negative experience connected with the procedures of mandatory return was contradictory to the principle of child's well-being.

In response<sup>691</sup> the Minister of Justice informed that the Ombudsman's proposal was included in the draft act on executing some activities of the central body in family cases under the law of the European Union and international instruments and amending the Act – the Code of Civil Procedure and some other acts. According to the intended changes, decisions issued under the Hague Convention pertaining to child's return to previous place of residence would be enforceable only after becoming legally valid.

## 6.2. Individual cases in the context in international protection of children's right

### 6.2.1. Protection of rights of minor foreigners

- Access of minor foreigners to child-support benefit

In the letters addressed to the Ombudsman for Children, foreigners claimed that local administrative authorities and local Government Appeal Councils re-

<sup>691</sup> DL-I-072-15/16.

fused them the child-support benefit. Petitioners claimed that the authorities did not interpret the regulations that defined foreigners entitled to receive the benefit correctly<sup>692</sup>.

First signs of wrong interpretation by local administrative authorities of Article 1 item 2 point 2d of the Act on state support in child upbringing reached the Ombudsman already in May 2016, that is only a month after the Act came into effect. The Ombudsman for Children was most often addressed by foreigners who had been granted the refugee status in Poland or supplementary protection in our country. Administrative bodies did not grant the benefit because the notice saying “access to labour market” was not added to stay permits issued for those persons. Holding such a permit with this notice is, pursuant to Article 1 item 2 point 2d of the Act in its literal sense, a condition for being granted the 500+ benefit. On the other hand, the notice was of purely technical nature and confirmed only the foreigner’s access to labour market arising from other regulations of law (Article 87 of the Act of promoting employment and labour market institutions).

The Ombudsman for Children, alarmed by the increasing number of complaints about possible discrimination of the above mentioned groups of foreigners (who had the refugee status or provided with supplementary protection) with respect to access to 500+ benefit for minor children, analysed all decisions he received that refused granting the benefit. Reasons presented in them for refusing the benefit were examined in terms of their conformity with the regulations of the Constitution of the Republic of Poland and other international agreements binding for Poland. As a result, the Ombudsman concluded that the interpretation of Article 1 item 2 point 2d proposed by the administrative bodies (checking inly whether the stay permit includes or not a notice saying “access to labour market”) could be against the Constitution, the Convention on the Rights of the Child and the Geneva Convention relating to the Status of Refugees.

With this in mind, the Ombudsman for Children, intending to establish a correct, pro-constitutive interpretation o the above mentioned article, officially

<sup>692</sup> ZSM.441.62.2016.AC, ZSM.441.69.2016.AC, ZSM.441.72.2016.AC, ZSM.441.85.2016.AC, ZSM.441.97.2016.AC, ZSM.441.98.2016.AC, ZSM.441.104.2016.AC, ZSM.441.106.2016.AC, ZSM.441.111.2016.AC, ZSM.441.120.2016.AC, ZSM.441.123.2016.AC, ZSM.441.143.2016.AC, ZSM.441.163.2016.AC, ZSM.441.175.2016.AC, ZSM.441.184.2016.AC, ZSM.441.185.2016.AC, ZSM.441.205.2016.AC, ZSM.441.233.2016.AC.

joined administrative and court-administrative proceedings pertaining the foreigner's right to child-support benefit.

For example, there was a case of three minor citizens of Belarus, whose mother filed an application for the child-support benefit to the city president<sup>693</sup>. The petitioner and her children were granted the status of refugee in Poland. Yet she did not have the notice of access to labour market entered into her records. That was the immediate reason why she was refused the benefit by the city president. The decision was upheld by the local Government Appeal Council. The petitioner filed an appeal against the decision to the voivodship administrative court, and asked the Ombudsman for support in court proceedings. The Ombudsman for Children, having reviewed the case files, officially joined the ongoing proceedings. In his statement presented to the court, the Ombudsman stressed that the interpretation of Article 1 item 2 point 2d of the Act on state support in child upbringing violated Article 32, Article 71 item 1 and Article 72 item 1 of the Constitution as well as Article 2, Article 22 item 1 and Article 26 item 1 of the Convention on the Rights of the Child, and Article 23 of the Geneva Convention relating to the Status of Refugees.

The Court fully agreed with this position and repealed decisions of both authorities.

Similarly, the Ombudsman intervened in the case of four minor citizens of the Russian Federation, whose mother also appealed against the final decision of local Government Appeal Council that refused the benefit, to the Voivodship Administrative Court<sup>694</sup>. The Ombudsman for Children joined officially the ongoing court-administrative proceedings. In his statement presented to the court, the Ombudsman stressed that foreigners who were provided with supplementary protection (just like those who held the status of refugees) had full access to Polish labour market though this fact was not displayed in their stay permits in the form of a notice "access to labour market". In his opinion, due to the principle of equal treatment set forth in the Constitution and the Convention on the Rights of the Child, foreigners could not be discriminated with respect to access to child-support benefit. Also in this case the Voivodship Administrative Court agreed with the Ombudsman and repealed the unfavourable decisions of the local Government Appeal Council and the city president. Proceedings pertaining to granting the benefit was returned to the first instance

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<sup>693</sup> ZSM.441.120.2016.AC

<sup>694</sup> ZSM.441.205.2016.AC

body which should issue a decision granting the benefit to the mother of the minors.

In another two cases of minor citizens of Russian Federation who were provided with supplementary protection in Poland, the Ombudsman for Children filed complaints to voivodeship administrative courts<sup>695</sup> against decisions issued by relevant bodies that refused to grant the benefit to the foreigners. The courts, having agreed with the Ombudsman's position, repealed unfavourable decisions of the bodies of both instances.

In case of four minor citizens of Syria<sup>696</sup> and three minor citizens of Ukraine<sup>697</sup> the Ombudsman's intervention in administrative proceedings conducted by local Government Appeal Councils proved to be sufficient. In both cases, having reviewed the reasons presented by the Ombudsman that refusing the foreigners who were granted the status of refugee the 500+ benefit was unacceptable, the body of appeal repealed the decision of the city president and granted the foreigners the benefit.

- **Provision of international protection for minor foreigners in Poland**

In 2016, the Ombudsman for Children received many petitions for help and protective measures for the rights of children in proceedings pertaining to provision of international protection mainly from citizens of Russian Federation of Chechen nationality<sup>698</sup>, citizens of Ukraine<sup>699</sup> and families from other countries<sup>700</sup>. The foreigners passed to the Ombudsman incorrect – in their opinion – decisions of the Head of the Office of Foreigners and the Council for Affairs of Foreigners which refused to grant them the status of refugee and refused to grant them supplementary protection in Poland.

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<sup>695</sup> ZSM.441.72.2016.AC, ZSM.441.184.2016.AC

<sup>696</sup> ZSM.441.85.2016.AC

<sup>697</sup> ZSM.441.143.2016.AC

<sup>698</sup> ZSM.441.9.2016.AC, ZSM.441.56.2016.AC, ZSM.441.64.2016.AC, ZSM.441.70.2016.AC, ZSM.441.80.2016.AC, ZSM.441.88.2016.AC, ZSM.441.189.2016.AC, ZSM.441.206.2016.AC, ZSM.441.214.2016.AC, ZSM.441.221.2016.AC

<sup>699</sup> ZSM.441.1.2016.AC, ZSM.441.82.2016.AC, ZSM.441.83.2016.AC, ZSM.441.126.2016.AC, ZSM.441.129.2016.AC, ZSM.441.130.2016.AC, ZSM.441.136.2016.AC, ZSM.441.162.2016.AC, ZSM.441.198.2016.AC, ZSM.441.204.2016.AC, ZSM.441.229.2016.AC, ZSM.441.230.2016.AC, ZSM.441.232.2016.AC, ZSM.441.235.2016.AC

<sup>700</sup> ZSM.441.2.2016.AC, ZSM.441.3.2016.AC, ZSM.441.40.2016.AC, ZSM.441.236.2016.AC

The petitioners claimed that the administrative bodies did not see the fact that in their country of origin they had to face a real danger of persecution and their children were exposed to real harm. At the same time, the foreigners wrote that leaving Poland and returning back to their country of origin would cause disturbances in the development of their minor children. To illustrate that they also described how their children integrated with Polish society and close relations they entered into with their peers.

In every case, the Ombudsman monitored the proceedings that involved the interested parties conducted by the Head of the Office for Foreigners or the Council for Affairs of Foreigners and analysed their decisions in terms of their conformity with regulations of law, to use, if necessary, legal measures under the mandate pursuant to the Act on the Ombudsman for Children.

It must be here stressed that pursuant to currently binding regulations of the Act on granting protection to aliens within the territory of Republic of Poland, administrative bodies conducting proceeding pertaining to granting international protection inspected only whether the petitioners would be exposed to harassment, tortures or other forms of inhuman or humiliating treatment or punishing. In such proceedings – as to the rule – it was not inspected whether returning to the country of origin would violate the foreigners' children's right to education, the right to identity or the right to protection of private life. Yet the above mentioned circumstances were taken into account obligatorily in the proceedings pertaining to committing a foreigner to return, conducted under the Act on foreigners by competent commandants of departments or other units of Border Guard.

Hence, in cases pertaining to granting protection to foreigners within the territory of Poland, the Ombudsman for Children inspected whether the circumstances of each case implied that return of a minor to his or her country of origin could be connected with the risk of exposure to inhuman treatment.

For example, there was a case of two minor citizens of Ukraine who came to Poland with their parents in 2014<sup>701</sup>. In the course of proceedings against them, the Ombudsman for Children addressed the Head of the Office for Foreigners with request for detailed information on evidence procedures already undertaken and planned. The Ombudsman analysed the received answers whether it was necessary to join the proceedings. The parents of the children attached many documents to their petitions (psychological and pedagogical opinions)

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<sup>701</sup> ZSM.441.198.2016.AC

showing that return of the minors to Ukraine would be very harmful to them. Such harm would be caused by interrupting a psychotherapy started in Poland, necessary because of the trauma the children had experienced, witnessing the war in Donbas. Although the minors had official access to this kind of support in Ukraine, in reality availability of psychological support in this country was very limited, as proved also by reports developed by the Head of the Office for Foreigners. Stress related to return to their country, which was a place of trauma for the children, and broken friendships made in Poland with their peers along with interrupted therapy necessary for them to recover, would meet the premise of being exposed to serious harm (Article 15 point 2 of the Act on granting protection to aliens within the territory of Republic of Poland). Such premise identified in the course of proceedings justifies a decision to grant supplementary protection in Poland.

The Head of the Office for Foreigners informed the Ombudsman that the minors were granted supplementary protection in Poland.

In cases in which there were no personal circumstances that would make the return impossible or expose children to serious harm like health issues, the Ombudsman checked how long the minors had been staying in our country, how much they had integrated with Polish society and whether they had made solid relationships with their peers. If that was the case, the Ombudsman gave the parents detailed legal information how these circumstances could help them receive permission to stay in Poland for humanitarian reasons. The Ombudsman explained also that this permit may be granted only after proceedings were instituted pertaining to their return to their country of origin.

The Ombudsman took a similar step in case of three minors whose parents came to Poland in the middle of 2014 from Eastern Ukraine (Donbas) and filed an application for international protection<sup>702</sup>. The foreigners asked the Ombudsman for help shortly before the Council for Affairs of Refugees issued a decision concluding the proceedings on granting international protection to them.

Having reviewed the case, the Ombudsman did not conclude that the issued decision violated the rights of the child. He also noticed that the minors had been in Poland for a relatively long time, had good achievements in Polish schools and found friendships and settlement here in Poland. Hence, in the letter to their parents, the Ombudsman indicated that in case their family stayed in

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<sup>702</sup> ZSM.441.126.2016.AC



Poland, such circumstances would have to be thoroughly investigated by the relevant body of Border Guard in proceedings pertaining to the obligation to return. The Ombudsman explained to the petitioners all legal issues and that the issuance of the decision on the obligation to return was unacceptable in case its enforcement could violate the rights of the child to an extent that really endangered the child's psycho-physical development. The family remained in Poland and filed the petition to the Head of the Office of Foreigners for international protection again. At the same time the Commandant of the Local Border Guard unit instituted proceedings against the family pertaining to their obligation to return to Ukraine. The body is not checking whether there are any circumstances in the case to justify a positive decision on granting permit for stay. The Ombudsman is monitoring the proceedings.

- **Granting minors permission to stay for humanitarian reasons.**

In 2016, the Ombudsman for Children received letters requesting help in proceedings pertaining to obligation to return and to make it possible for them to stay mainly from citizens of Ukraine<sup>703</sup> the Russian Federation<sup>704</sup> and Georgia<sup>705</sup>. The foreigners questioned decisions on voluntary return, issued for them and their minor children by relevant commandants of departments or units of Border Guards.

Proceedings pertaining to voluntary return to his or her country of origin, pursuant to the Act on foreigners, could be instituted i.a. If a foreigner did not leave the territory of the Republic of Poland voluntarily within 30 days of the day the legally binding decision refusing to grant international protection in Poland was delivered to this person. In case of foreigners who called the Ombudsman failure to have fulfilled this obligation was the most common ground on which proceeding pertaining to obligation to return were instituted against them and their children. The foreigners decided to stay in Poland for the reason that the time their minor children had been living in Poland was considerably long (1,5 year, 2 years, 2,5 years and sometimes a couple of years). The parents, as they observed how well their children were assimilating in Polish society, and the feeling of stability they found in Poland, decided to stay here, even in the face of possible proceedings pertaining to obligation of return.

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<sup>703</sup> ZSM.441.82.2016.AC, ZSM.441.126.2016.AC, ZSM.441.136.2016.AC, ZSM.441.198.2016.AC, ZSM.441.230.2016.AC, ZSM.441.235.2016.AC, ZSM.441.229.2016.AC

<sup>704</sup> ZSM.441.56.2016.AC, ZSM.441.64.2016.AC, ZSM.441.70.2016.AC, ZSM.441.80.2016.AC, ZSM.441.88.2016.AC

<sup>705</sup> ZSM.441.2.2016.AC, ZSM.441.3.2016.AC

Yet pursuant to Article 303 item 1 point 2 of the Act on foreigners, a decision on obligation to return shall not be issued if there are premises to grant the foreigner permission to stay for humanitarian reasons. Pursuant to Article 348 point 3 of this Act, the risk of infringing, by ordering to return to the country of origin, the rights of the child set in the Convention on the Rights of the Child, is such a premise. The regulation then says that obliging a foreigner to return is acceptable only if violation of a right set by the Convention would substantially threaten the psycho-physical development of a minor.

And so, the fact that the children of foreigners attend schools in Poland or even have mastered Polish language is not enough to grant the foreigner international protection in Poland. In most cases there are no reasons to believe that the child would be deprived of the possibility to continue education in his or her country of origin. The more important issue is the evaluation whether an obligation to return does not violate the child's right to protection of private life (relations with peers) or the right to identity (a real bond between the child and Poland).

In every such case, the Ombudsman addressed the competent administrative bodies, asked for access to case files and analysed them. If such an analysis led to a conclusion that the rights of the child could be infringed by issuing and then executing a decision on obligation to return, the Ombudsman officially joined the ongoing proceedings.

For example, there was a case of two minors whose parents came to Poland from Georgia at the beginning of 2012<sup>706</sup>. The foreigners filed an application for international protection in Poland yet at the beginning of 2013 they were provided with final decision which refused to grant them the status of refugee, the supplementary protection, the consent for a tolerated stay and obliging them to leave the territory of Poland. The decision referred also to the elder daughter of the petitioners but not the younger one, who was born after the decision was issued. Most importantly however, the elder child was only 3 years old when she came to Poland with her parents, and nearly 5 when the above mentioned decision was issued. Now the girl is 9. This means that half of her life and all she can embrace with her memory is about living in Poland. It is here that she made all peer relations and only here she attended the school. She speaks and writes in Polish fluently. She does not speak Georgian, the language of the country she is obliged to return to. Bearing this in mind, the Ombudsman officially joined the ongoing proceedings before the Commandant of the Border Guard

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<sup>706</sup> ZSM.441.2.2016.AC

unit pertaining to granting the permit to stay for humanitarian reasons. The proceedings had been instituted upon request of one of social organisations that provided free legal counselling to foreigners. In his statement submitted to the unit of the Border Guard, the Ombudsman described the above mentioned circumstances referring to the girl's stay in Poland and her bond to our country. He also stressed that before any decision was issued the Commandant, pursuant to Article 12 of the Convention on the Rights of the Child and Article 73 item 3 of the Constitution, should hear what the girl had to say. The Ombudsman pointed out also that it would be desirable to ask an expert psychologist for opinion, who should assess whether the return of the girl to Georgia would lead to serious disturbances in her psycho-physical development. The Commandant of the Border Guard allowed the motion. The proceedings are still in course.

In another similar case, minors citizens of the Russian Federation addressed the Ombudsman for Children<sup>707</sup>. The children came to Poland in 2014 with their parents who addressed the Head of the Office for Foreigners with a petition for international protection in our country. The petition was dismissed. The Council for Affairs of Refugees, having reviewed the appeal lodged by the petitioners, upheld the negative decision of the Head of the Office of Foreigners. Yet the parents decided to stay in Poland and again apply for international protection in this country. Subsequent application did not exclude the possibility to institute proceedings pertaining to obligation to return. In his letter to the Ombudsman the minors wrote that they felt very well in Poland, they liked their school and teachers and made many friendships in this country. They wrote that what they feared most was that their family would be told to leave Poland. Based on this letter and then opinions, certificates and diplomas awarded to children, the Ombudsman addressed the Commandant of the Border Guard unit with a request for thorough consideration of their case in terms of reasons to grant the family permission to stay in Poland for humanitarian reasons. The body, having allowed the Ombudsman's comments regarding special care for children in proceedings decided to admit the evidence of expert psychologist's opinion about how the return to the country of origin would influence the psycho-physical development of the minors. The proceedings are still in progress.

Apart from interventions undertaken in individual cases, the Ombudsman presented also evaluations and opinions and motions intending to provide effective protection if the rights and the well-being of children under proceedings

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<sup>707</sup> ZSM.441.88.2016.AC

pertaining to the obligation to return<sup>708</sup> to relevant bodies of public administration.

- **Legalisation of stay of minor foreigners in Poland**

In 2016, the Ombudsman for Children received petitions that indicated the need to protect the rights of the child in proceedings under granting the minor foreigner a temporary or permanent residence permit within the territory of Poland<sup>709</sup>.

In most of such cases, the Ombudsman, having analysed the case files, did not conclude that the right of the child could have been or could be infringed, either in the course of proceedings or by issuing a decision that refused the petitioners to stay. The parents were given thorough information about their legal situation, and about other possible ways to legalise their stay in Poland.

For example, there was a case of a minor national of Ukraine<sup>710</sup>. Both the grandfather and the mother of the girl, for the reason of their Polish background, were granted permanent permit to stay in Poland. The mother of the minor addressed the voivode for permanent stay permit also for her daughter, arguing that the girl had also Polish origin. Here it must be mentioned that the right of persons of confirmed Polish nationality arises directly from Article 52, item 5 of the Constitution of Poland. The regulations of the Act on foreigners and the additionally applied Act on repatriation defined only the procedure of this kind of proceedings and how the nationality of petitioners should be determined. Having reviewed the case, the first instance body refused to grant the permit to the child. The voivode argued that the only person who had Polish nationality was her great-grandfather. According to the administrative body, the girl then did not meet the requirement indicated in Article 5 item 2 of the Act on repatriation (Polish nationality confirmed by at least two great-grandparents, who were Polish citizens) and for that reason she could not be granted to stay in Poland on a permanent basis. The mother did agree with that decision and appealed against it to the Head of the Office for Foreigners. She also informed the Ombudsman for Children about it and asked for help. Having reviewed the case, the Ombudsman officially joined the proceedings of appeal and stated that the decision issued by the voivode was not correct. The Ombudsman stressed that the voivode had groundlessly omitted Article 5 item 3 of the Act

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<sup>708</sup> ZSM.422.12.2016.AC

<sup>709</sup> ZSM.441.96.2015.AC, ZSM.441.119.2015.AC, ZSM.441.89.2016.AC, ZSM.441.173.2016.AC

<sup>710</sup> ZSM.441.231.2016.AC

on repatriation. Pursuant to this Article, the condition of having an ancestor of Polish nationality should be deemed satisfied if one of the parents, grandparents or two great-grandparents of the child confirmed their belonging to Polish Nation, for example by the fact that they had been practising and celebrating Polish traditions and customs. Such was the case of the girl's grandfather and mother, which was confirmed by official decisions granting permanent stay to them. Hence, the Ombudsman applied to the Head of the Office for Foreigners for repealing the unfavourable decision issued by the first instance body and refer the case back to be reviewed again. The proceedings of appeal are still in progress.

- **Acquiring Polish nationality by minor foreigners.**

In 2016 the Ombudsman for Children received petitions from minor foreigners living in Poland or their carers for support in their endeavours to obtain Polish citizenship<sup>711</sup>.

Pursuant to the Act on Polish citizenship a foreigner may acquire the citizenship of our country under a decision by the President of the Republic of Poland on granting Polish citizenship or under an administrative decision on recognizing Polish citizenship. Yet what is important, issuing a decision on recognising Polish citizenship by a competent voivode is hedged around with many conditions, which are difficult to be met by minor foreigners who had been left in Poland unattended by their biological parents or whose biological parents had died. In such special cases the Ombudsman, having reviewed all circumstances of the case, addressed the President of the Republic of Poland letters of support for petitions for granting Polish citizenship to a child.

In such way the Ombudsman had to intervene in case of a 17-year-old citizen of Romania<sup>712</sup>. The boy was born in Poland. His mother, also Romanian, abandoned him in hospital already after the labour. From that moment the boy was staying in different institutions of foster care. The legal carers addressed the President of the Republic of Poland with a petition for granting Polish citizenship to the boy. The boy had been raising in Poland and this was the country in which he grew, learned and made friendships. Being the holder of Romanian citizenship did not translate into any special attitude or bond towards that country. The minor had never been to his country of nationality, had never got to know his biological parents nor siblings, who would be in fact the only link

<sup>711</sup> ZSM.441.22.2016.AC, ZSM.441.73.2016.AC, ZSM.441.101.2016.AC, ZSM.441.108.2016.AC

<sup>712</sup> ZSM.441.22.2016.AC

between him and Romania. Having this in mind, the Ombudsman supported the endeavours of the boy's carers and in the letter to the President of the Republic of Poland indicated that – in his opinion – his bond to Poland, which the minor had, and which grew stronger every year of the boy's 17-years' stay here, was a good ground to grant him Polish citizenship. After a month from submitting this letter, the chancellery of the President of Poland informed the Ombudsman that the President granted Polish citizenship to the boy.

Another example of the Ombudsman for Children's intervention was a case of minor girl who held the citizenship of Ukraine<sup>713</sup>. The Ombudsman supported a petition of her carers addressed to the President of the Republic of Poland for granting Polish citizenship to her. The minor had been living in Poland from her birth and was 7 at the moment the petition was filed. When the child was not less than 3,5 month old, the custody of her was entrusted to a family who filed also an application for adoption. This family is the only one the girl knows and she is happy to live with them. The carers had been trying to adopt her from 2010 through the agency of the Ukrainian Ministry of Family, Youth and Sports, but with no success. Lack of consent to adopt the child made the adoption impossible under the Ukrainian law.

As a result both the girl and her carers were living in constant uncertainty as to her future and the future of the happy family they had made. The Ombudsman presented all these facts in the letter addressed to the President of the Republic of Poland, stating that Polish citizenship would allow to apply Polish law in the proceedings pertaining to adoption. After two months from submission of this letter, the Chancellery of the President of Poland informed the Ombudsman for Children that the President of the Republic of Poland decided to grant Polish citizenship to the minor. Then a relevant court adjudicated adoption of the girl.

- **Stay of minor foreigners in guarded centres for aliens**

In 2016, a fall was observed in the number of cases regarding protection of children placed with their parents in guarded centres for aliens<sup>714</sup>. Letters addressed to the Ombudsman for Children by their parents referred most often to complaints about the quality of medical provided for minors in the centres.

For example, there was a case of two minor citizens of Russian Federation placed in a guarded centre for aliens with their parents in connection with proceedings against the whole family pertaining to obligation to return to their

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<sup>713</sup> ZSM.420.1.2014.AC

<sup>714</sup> ZSM.441.70.2016.AC, ZSM.441.74.2016.AC, ZSM.441.198.2016.AC

country of origin<sup>715</sup>. The mother of the girls wrote in her letter to the Ombudsman that her younger daughter was suffering very serious problems with the digestive treatment. The mother had many times addressed the physician on duty and asked him for help but the drugs she received did not – according to the mother – improve the child's condition. She also said that the elder daughter was suffering from dysplasia of the right hip joint. She claimed that from the moment they had been placed in the centre, she had observed deterioration in the girls' condition (the minor started to limp again and put her feet incorrectly). Hence, the Ombudsman for Children immediately addressed the Commandant of the Border Guard unit who supervised the centre and asked for inspection of the situation as soon as possible. He also asked for information about results of action undertaken to solve the problem, in particular whether it was possible to provide for relevant and necessary medical care to the children in this guarded centre.

In response the Commandant of the Border Guard unit informed what diagnostic measures and specialist consultations had been provided for the girls so far. He also informed in detail about the current physical condition of the minors and assured that the centre was capable of guaranteeing appropriate therapy for the girls. Having reviewed the explanations the Ombudsman found them satisfactory but continued to monitor the girls' situation.

After two months from the notification the Commandant notified the Ombudsman that the whole family was discharged from the centre because the mother had fallen ill. The foreigners were moved to a Centre for Foreigners run by the Head of the Office for Foreigners.. Hence, due to the ongoing subsequent proceedings against them pertaining to provision of international protection, the girl could benefit from the basic and specialist medical care provided by the Head of the Office for Foreigners.

### 6.2.2. Polish citizens living abroad

Every year the Ombudsman for Children received complaints from Polish citizens living abroad about the activity of foreign custodial institutions which

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<sup>715</sup> ZSM.441.74.2016.AC

interfered in the sphere of private life and freedom of their children<sup>716</sup>. The petitioners questioned decisions issued by foreign services and family courts as a result of which children were removed from them, contact with them was forbidden and the parents were deprived of the parental authority or it was limited.

In such cases the Ombudsman's mandate is restricted. He is then not authorised to demand explanations from foreign bodies nor to institute proceedings before foreign courts and other institutions nor to participate in proceedings as a party to it. Yet having in mind that the complaints regarded situations in which the rights of minor Polish citizens could have been infringed by foreign services, the Ombudsman took every possible measure to clarify each case and present legal measures available to petitioners to protect their children abroad.

Hence, in such cases, the Ombudsman asked for assistance of Polish consular units and equivalent institutions defending children's rights abroad. It must be then mentioned that it is the consular service that bears the responsibility to provide assistance to Polish citizens during their stay in a foreign country, and consuls have also the possibility to obtain information – under mandate defined by law – about the current state of affairs of Polish citizens and proceedings before foreign bodies of public administration. Moreover, turning to a consular office guarantees more detailed information about proceedings before foreign bodies than in case of petitions addressed by European Ombudspersons, as they usually do not hold the authority to investigate individual cases.

Cases reported to the Ombudsman by Polish immigrants referred most often to:

- 1) Provision of care of children in inappropriate manner by parents;
- 2) Removing children by foreign social service;
- 3) Proceedings before foreign courts;
- 4) Depriving of or limiting parental authority by foreign courts;

<sup>716</sup> ZSM.441.13.2016.JW, ZSM.441.27.2016.AJ, ZSM.441.44.2016.JW, ZSM.441.48.2016.AJ, ZSM.441.55.2016.AD, ZSM.441.51.2016.JW, ZSM.441.66.2016.MC, ZSM.441.68.2016.JW, ZSM.441.87.2016.AD, ZSM.441.95.2016.JW, ZSM.441.113.2016.AD, ZSM.441.135.2016.JW, ZSM.441.142.2016.AD, ZSM.441.150.2016.AD, ZSM.441.159.2016.AD, ZSM.441.160.2016.JW, ZSM.441.170.2016.AD, ZSM.441.176.2016.AD, ZSM.441.180.2016.JW, ZSM.441.203.2016.AD, ZSM.441.209.2016.JW



- 5) Failure to inform parents about the child's place of stay;
- 6) Ban on contacts with children;
- 7) Ban on communicating with the minor with his or her native language;
- 8) Recognising and enforcing decisions of courts under the Council Regulation (WE) no. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility (Brussels II bis);
- 9) Passing care of children to Polish families.

In order to secure the rights of minor Polish citizens as quick as possible against who the foreign services had taken up intervention, the Ombudsman applied also to equivalent institutions protecting human or children's rights for investigation in the case and provision of support in clarifying its actual and legal aspects. The Ombudsman also formulated petitions for support for Polish consular service to clarify problems of Polish citizens.

The Ombudsman for Children has for many years received messages from Polish citizens staying or living within the territory of Germany with reference to interventions of local authorities in their family relations<sup>717</sup>. The complaints come both from individual persons, carers and parents, as well as from organisations operating in Germany and representing Polish families against whom local authorities for children had undertaken intervention. These cases are subject to analysis followed by relevant action under the mandate of the Ombudsman for Children to secure the rights of Polish minor citizens.

Complaints sent by Polish parents referred most often to interventions against their children taken up by officers of the German office for children and youth affairs – Jugendamt. As a result, children were removed from the parents and placed in foster families. Problems reported to the Ombudsman referred also to discrimination of parents with Polish citizenship in entrusting custody of

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<sup>717</sup> ZSM.441.14.2016.AJ, ZSM.441.18.2016.JW, ZSM.441.34.2016.AJ, ZSM.441.31.2016.JW, ZSM.441.41.2016.JW, ZSM.441.58.2016.JW, ZSM.441.52.2016.AJ, ZSM.441.75.2016.JW, ZSM.441.113.2016.AD, ZSM.441.114.2016.AD, ZSM.441.116.2016.AD, ZSM.441.122.2016.JW, ZSM.441.124.2016.AD, ZSM.441.134.2016.JW, ZSM.441.140.2016.JW, ZSM.441.149.2016.JW, ZSM.441.154.2016.JW, ZSM.441.155.2016.JW, ZSM.441.158.2016.JW, ZSM.441.181.2016.MC, ZSM.441.188.2016.MC, ZSM.441.196.2016.AD, ZSM.441.199.2016.JW, ZSM.441.220.2016.MC, ZSM.441.222.2016.JW, ZSM.441.225.2016.JW

children by German courts, failure to inform about the minors' place of stay, limiting contact between parents and children, supervising the course of meetings between them by German officers or even not allowing for communication in the petitioners' mother tongue. Carers of children claimed that they found the activity of German office Jugendamt arbitrary, not grounded by reliable evidence and not preceded by relevant courts.

A numerous group was formed by those Polish citizens who lived in relationships with German citizens. They claimed that in case their partnership was broke, custody minor children, under local courts' decisions was entrusted to one of the parent, and usually the one who held the German citizenship. Also the contact with the other carer was restricted also in the scope of communication in Polish language and in some cases – meetings were completely banned. Such rigorous settlements were grounded by German bodies with their care for the child's well-being and protection against possible abduction to Poland.

Problems described above were the topic of meeting held between the Ombudsman for Children and the General Consul of the Republic of Poland in Cologne. It was a good opportunity to exchange experiences and practices in unusual and non-standard cases.

For example, the Ombudsman for Children had to intervene in case of a minor daughter of a Polish citizen who lived in Germany<sup>718</sup>. The Ombudsman, based on numerous notifications from the mass media, undertook the case ex officio. It appeared that the German administration officers removed the child from the mother two days after labour already from the hospital. The mother was not given any reasons for it nor informed about the child's current place of stay. The mother had no other contact with the child. The reason was supposed to be the financial condition of the mother, in particular her inappropriate housing settlement. The Ombudsman for Children learned that the minor was granted German citizenship, though the parents – Polish citizens – did not apply for it.

The Ombudsman for Children was alarmed by this activity in terms of its conformity with law and especially the Convention on the Rights of the Child, its Article 8 which guaranteed respect for the child's identity, including the child's citizenship, name and family relations.

The Ombudsman for Children addressed the locally competent Consular Department in Germany, with a motion for inspection of the case and immediate intervention. The Ombudsman submitted also a request for support of the

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<sup>718</sup> ZSM.441.122.2016.JW

mother's endeavours to regaining custody of her child and for representation of her interest in court proceedings.

Finally, as a result of intervention by Polish administrative bodies, the minor came back to her parents. The mother was provided with support to develop her maternal skills.

The Ombudsman for Children received also complaints from Polish citizens living in the Netherlands with respect to interventions undertaken by local institutions against their children<sup>719</sup>. Those messages concerned decisions issued by Dutch bodies as a result of which children were taken away from their parents and placed in foster families.

Analysis of cases reported to the Ombudsman for Children proved that the Dutch bodies made decisions as a result of which siblings were separated from each other, placed in different foster families and their contacts with parents were subject to severe restrictions also in terms of communicating in Polish language. Another problem was also placing Polish children in families of different cultural background who did not speak Polish. Such practice made the child lose his or her national identity and the ability to communicate in his or her mother tongue, which, in the future, could be important to keep contact with the parents.

The above mentioned activity of Dutch bodies made the petitioners seriously doubtful as to the legitimacy of these decisions. Also the Ombudsman questioned the legality of practices applied by the Dutch bodies – in terms of respect for the rights of children under Article 8 of the Convention on the Rights of the Child.

Hence, the Ombudsman addressed in each case the consular office in the Netherlands to obtain information about the status of proceedings and reasons for interventions undertaken against Polish families. He also asked the consular offices to provide assistance to Polish citizens and necessary measures to secure the rights of minors Poles in the Netherlands. The responses given to the Ombudsman said that Polish consular units had some difficulties in communicating with the Dutch child's rights protection service, as it did not respect the authority of the consul guaranteed by the Vienna Convention on diplomatic service. This could be observed for example in problems with obtaining full

<sup>719</sup> ZSM.441.17.2016.JW, ZSM.441.145.2016.AD, ZSM.441.152.2016.MC, ZSM.441.161.2016.AD, ZSM.441.165.2016.JW, ZSM.441.178.2016.MC, ZSM.441.223.2016.JW

information about the situation of a child who was separated from his or her parents.

For example, there was a case of four minor children of a Polish mother who had been living in the Netherlands for many years<sup>720</sup>. The mother informed that her children held both the Dutch and the Polish citizenship. As a result of intervention of local institution for child's rights protection, the minors were taken away from the mother and placed in four different foster families. Visitations with the mother were limited to only 50-minutes meetings once a week. Moreover, further proceedings were instituted to limit this contact even more. The mother asked the Ombudsman for help and expressed her concern about the situation and the fact that the minors were in four different places and the limited contact with them.

The Ombudsman asked the Polish diplomatic service in Hague for explanations. In response the consul informed that the court prolonged the stay of children in foster families but refused to give any reasons for it.

Hence, the Ombudsman asked for assistance an equivalent office of Ombudsperson for the Netherlands. He stated that even when circumstances of a care required that a child be removed from the parents, the children had to be provided with the option to stay together with their siblings, keep contact with parents and communicate freely with them in their mother tongue. In his letter the Ombudsman also asked the Ombudsperson to investigate into the matter and help to explain the reasons why the children were separated and their foster care was prolonged. The Ombudsman asked the Ombudsperson also consider the option to provide some assistance to Polish diplomatic services in solving these kind of affairs.

The Dutch Ombudsman for Children thanked the Polish Ombudsman for being concerned and informing him of the problem faced by Polish Children. Yet he implied that he was authorised to inspect a complaint about activity of children's rights protection services only after the complainant had exhausted all legal measures of appeal under the local law. The Ombudsman said also that he had no authority to undertake intervention in cases which were subject to proceedings before local courts, and that it was necessary to use the measures of appeal as provided by the Dutch procedures of law. He also gave a phone number for Polish parents to call for information and legal advice.

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<sup>720</sup> ZSM.441.161.AD

The Dutch Ombudsman agreed with the opinion of the Polish Ombudsman in that it was necessary to help the minors keep their ethnic, religious, cultural and linguistic identity.

Problems connected with interventions undertaken by social services against minor Polish citizens were also the subject of letters addressed to the Ombudsman by Polish people living in Great Britain<sup>721</sup>. The number of complaints from Polish citizens was the highest of all complaints received by the Ombudsman with respect to parents' relations with foreign institutions of guardianship and custody affairs. In their letters, Polish citizens claimed that the scope of interventions by local social services was inadequate to the manner in which they had been taking care of their children.

Analysis of reported cases indicated that lack of awareness of local regulations of family law was a great problem, as those regulations were very often much more strict than in Poland. Moreover, biological parents were limited in their rights to participate in court proceedings before local institutions due to their bad command of English language. In such cases the Ombudsman addressed Polish diplomatic units in Great Britain and equivalent offices of Ombudspersons with requests to inspect the situation of the minor Polish citizen and undertake any relevant measures to secure the rights of the child.

For example, the Ombudsman had to intervene in case of a minor<sup>722</sup>, whose mother asked him for help in connection with the intervention of British social service undertaken against her. The information was that the minor was removed from her mother by the British Social Service and placed in a foster family. The mother was deprived of the right to maintain regular contact with the child, and she did not know the place of the girl's current stay.

Having in mind this restriction of contact, the Ombudsman addressed the Ombudsman for Children in Great Britain, asking him to investigate the case and

<sup>721</sup> ZSM.441.20.2016.JW, ZSM.441.21.2016.JW, ZSM.441.25.2016.JW, ZSM.441.36.2016.JW, ZSM.441.35.2016.JW, ZSM.441.45.2016.JW, ZSM.441.46.2016.JW, ZSM.441.59.2016.JW, ZSM.441.61.2016.MC, ZSM.441.92.2016.AD, ZSM.441.96.2016.AD, ZSM.441.115.2016.AD, ZSM.441.118.2016.AD, ZSM.441.133.2016.AD, ZSM.441.137.2016.JW, ZSM.441.138.2016.JW, ZSM.441.139.2016.AD, ZSM.441.148.2016.AD, ZSM.441.153.2016.JW, ZSM.441.164.2016.JW, ZSM.441.168.2016.AD, ZSM.441.169.2016.JW, ZSM.441.171.2016.JW, ZSM.441.172.2016.JW, ZSM.441.187.2016.MC, ZSM.441.191.2016.MC, ZSM.441.192.2016.MC, ZSM.441.218.2016.JW, ZSM.441.226.2016.JW, ZSM.441.228.2016.JW, ZSM.441.234.2016.AD, ZSM.441.237.2016.JW

<sup>722</sup> ZSM.441.116.2015.JW

to consider any possible measures that could be undertaken to secure the minor's rights to keep in contact with her mother, as guaranteed in Article 9 of the Convention on the Rights of the Child. In response the British Ombudsman indicated that he intervened in individual cases only when a minor came or called his office and requested for specific help and support. The Ombudsman for Children offered legal advice to the mother and psychological assistance to the child in case the mother and the child contacted his office directly.

The Ombudsman for Children, having analysed cases reported to his office, noticed also that the jurisprudence of British courts in cases with international element was different from that of other member states. In case the proceedings referred to a minor citizen of other European country, British courts check *ex officio* whether they were competent in a given case. Having concluded that the court of the mother country of the child was more competent to hear the case, they followed the procedure regulated by Article 15 of Brussels II bis, which provided that it was possible to pass the case to the court of the minor's origin. In the first place, however, the British court had to determine whether passing the case to another court was in line with the child's well-being, and – if there was any special relation between the minor and the state which would take over jurisdiction in the case. Here central bodies the task of whom was to give the judges information about regulations of the other country of the European Union played a very important role.

Moreover the Ombudsman's experience shows that in many cases, when it is necessary to separate a minor from the parents for his own good, British courts undertake measures to determine whether it is possible to place a minor in foster families within the territory of their mother country. Local courts cooperate in that respect with the Ministry of Justice who has the role of a central body in international affairs, and issues motions for background inquiry in the setting inhabited by the child's family.

For example, there was an intervention undertaken by the Ombudsman for Children in this kind of case involving three minor Polish citizens living with their parents in Great Britain<sup>723</sup>. Social services had taken the children from their parents. Then the British court issued a decision on temporary custody, under which the children were placed in foster families. In the course of proceedings, the local court addressed the Polish court, through the agency of British Ministry of Justice, with a request for background inquiry to determine

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<sup>723</sup> ZSM.441.115.2016.AD

whether members of their family in Poland could take the role of foster family for the children.

The Ombudsman for Children was addressed by the maternal grandmother of the children who lived in Poland and asked for help in taking over care of their grandchildren. In their letter addressed to the Ombudsman they indicated that they were the closest family of the children and declared to be ready to provide appropriate conditions for development in Poland for the children.

The Ombudsman addressed the Polish consular unit in Great Britain and the Ministry of Justice for urgent intervention to secure the children and asked to provide the family in Poland with legal advice, particularly to support the maternal grandparents who were to become the foster family for the children. In response, the consul informed that he had made contact with the interested parties to offer assistance to them and addressed local social service and the competent court in that matter.

The proceedings are in course. The British court is considering various options of settlement, including placement of the children under care of their grandparents in Poland. According to the court, if children were placed in Polish foster family, their right to be raised in the culture, religion and language of the country of origin would be realised in its fullest scope. Yet, first the court had to obtain detailed information about the situation of the grandparents, and for that purpose, it obliged the local service to collaborate with Polish central body. The Ombudsman for Children is still monitoring the case through the agency of Polish diplomatic service and the Ministry of Justice.

The Ombudsman received also complaints from Polish citizens living with their children within the territory of Sweden and Norway. In their letters, parents pointed to irregularities in the operation of foreign social services, finding their activity too determined, too far reaching and much too interfering into performance of parental authority by them.

Analysis of cases submitted to the Ombudsman for Children indicated that local institutions of social welfare took up interventions against Polish families very often on the basis of anonymous allegations which resulted in immediate removal of a child from his or her parents and placement in foster care. The parents claimed also that they were doubtful as to the operations of Norwegian and Swedish bodies in that they did not duly care for the child's national identity and the way the child could preserve it, placed the children in alien foster families who did not know Polish language, limited the child's contact

with parents or did not respect the children's requests concerning celebration of their cultural and religious practices or traditions in which the child had been raised so far.

To clarify the cases the Ombudsman addressed Polish consular service located in Sweden and Norway. The responses he received implied that the basic legal problems faced in communication with the children's rights protection agencies were that those services had refused to give any information to the parents about the removed child and had not given their consent to the children for a meeting with consul.

For example, the Ombudsman had to intervene in a case of a minor girl, a daughter of Polish mother and Swedish father<sup>724</sup>. The family lived together first in Poland, then in Sweden. After the parents parted, the Swedish court issued a decision under which it adjudicated joint custody of the girl by parents living in to different countries.

As the mother kept the child in Poland, the father instituted proceedings pertaining to returning the minor to Sweden under the Hague Convention on Civil Aspects of International Child Abduction. Under the settlement of Polish court, the child came back to her father to Sweden.

Moreover, proceedings were in course in the Swedish court pertaining to regulation of the father's parental authority over the minor. The court of first instance deprived the mother of her parental authority and settled the contact in the form of 30 minutes a week by means of an internet messenger. The mother appealed against the decision to the court of second instance.

The Ombudsman for Children addressed the Consul of the Republic of Poland in Stockholm and asked him to look into the matter and to explain the reasons for such settlement in that the mother was deprived of parental authority and the possibility to meet the girl face to face. Upon the Ombudsman's request, Polish diplomatic service addressed the relevant authorities in Sweden for information about the minor.

He was informed in response that the local authorities of the last place of father's residence refused to provide relevant information to the Consul.

The Ombudsman took also intervention in a case of minor Polish citizen living with his parents in Norway<sup>725</sup>. Barnevernet, the local authorities responsible

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<sup>724</sup> ZSM.441.72.2015.JW

<sup>725</sup> ZSM.441.96.2016.JW



for child rights protection removed a boy from his family and placed him in a Norwegian foster family, upon a notification sent by the boy's educator who suspected that the child could have been a victim of violence. The parents, in their letter addressed to the Ombudsman, pointed out that they did not agree with the allegations, and the intervention of the authorities was premature and not backed up with any evidence. The parents were allowed to contact their son, they could meet him separately, once a week. Proceedings were instituted in Norwegian bodies to settle the parental authority over the boy.

The Ombudsman for Children addressed the Polish consular unit in Oslo with a request to investigate the child's situation, to provide information on the reasons of the removal and to support the family.

According to the information submitted by the Consul in Oslo, there were criminal proceedings instituted against the father and for that reason the boy, under a court's decision, was placed in a Norwegian foster family. Also visitations of the mother were settled – the mother was allowed to 8 meetings with the child per year, the father – 4. The decision was not legally valid, the parents appealed against it. He additionally pointed that due to the parents' complaints about the child's condition, he had addressed Barnevernet with a request for permission for a meeting with the boy, pursuant to Article 36 of the Vienna Convention on Consular Relations. The Consul was refused to be allowed to meet the boy, and the argument against it was that the boy did not want to meet him and a conversation with the Consul him would be harmful for him.

Bearing in mind the above mentioned circumstances, the Ombudsman for Children addressed the Ombudsman for Children in Norway and the Ombudsman for Children in Sweden with a request for support to Polish consular units in clarifying the situation of minor Polish citizens<sup>726</sup>. Yet he received an answer that unlike the Polish Ombudsman for Children, he did not have such a wide mandate to undertake action in individual cases nor any authority to control operations performed by the social service.

### 6.2.3. International child abduction

Reports addressed to the Ombudsman for Children with regard to international child abduction made up an abundant group of cases. Those cases were con-

<sup>726</sup> ZSM.422.6.2015.AJ

nected both with taking children out of Poland to another country and abducting children living abroad and taking them to Poland.

The basic legal instruments to be applied in such cases are: Convention on Civil Aspects of International child abduction, made in Hague on 25 October 1980 (the Hague Convention) and Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (Brussels II bis).

The purpose of the Hague Convention is to protect the child against harmful effects of illegal removal or keeping a child abroad and to determine the rules of procedure to guarantee that the child immediately come back to the country of his or her permanent residence. Pursuant to the Convention, a person whose custodial rights had been infringed by the fact of removing or keeping a child in another country, can file a motion for ordering the child's return to the country in which the child resided on a permanent basis before abduction. Such a motion is heard by courts of country to which the child was taken, who are obliged to provide for immediate return of the child, unless, in the course of the proceedings, an exception under the Hague Convention is proved to exist.

The exceptions were defined in Article 13, sentence 1 letter a) and b), in Article 13 sentence 2, in Article 20 and in Article 12 sentence 2 of the Hague Convention and should be applied in case the following premises occur: 1) a period of less than one year has elapsed from the date of the wrongful removal or retention, and the child had adjusted to the new setting; 2) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or 3) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation, or 4) a child who reached the relevant age and level of maturity opposes to return to the habitual place of residence 5) the child's return would not be acceptable in the light of basic principles of the addressed state regarding protection of human rights and fundamental freedoms.

The Hague Convention is then based on an assumption that illegal abduction or retention of a child abroad is against the child's well-being, and, in this way, that the child's immediate return to the place of residence before abduction is compliant with – as to the rule – the best interest of the child. At the same time, however, the rule of well-being of a child, referred to also in the Preamble,

must be considered in the proceedings also in the light of the above mentioned exceptions to the general rule of mandatory return of the child. In this respect, exceptions connected with child's exposure to grave risk of physical or mental harm (Article 13 letter b of the Convention) and with objection of the minor against return to the place of previous residence (Article 13 sentence 2 of the Convention).

The Regulation Brussels II bis is applied in cases connected with relations between the EU member states in case a child was abducted from a member state to the territory of another member state. In such cases, regulations enshrined in the Regulations complete the regulations of the Hague Convention that define the rules of procedure in cases concerning motions for return of the minor. The purpose of the Brussels II bis regulation is in principle the same as of the Hague Convention, that is to prevent children from being abducted across borders and – in cases if such abduction does take place -to provide for the child's return to his or her previous place of residence as soon as possible. Pursuant to the Preamble, the Regulation is based on the rule of international cooperation and mutual trust, followed by the states of European Union in the created sphere of freedom, safety and justice. Hence, the Regulation Brussels II bis, limits the scope of application of the exception under Article 13 letter b of the Hague Convention from the rule of immediate return of the child in relation to the grave risk of physical or psychological harm. Pursuant to Article 11 item 4 of the Regulation, the court cannot refuse to order return of the child on that basis if it had been determined that relevant arrangements had been made to secure the child after the child comes back to the country of his or her origin. On the other hand, Article 11 item 2 of the Regulation reinforces procedural guarantees of the child's participation in proceedings pertaining to mandatory return, indicating clearly that when regulations of the the Hague Conventions are applied, the court is obliged to hear the child in the course of the proceedings, unless it is found inappropriate because of the child's age or the level of maturity.

In case of proceedings pertaining to motions for return of the child under the Hague Convention in Polish courts, the Ombudsman for Children, having analysed the case files and concluded that in the course of the proceedings, the child's rights had been infringed or the child's return would expose the child's well-being to a risk, decided to join the court proceedings officially<sup>727</sup>. Moreo-

<sup>727</sup> ZSM.441.121.2015.AJ, ZSM.441.148.2015.JW, ZSM.441.155.2015.AJ, ZSM.441.158.2015.AJ, ZSM.441.15.2016.JW ZSM.441.50.2016.AD, ZSM.441.63.2016.JW, ZSM.441.79.2016.AD, ZSM.441.94.2016.JW, ZSM.441.100.2016.AD, ZSM.441.156.2016.JW

ver, if, in the Ombudsman's opinion, the court's decision adjudicating child's return to the previous place of residence was issued against the regulations of substantive and procedural law, and in the same way, was a threat to the child's well-being, the Ombudsman took advantage of his right to appeal against the decision<sup>728</sup>.

On investigating cases concerning abduction of minors, the Ombudsman examined whether the court took into account all important circumstances in the course of the proceedings. In cases in which participants to the proceedings referred to occurrence negative premises defined in Article 13 letter b of the Convention, the Ombudsman particularly paid attention to the fact whether the court had admitted the evidence of experts' opinions to determine if the child's return would not expose the child to the risk of physical or mental damage or put the child in any other intolerable situation. To find this out, usually experts' knowledge is necessary. In the opinion of the Ombudsman, a refusal to admit evidence of court experts does not, practically, allow the person who appeals against the child's return, to prove the above mentioned circumstances. The Ombudsman considered also the fact that the procedural obligation imposed on courts hearing the motions for returning the child under the Hague Convention to thoroughly consider all and any circumstances that would legitimize withdrawing from returning the child as provided by Article 13 letter b of the Hague Convention was confirmed by relevant judgements under the case law of the European Court of Human Rights<sup>729</sup>. According to the jurisprudence of the Court, application of the Hague Convention must always meet the requirements of and be in line with Article 8 of the Convention on Protection of Human Rights and Fundamental Freedoms, so as to guarantee the right to respect for one's family life. This results in arising of an obligation to duly consider the best interest of the child in the perspective of exceptions from the rule of immediate return as provided by the Hague Convention. The best interest of the child must be always considered individually, in the context of specific circumstances of a case. In situations when the Ombudsman saw some irregularities in that the court ignored the evidence of experts' opinion which resulted in lack of necessary insight into the best interest of the child in the perspective of exceptions provided by the Hague Convention, after he had officially joined the proceed-

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<sup>728</sup> ZSM.441.137.2015.AD, ZSM.441.100.2016.AD

<sup>729</sup> X v. Latvia, judgement of the Grand Chamber of 26 November 2013, complaint no. 27853/09

ings, he filed motions for hearing evidence of experts' opinions as necessary for determination of real state of affairs<sup>730</sup>.

Analysing cases in Polish courts pertaining to motions for returning a child under the Hague Convention, the Ombudsman for Children investigated also whether the minor was provided with the possibility to present his or her position regarding the return to the country of his or her habitual residence. Following the fact that pursuant to Article 13 sentence 2 of the Hague Convention, one of the premises that allow to refuse to order to return when the child has reached the age and degree of maturity relevant to express personal opinion and this opinion being taken into account, the Ombudsman inspected whether the courts which heard the cases under the Hague Convention made it possible for the minors to express their opinion in that matter. The Ombudsman for Children took also into account the fact that the obligation to hear a child arising from Article 12 of the Convention on the Rights of the Child was specified not only in Article 576 § 2 of the Code of Civil Procedure but also in the norm of Article 11 item 2 of the Regulation Brussels II bis which was also applied in proceedings pertaining to mandatory return of a child to other member states of the European Union. Pursuant to this regulation, the court is obliged to provide the minor with the possibility to be heard, if the level of maturity, health condition and the degree of mental development of the minor allows to. In situations when the Ombudsman for Children concluded that the procedural rights of minors in proceedings under the Hague Convention were infringed, after he had officially joined the proceedings, he filed relevant motions to make the court obtain the child's view on his/her possible return to the country of habitual residence. According to the Ombudsman especially grossly infringing were those cases under the Hague Convention in which courts, before issuing a decision, had not obtained any objective and unbiased evidence regarding the child, the child's opinion on possible return and the child's current mental condition and were satisfied only with the testimony of the parents engaged in the dispute or with private psychological opinions ordered by them<sup>731</sup>.

Moreover, especially in cases under the Hague Convention and the Regulation Brussels II bis, the Ombudsman for Children inspected whether in situations in which, when it was necessary in the light of those instruments to order the return of the child to the country of his or her previous residence, Polish courts

<sup>730</sup> ZSM.441.121.2015.AJ, ZSM.441.148.2015.JW, ZSM.441.155.2015.AJ, ZSM.441.158.2015.AJ, ZSM.441.15.2016.JW, ZSM.441.50.2016.AD, ZSM.441.63.2016.JW, ZSM.441.94.2016.JW, ZSM.441.100.2016.AD, ZSM.441.156.2016.JW

<sup>731</sup> ZSM.441.158.2015.AD, ZSM.441.100.2016.AD, ZSM.441.156.2016.JW

did the relevant inquiries to secure the child after his or her return. In this context, the Ombudsman took into consideration the content of Article 11 item 4 of the Regulation Brussels II bis, pursuant to which the court could not refuse to order the return under Article 13 letter b of the Hague Convention (that is following a conclusion that there was a grave risk of mental or physical harm after the child's return), if relevant arrangements had been made to secure the child after his or her return to the country of origin. In Ombudsman's opinion, the currently biding regulations obliged then the court adjudicating in a case under the Hague Convention and the Regulation Brussels II bis to address the authorities of the child's country of origin to make relevant arrangements and take measures to secure the child. In cases which the Ombudsman found to be defective in that aspect, after officially joining the proceedings, he pointed to the need for the court to enter into collaboration with the authorities of the member state to which the child would return, to provide for the child's security after the return<sup>732</sup>.

The above mentioned irregularities, having been reported by the Ombudsman for Children in the proceedings of appeal, were many times the reason why the body of evidence had to be collected in the case by courts of appeal<sup>733</sup>. In some cases, they resulted also in altering the decision on mandatory return by the court of appeal so as to best suit the best interest of the child<sup>734</sup>.

For example, the Ombudsman intervened in a case under the Hague Convention regarding civil aspect of international child abduction, concerning a minor boy<sup>735</sup>, who, after his parents parted, was living with his mother in Germany. The father kept constantly in touch with his son. During the meetings the father of the minor notices alarming changes in the behaviour of his son who became to be nervous and weepy. The son told the father that the mother had been leaving him home alone as she went abroad for a couple of days. Motivated by care for the child's well-being and health, the father took the boy to Poland, without the mother's consent. The mother instituted proceedings before Polish court pertaining to mandatory return of the child under the Hague Convention, as a result of which the regional court issued a decision that ordered the father to return the child to Germany.

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<sup>732</sup> ZSM.441.158.2015.AD, ZSM.441.79.2016.AD

<sup>733</sup> ZSM.441.158.2015.AD, ZSM.441.79.2016.AD, ZSM.441.100.AD., ZSM.441.156.2016.JW

<sup>734</sup> ZSM.441.79.2016.AD, ZSM.441.156.2016.JW

<sup>735</sup> ZSM.441.156.2016.JW

The father asked the Ombudsman for Children for help as he appealed against that decision. The case files indicated that the court of first instance issued a decision after only one hearing and without having considered most of the motions for evidence submitted by the child's father to prove the risks for the child's well-being connected with the child's return to his mother to Germany, including a motion for admitting the evidence of experts' opinions. Though the father presented a private psychological opinion which said that the boy had emotional disturbances arising from the fluent family situation and parental neglect of the mother, the court assumed that this mental condition was caused by the shock resulting from the boy's isolation from the mother and could not be considered a circumstance for refusal to issue a mandatory return of the child.

Having in mind the child well-being, the Ombudsman for Children officially joined the proceedings and argued for admitting evidence from the opinion of experts to determine whether the minor's return to France could expose him to any mental or physical harm or otherwise place him in an intolerable situation (Article 13b of the Convention). With reference to the content of the private psychological opinion presented by the father, the Ombudsman stressed that in order to exclude the premises under Article 13 letter b of the Hague Convention, it was necessary to complete the body of evidence and admit the evidence of expert psychologists.

The district court agreed with the Ombudsman for Children and admitted the evidence of the experts' opinion. It confirmed that in the time when the child was under custody of his mother, his well-being could have been at risk. The expert diagnosed the child to have had a trauma connected with the person of the mother and the feeling of being abandoned by her. It also said that during a conversation with the expert, the minor expressed his definite reluctance to come back to Germany to his mother.

The Ombudsman for Children, referring the expert's opinion and the opinion of the minor himself, applied for alteration of the first instance decision by repealing the motion for mandatory return of the child to Germany. According to the Ombudsman, there were premises under Article 13 letter b and Article 13 sentence 2 of the Hague Convention, that argued against the decision of mandatory return. The district court acceded to the Ombudsman's motion and, having in mind the well-being of the minor, altered the decision, by repealing the motion filed by the mother.

In another case of this category, the Ombudsman intervened with respect to the case of a son of a Dutch father and Polish mother<sup>736</sup>. The boy lived in the Netherlands from his birth. The mother came with hi to Poland for a holiday and decided to stay here, though the father did not agree to it. She argued that the minor had some emotional disturbances arising from the fact that he was involuntarily involved in the dispute between the parents. It had already happened before – the mother had taken the boy to Poland without the father’s consent a couple of years earlier. Then the father took the boy himself and came back to the Netherlands with him, without having used any legal measures. After the minor came back to the Netherlands, the mother did not have any contact with him for some time, then the visitations took place under a court appointed guardian and finally – the Dutch courts adjudicated joint custody and distribution of custodial obligations between the parents.

The father of the child filed a motion for mandatory return of the child to the Netherlands under the Hague Convention. In the course of court proceedings the mother filed a motion for hearing the evidence of expert’s opinion to determine whether the child return to the Netherlands would expose him to any mental or physical harm or put him in any other intolerable situation. She also presented private psychological opinions that indicated weak emotional condition of the minor. The court dismissed the motions, arguing that they were an attempt to prolong the proceedings. And although the court made an attempt to hear the minor, the boy finally refused to enter the court building and take part in the procedure.

The court issued a decision which obliged the mother to return the child within 7 days from the day the decision was issued. The mother appealed against this decision and asked the Ombudsman for Children for help. Having analysed the case files, the Ombudsman officially joined the proceedings or appeal. The Ombudsman filed a motion for hearing the evidence of expert’s opinion to determine whether the child return to the Netherlands would expose him to any mental or physical harm or put him in any other intolerable situation. The Ombudsman stressed that in the light of special circumstances of the case, hearing of the evidence of expert’s opinion was necessary to exclude the premises set forth in Article 13 letter b of the Hague Convention. In his opinion, the body of evidence collected by the court was incomplete, as no evidence was obtained in the course of the proceedings to determine the current mental condition of the minor, who was put again in a situation of radical change of life and upbringing.

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<sup>736</sup> ZSM.441.158.2015.AD



In this context, the Ombudsman noticed also that the minor had not been heard by the court of first instance, because he had refused to enter the building. The Ombudsman stressed that in the case Article 11 item 2 of the Brussels II Bis Regulation was to be applied regarding the obligation to provide the minor a possibility to be heard, unless it would seem inappropriate due to the child's age or degree of maturity. The Ombudsman pointed out that this obligation comprised also provision of relevant conditions for a minor to be heard. In the Ombudsman's opinion, neither the regulations of the EU law, nor Article 576 § 2 of the CCP, nor even the Article 12 item 2 of the Convention on the Rights of the Child did not exclude the possibility to hear the minor outside the court's building.

The Ombudsman pointed out also that the quoted decisions of Dutch courts and the operations of Dutch authorities following the previous series of abduction (the fact that the mother was deprived of the contact with her son), should also be subject to assessment whether relevant arrangements had been made in the country where the minor was to be returned to secure the child, which the court did not do.

As the court's decision was enforceable, and the mother did not freely return the child to the father, what followed was mandatory removal of the minor before the mother's appeal was heard by the district court. The boy was returned to his father with whom he came back to the Netherlands and he is currently staying there. The Dutch court forbade the mother to contact the minor until he reaches the age of 12. A private expert psychologist's opinion attached to the files by the child's father said that the boy did not want to have any contact with the mother.

Bearing in mind the best interest of the minor, the Ombudsman for Children is continuing his activity under the Hague Convention proceedings in the district court. At the same time, considering the possible threat to child's well-being arising from the immediate enforceability of the decisions issued under the Hague Convention as exemplified by this case, the Ombudsman took also measures of general nature. In his address<sup>737</sup> to the Minister of Justice of 24 November 2016 the Ombudsman asked for legislative work to introduce a rule that decisions issued on the basis of the Convention would be enforceable only after they become legally valid. The above mentioned demand was acknowledged in the draft act developed by the Ministry of Justice (see General Addressed for more details).

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<sup>737</sup> ZSM.422.17.2016.JW

At an appeal hearing at the district court, the Ombudsman for Children altered the motion for evidence and requested hearing of evidence of psychologist's opinion under legal assistance in the Netherlands. In his another court paper, the Ombudsman stressed also that in the light of Article 11 item 4 of the Regulation Brussels II bis, it was important to determine what operations had been undertaken in the case of the minor by Dutch authorities and what were the rules (if any) that those authorities were guided by in their supervision over the minor after his return to the Netherlands.

The district court acceded to the Ombudsman for Children's position and allowed for the hearing of evidence of by psychologist appointed by the Dutch court to determine whether the minor's return to the Netherlands would expose him th physical or mental harm or put him in an intolerable situation, how the Dutch authorities had secured the child after his return to the Netherlands, what was his current psycho-physical condition, whether the minor could be heard during the proceedings even if had refused once and how the fact that he had no contact with the mother influenced him and what solution did the expert suggest to make this contact for the sake of the minor's good.

The district court is waiting for the decision to be developed.

In another case<sup>738</sup> under the Hague Convention and the Regulation Brussels II bis, the Ombudsman for Children intervened to help minors who had lived in France since they were born. After their parents had parted, the girl remained in custody of their mother and their father established a new family and moved to another city. The mother of the girls left France and came to Poland, because her mother had fallen seriously ill. Due to the fact that the mother had not received the father's consent to the departure, he filed a motion to the court under the Hague Convention for mandatory return of the minors to France.

In the course of the proceedings at the regional court, a hearing of evidence was carried out to determine whether returning minors to France would expose them to any physical or mental harm. In the opinion, the experts concluded that it would be unfavourable for the girls to return to their father, as separation from the mother, who was the most important person for them, would expose them to harm and probably put them in an intolerable situation. Yet the court allowed the father's motion and ordered mandatory return of the minors. Based on the opinion of experts the court stated that in order to reduce the negative consequences of the girls' return to France, the mother should join them.

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<sup>738</sup> ZSM.441.79.2016.AD

She, however, filed an appeal against the decision and asked the Ombudsman for help. Having analysed the case files, the Ombudsman officially joined the proceedings or appeal. In his court paper, the Ombudsman stressed that after the court of first instance issued a decision, the circumstances of the case changed – the father instituted proceedings at a French court to be entrusted with custody of the girls and the French court defined the place of the girls' residence at the father's, for the time of the proceedings. According to this decision, if the girls came back to France, not only would they be separated from their mother but also get to a new environment and new school. In the opinion of the Ombudsman, at that stage of the case there was a grave risk that their return to France would expose them to serious mental harm, which was also mentioned in the opinion. The Ombudsman for Children said also that an order to return to France would require first an inquiry whether in the country of return relevant measures had been taken to secure the children after their return, pursuant to Article 11 item 4 of the Regulation Brussels II bis. In order to investigate these circumstances – according to the Ombudsman it was necessary for Polish and French courts to collaborate to enable the mother to return to France with the minors and to guarantee that the children would remain under custody of the mother until the proceedings at the French court was closed.

In the appeal hearing the district court addressed the French central authority with a request to find out whether the arrangements the Ombudsman pointed out had been made. In response the central authority stated that the mother of the children had many procedural mechanisms at hand that would allow to obtain immediately a final decision in the proceedings before the French court pertaining to custody of children. The central authority informed also that in case the Polish court issued a decision that forbade the father to take the children until the French court issued a final decision on custody of children, this decision would be enforced in France under Article 20 of the Regulation Brussels II bis and under Article 11 of the Hague Convention of 1996 on jurisdiction, applicable law, recognition enforcement and co-operation in respect of parental responsibility and measures for the protection of children.

After the court obtained the above mentioned information, it dismissed the appeal of the mother, but applied, at the same time, under the rule of Article 11 item 4 of the Regulation Brussels II bis, an interim measure to provide for protection to children after their return to France. The Court agreed with the position of the Ombudsman that in connection with the interim decision of the French court that determined the place of residence of the girls at the father, there was a grave risk of serious psychological harm due to their separation

from the mother. In order to protect the children against this risk, the district court applied the interim protective measure in the form of a ban on mandatory removal of children by the father from the mother after they come back to France until the French court issued a final decision on custody of the minors.

The Hague Convention on Civil Aspects of International Child Abduction is applicable not only to children taken from abroad to Poland but also in case minors have been wrongly taken from Poland to other countries – Parties to the Convention. In such situations, a motion for mandatory return of a child due to wrongful abduction or retention of that child must be filed through the agency of the Polish central authority, that is the Ministry of Justice, but is heard by authorities of the state where the child is staying.

As the Ombudsman for Children is not authorised to act in courts of foreign countries, he only monitored the course of justice pertaining to mandatory return of the child through the agency of the Polish Ministry of Justice<sup>739</sup>.

This category of cases included the case of two minor girls, taken away by his mother – without their father's consent – from Poland to Great Britain<sup>740</sup>. The father did not have any contact with them nor knew where they were staying. He asked the Ombudsman for Children for relevant measures to make the children come back to Poland. The father submitted a motion under the Hague Convention for mandatory return of the girls to Poland through the agency of the Ministry of Justice. The Ombudsman for Children addressed the Polish central authority with a request for information about the current state of affairs and what measures had been taken to determine the place of stay of minors, to which the central authority was obliged under Article 7 sentence 2 letter a) of the Hague Convention. In response, the Ministry of Justice assured that the father's motion was sent to the English central authority and that the operations to determine the place of stay of children were in course. The English court issued immediately a decision that obliged the mother to come back to Poland with the minors. As a result, the minors came back to Poland and the dispute regarding the right to custody of the children was in course at the relevant Polish courts.

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<sup>739</sup> ZSM.441.71.2016.JW, ZSM.441.109.2016.AD, ZSM.441.144.2016.AD, ZSM.441.146.2016.JW, ZSM.441.170.2016.AD

<sup>740</sup> ZSM.441.144.2016.AD

The Ombudsman for Children received also cases which referred also abduction of children to countries which were not parties to the Hague Convention<sup>741</sup>. In such cases the Ombudsman gave the interested parties exhaustive information on other legal instruments binding in the relations between the country of the child's origin and the country to which the child was abducted, and which could be used to make the child come back to the country.

For example, there was a case of a minor whose abduction by the mother from Poland to Vietnam was reported to the Ombudsman by the girl's father<sup>742</sup>. The Ombudsman indicated to the father that in order to achieve the return of the minor to Poland he should, based on the agreement between the Republic of Poland and the Socialist Republic of Vietnam on legal assistance and legal relationships in civil, family and criminal cases of 22 March 1993 address the relevant Vietnamese court with a respect for recognition and enforcement of the decision of the Polish court that entrusted him with custody of the minor or determined the minor's place of stay at the father's. The father instituted the proceedings in that respect at Polish courts and is waiting for issuance of a legally valid decision.

The Ombudsman for Children addressed also the Consul of the Republic of Poland in Hanoi to provide the petitioner with support in his activity in Vietnam. The obtained information indicates that the petitioner did receive such support but further actions were necessary to provide for the minor's return.

Another example of case undertaken by the Ombudsman for Children was the one<sup>743</sup> in which a child was abducted to a country that was not the party to the Hague Convention, by a father from the Netherlands to Egypt, without the mother's consent. The mother who tried to arrange for the minor's return to his country of permanent stay, did not have any international law instrument to proceed under.

After the mother asked the Ombudsman for Children for support, he addressed the Polish consuls in Egypt and the Netherlands and asked for investigation in the case and provision of relevant support to the petitioner. As a result, the minor came back with the mother to the Netherlands.

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<sup>741</sup> ZSM.441.10.2016.JW, ZSM.441.57.2016.JW, ZSM.441.132.2016.AD, ZSM.441.167.2016.AD, ZSM.441.224.2016.AD

<sup>742</sup> ZSM.441.224.2016.AD

<sup>743</sup> ZSM.441.132.2016.AD

## 6.3. International cooperation

### 6.3.1. Cooperation within European Network of Ombudspersons for Children (ENOC) and meetings promoting the institution of the Ombudsman for Children in the world.

- Report titled “Safety and fundamental rights at stake for children on the move”, January 2016

ENOC report is an effect of works of Working Group on Children on the move, established during 19th ENOC General Assembly in Hague, which operates on behalf of 41 European ombudspersons for children by monitoring observance of the rights of children travelling in Europe. It's tasks include carrying out research to recognize major threats and problems related to accessing the rights by travelling children. The input of Polish Ombudsman for Children contained the presentation of Polish legal solutions related to the reception of minor migrants and adoption of legal regulations as regards the institution of guardian for unaccompanied minors.

The report has been submitted, among others, to the Council of Europe, the European Commission, the United Nations, as well as to the governments of particular countries through ombudspersons. At the end of February 2016, the Ombudsman for Children submitted the report to the Prime Minister. In the report, attention was paid to risks related to children travelling to Europe by the sea – approximately 30 percent of migrants who drowned constitute children. In winter children reaching particular countries are all wet and cold, many of them suffering hypothermia resulting in diseases such as pneumonia, for example. On the route throughout Europe children happen to be separated from their parents, mainly due to chaos during border controls, they are exposed to sexual abuse or violence in refugee centres. Transfer centres and reception centres on the route through Western Balkans feature low standard, basic sanitation fails and is not adjusted to winter conditions. Children placed in closed centres happen to stay there for weeks, or even months, without access to education, any form of privacy or recreational activities.

- **Annual Meeting of the Ombudspersons for Children of the Balkan Countries and Poland, Tallinn, 16 – 17 June 2016**

Annual Meeting of the Ombudspersons for Children from Lithuania, Latvia, Estonia and Poland was held in Tallinn. The meeting was organized by the Office of Justice Commissioner in Estonia. Debate of ombudspersons focused on issues related to health. The discussed topics included, among other things, protective vaccinations, parents' right to information and doctor's right to refusal of giving information, child's consent and independent decision making by the child. Ombudspersons exchanged their experiences as regards psychiatric care for children, and visited psychiatric and psychological support centre for children and youth in Tallinn.

During the meeting, the Ombudsman presented the major initiatives carried out in 2015, particularly within health care for children (among others, monitoring system of child's fate, Child Health Certificate, feeding standards in educational facilities). The Ombudsman presented also Charter of Child Patient Rights – educational initiative realized in cooperation with the Commissioner for Patients' Rights, and the book *Kuba i Buba w szpitalu, czyli o prawach dziecka-pacjenta niemal wszystko* ["Kuba and Buba in the hospital, nearly everything about child-patient's rights"] written by Grzegorz Kasdepke, published under the patronage of the Ombudsman for Children and the Commissioner for Patients' Rights. The form of the book enables the youngest to reach the knowledge on the rights of the youngest patients and their guardians and to familiarize them with the issue. The Charter of Child Patient Rights and the book *Kuba i Buba w szpitalu, czyli o prawach dziecka-pacjenta niemal wszystko* ["Kuba and Buba in the hospital, nearly everything about child-patient's rights"] were submitted to the Ombudspersons of the Baltic Countries, who had the Chart translated to native languages.

- **Conference organised by the Ombudsman for Children of France, Paris, 28 June 2016**

Representatives of the Ombudsman participated in the conference, organised by the Ombudsman for Children in France, devoted to the condition of children in the light of migration crisis. The meeting was also attended by the representatives of European institutions and European non-governmental organisations. On completion of the debates, the statement was adopted, in which the representatives undertook to strengthen the cooperation in order to protect and promote rights of the children on move in the light of migration crisis.

As can be seen from research of European Court of Human Rights, referred to during the conference, there are over 60 Million of refugees all over the world. Half of them are children. These children constitute the group which is particularly vulnerable to the risk of violence, abuse, shameful treatment, trauma or even death. They need special protective measures, these agreed by all European countries, which ratified the Convention on the Rights of the Child.

- **Annual Meeting of European Network of Ombudspersons for Children, Vilnius, 20-22 September 2016**

The Ombudsman for Children participated in the annual meeting of European Network of Ombudspersons for Children (ENOC) in Vilnius. The meeting was hosted by Edita Žiobienė, the Ombudsman for Children of the Republic of Lithuania. ENOC meeting was devoted to the issues related to ensuring equal opportunities as regards access to education for all children. The participants of the meeting discussed the implementation of right to education for refugee children and children belonging to national minorities. The debates touched on the issues of inclusive education and necessary legal changes in particular member countries. During the meeting the occasion was taken to present good practices and experiences of the ombudspersons for children from particular countries.

Defenders of the children's rights from the whole Europe familiarized themselves with Polish solutions related to the health of minors and to monitoring of child's fate. Prof. Stanisław Dylak, head of Pedeutology Department at Adam Mickiewicz University in Poznań held a lecture titled "Education for evolution". The ombudspersons accepted the declaration on "Equal opportunities in education for all children", which was submitted by the Ombudsman to the Prime Minister.

Participants also took part in workshops aimed at presenting realized issues and current problems related to preventing violence, ensuring children a right to health care or observing rights of children placed in foster care. Apart from the Ombudspersons for Children, also representatives of the United Nations, UNESCO, the Council of Europe, the European Commission and OSCE exchanged their experiences and observations.

- **Visit of Finnish Ombudsman for Children to Warsaw, 15-16 December 2016**

Tuomas Kurttila, the Ombudsman for Children in Finland visited Warsaw at the invitation of the Ombudsman for Children. Exchange of experiences relating to



the system of care over children and youth was the main objective of the Finish Ombudsman's visit in Warsaw. Cooperation within European Network of Ombudspersons for Children (ENOC) and meetings promoting the institution of the Ombudsman for Children in the world. Tuomas Kurttila visited Korczakianum Documentation and Research Centre, met students of one of Warsaw high schools and Social Advisors of the Ombudsman for Children. Tuomas Kurttila held lecture in Maria Grzegorzewska University of Special Education in Warsaw entitled "Why do children in Finland enjoy their life so much?"

Finnish Ombudsman made himself acquainted with activities of Polish Ombudsman for Children and learnt in details about the Janusz Korczak's concept. The Ombudsman inspired the guest to publish within his competences a valuable literature of Janusz Korczak. The book *Prawo dziecka do szacunku* ["Child's right to respect"] written by Korczak has already been translated into Finnish. As promised, more of such books will be provided to Finish children and parents soon.

Word "trust" was echoing numerous times in many issues. In the view of Tuomas Kurttila, it is difficult to create reliable and effective education system for children and youth without it. He underlined it with equal strength during the meeting with students, as well as during open lecture in Maria Grzegorzewska Academy of Special Education in Warsaw. Tuomas Kurttila devoted large part of his lecture to the education system. He argued that children who are satisfied with teachers become more happy.

The Ombudsman pointed that Finnish education system is seen as one of the best in the world, also, or probably above all, due to the fact that children and parents trust teachers deeply.

### **6.3.2. Cooperation with the representatives of European and international institutions and meetings within promotion of children's rights in the world**

- **Meeting with representatives of Danish organisation called Global Foundation and Coalition for Family Foster Care, Warsaw, 20 January 2016**

Psychologists Niels Peter Rygaard and Morten Jac as well as members of the Board for Coalition of Family Foster Care presented the programme of support

and improvement of professional abilities and competences of people dealing with supervision over children in foster care to the Ombudsman for Children. FIRSTart programme was established under the supervision of Niels Peter Rygaard, international expert on the development of child care. It contains 14 training sessions for people caring for children at the age of 0-3 years. Danish people implemented the programme in several EU countries and wish to include Poland.

- **The Meeting with the Commissioner for Human Rights of the Council of Europe Nils Muižnieks, Warsaw, 9 February 2016**

Protection of children's rights and activities of the Ombudsman for Children institution were the subject matter of the discussion between the Ombudsman and Nils Muižnieks. During the meeting Nils Muižnieks was questioning Polish Ombudsman, among other things, about the scope of duties and the ground of the most frequent interventions. The Ombudsman presented to the Commissioner the spectrum of issues, in which he is involved in and deals with routinely. He listed regulations that have been introduced to Polish law recently (among others, child's right to both parents, total ban on beating), which protect the welfare of children more effectively. The Commissioner was also interested in the situation of children placed in educational care centres and emergency youth centres, as well as in the actions of the Ombudsman for Children in the scope of the support for children with non-polish citizenship or without citizenship.

- **Project "Childhood without violence: avoiding corporal punishment in the countries of the Baltic Sea Region", February 2016**

The Ombudsman for Children commenced the project funded by the European Commission, which aims at working for eliminating corporal punishment of children through multi-agency activities based on inter-ministerial and inter-governmental cooperation of the Baltic Region countries. Action patterns for member countries of EU and non-EU will be created in the framework of the project. In December 2016 the project received a positive assessment of the European Commission.

- **Conference of the Criminal Justice Programme of the European Commission and Defense for Children (DCI)-Belgium - Children's rights behind bars: Children's rights behind bars. Improving monitoring mechanisms (,CHILDREN'S RIGHTS BEHIND BARS: Human Rights of**

**Children deprived of liberty. Improving Monitoring Mechanisms”),  
Brussels, 15 February 2016**

The Ombudsman for Children participated in the conference titled „CHILDREN'S RIGHTS BEHIND BARS: Human Rights of Children deprived of liberty. Improving Monitoring Mechanisms”, organised by European Commission and Defense for Children (DCI) Belgium. The meeting was attended by representatives of partners from 14 European countries and experts participating in the project, as well as representatives of international non-governmental organisations and state institutions.

The conference summarized the project coordinated by Defense for Children (DCI) Belgium aiming at improving living conditions of children in places of deprivation of liberty and strengthening monitoring mechanisms of these institutions. The project was also to underline dignity of children and respecting their rights. As a result a guide Practical Guide – monitoring places where children are deprived of liberty has been prepared which should serve as a supporting tool for specialists responsible for monitoring of places of deprivation of liberty. It contains guidelines which can make the monitoring not only effective but also child-friendly. The authors of the guide stress that such monitoring in places of deprivation of liberty is frequently carried out by persons who have no previous experience at working with children. Presentation of good practices applied in various countries was a valuable element of the discussion.

Conference „Children's Rights Behind Bars” was attended by: representatives of the Council of Europe, delegates from UE countries, experts from state institutions specialized in children's rights, ombudspersons of children, scientists, clerks and representatives of non-governmental organisations. Several dozen international organisations are involved in the project coordinated by „Defense for Children” organisation. Publication of Practical Guide monitoring places where children are deprived of liberty was translated into Polish by the Ombudsman for Children.

• **Council of Europe Conference in Sofia, 5-6 April 2016**

The Ombudsman for Children participated in the conference organised by the Council of Europe held in Sofia. The conference opened a new European strategy of children's rights for 2016-2021, being third strategy of the Council of Europe related to children's rights. The conference gathered the representatives of the Council of Europe countries' representatives, representatives of the European Parliament, the European Commission, Commissioner for Hu-

man Rights of the Council of Europe, Chair of the UN Committee on the Rights of the Child, Special Representative of Secretary General on the elimination of violence against children, Director of the EU Agency for Fundamental Rights, Director General of UNICEF Europe and representatives of many European organisations for children (including Eurochild, CBSS, Save the Children, Who, Lumos). Debates were held in nine thematic sessions during which participants discussed current issues related to the protection of children's rights in Europe and commented progress as regards protection of the children's rights made in numerous areas and countries, and a new strategy of children's rights protection, i.e. Sophia Strategy. The Ombudsman for Children took part in given discussion groups and thematic workshops. The issue of creating national integrated strategies for protecting children against violence was particularly important for the Ombudsman. During his visit, the Ombudsman was accompanied by prof. Ewa Jarosz, social advisor of the Ombudsman for Children, expert on violence against children.

- **Meeting with Hilal Elver, UN Special Rapporteur on the Right to Food, Warsaw, 21 April 2016**

During the meeting with the Ombudsman for Children, Hilal Elver listened with great interest about changes as regards feeding, which have been introduced into Polish school system. So called junk food has disappeared from Polish schools, and canteens introduced feeding standards recommended by National Food and Nutrition Institute, what was requested by the Ombudsman for Children. Hilal Lever asked about legal regulations of advertising market – in the context of advertising unhealthy products to children. The topics of conversation included: feeding in foster and family care, supplementary feeding at schools and promotion of healthy food for small children. Remarks and recommendations of the UN Special Rapporteur on the Right to Food will be included in the final statement which will be presented to the United Nations Human Rights Council in March 2017.

- **Cooperation with The Lanzarote Committee on the Protection of children against Sexual Exploitation and Sexual Abuse, May 2016**

Through the Ministry of Justice the Ombudsman for Children submitted to the Lanzarote Committee, which monitors implementation of the Convention on the Protection of children against Sexual Exploitation and Sexual Abuse, proposals of issues which can become a subject of assessment for the nearest Committee meeting.

Taking into account the state of observing children's rights to protection against violence, cruelty, exploitation, depravity, neglect and other maltreatment, including particularly rights to protection against sexual exploitation and sexual abuse, the Ombudsman took into consideration the following topics:

- ▶ recognition of maltreated child symptoms,
  - ▶ improvement of skills of persons dealing with maltreated child,
  - ▶ education of children, parents and professionals working on the safety of children and protection against sexual exploitation,
  - ▶ prevention and treatment of sexual disorders,
  - ▶ preventive measures for perpetrators of sexual crimes towards children.
- **Experts Meeting devoted to new forms of peer aggression such as bullying and cyberbullying, Florence, 11 May 2016**

The Ombudsman for Children attended experts meeting devoted to new forms of peer aggression such as bullying and cyberbullying. Marta Santos Pais, UN Special Representative of the Secretary-General on Violence against Children chaired the debates. The objective of the meeting in Florence was international diagnosis of bullying and cyberbullying issues, exchange of good practices, prevention of the occurrence and specifying the content of UN resolution related to the issue. Bullying, that is mobbing within student environment, is a long-term, negative action of a student or student group addressed to other student of student group, which aims at excluding the victim from a peer group. Cyberbullying is an occurrence of defaming, harassing, tyrannizing and making fun of somebody in network.

Marta Santos Pais invited the representatives from all over the world to the expert team, including: Saudi Arabia, Holland, The United States, Republic of South Africa, Italy, France, Australia, Norway, Lebanon, Finland, Mexico, Great Britain, Greece, Ireland, Dominican Republic, Lithuania and Poland. Apart from scientists, ombudspersons for children and non-governmental organisations, the group of experts contained also teachers, criminologists and lawyers. International discussion served as an occasion for exchange of opinions, and reminding the sense of the Third Optional Protocol to the Convention on the Rights of the Child, which strengthens the status of a child as the subject of rights and enables more efficient functioning of national mechanisms for the protection of the children's rights.

Marta Santos Pais and Kirsten Sandberg, former Chair of the United Nations Committee on the Rights of the Child expressed their support for the idea of developing and implementing of the National Strategy for Preventing Violence

against Children, all the more the appeal of the Ombudsman for Children to the Prime Minister mentioned the need to prevent the occurrence of bullying.

During the visit in Florence, the Ombudsman visited UNICEF Innocenti Research Centre, one of the most reputable research centre devoted to children's rights in the world. The centre was built in 1988 in order to improve the research possibilities of the United Nations International Children's Emergency Fund (UNICEF) and to support its activities all over the world.

- **Meeting with Apostolic Nuncio in Poland archbishop Celestino Migliore, Warsaw, 13 May 2016**

The need for strengthening the protection of children's rights was discussed during the meeting. In this context the Ombudsman for Children expressed his gratitude for actions of the Pope Francis who consequently demands observing the rights of the youngest. The discussion also touched on the topic of violence against children and refugee children, who should be provided with care and protection against the effects of war fare by the world.

- **International Korczak Seminar, Geneva, 21 May 2016**

The Ombudsman for Children accompanied by social advisors – prof. Ewa Jarosz and Anna Lechowska – participated in the International Korczak Seminar organised by the Janusz Korczak International Seminar and Permanent Representation of the Republic of Poland to the United Nations in Geneva. The seminar was devoted to challenges faced by Europe and the world as regards protection of children's rights in the light of mass migration to Europe. The Ombudsman along with the Ambassador Piotr Stachańczyk opened the seminar, and held a lecture "Responsibility for a child – Korczak's voice", referring to the need of protection to all children, regardless of their legal situation, as well as to the issue of responsibility of the transfer countries of migration and target countries. During the seminar, participants discussed various aspects of threats caused by a new migration wave to Europe. During the seminar, the Ombudsman granted the President of the International Janusz Korczak Association (IKA) Batia Gilad with the honorary badge for contribution to children's rights – INFANTIS DIGNITATIS DEFENSORI.

- **The Meeting with the Ambassador of Qatar J.E. Ahmed S. Al-Celestino Migliore, Warsaw, 23 May 2016**

The cooperation of Polish Ombudsman with Qatar as regards the protection of the children's rights has gone for several years. The subjects of this year's

meeting was exchange of good practices within the protection of children's rights to health and education and ideas for continuing the cooperation. The participants agreed that children's rights to the protection of health, life and education should be particularly protected. The Qatar people have been observing Polish actions within the implementation and promotion of children's rights for years. This time, the meeting was focused on medical care, particularly the treatment of cancer among children. The Ombudsman for Children and J.E. Ahmed S. Al-Midhadi discussed issues and initiatives of both countries in this regard and expressed interest in strengthening the cooperation.

- **Meeting with the Visitors from Japan, Warsaw, 14 July 2016**

Delegation from Japan consisted of scientists, doctors, social workers and researchers and historians of children's rights. It was their consecutive visit in Poland. In 2016 the Japanese followed the footsteps of human and children's rights. They visited places commemorating fate of children during II World War, including the building, which was the former Janusz Korczak's Children's Home in Warsaw. During the meeting with the Ombudsman, the visitors were familiarized with his competences. Overview has been given to the problems which are usually presented to the Ombudsman by adults and children. The delegation was also interested at the history of the Ombudsman Office creation and at expanding his rights in recent years.

- **Meeting with the representatives of the International Ombudsman Institute – IOI, Warsaw, 20 July 2016**

The topic of the meeting was the role of the Ombudsman for Children in the current social, political and constitutional situation. Moreover, the most important actions of the Ombudsman and difficulties in the implementation of statutory tasks were presented. The Ombudsman presented the legal basics specifying the principles for office functioning to the visitors, and compared his competences with the competences of equivalent offices in Europe. IOI delegates familiarized themselves with the Ombudsman's remarks on the topic of observing the rights of the youngest in the country in the recent years and with the most important realized initiatives. They were also interested in the scope of intervention in individual cases, particularly in case of children placed in psychiatric wards and in facilities with varied level of supervision.

- **International conference Children as Actors for Transforming Society Caux, Switzerland, 26 July – 1 August 2016**

The Ombudsman for Children, prof. Ewa Jarosz, Social Advisor of the Ombudsman and teenagers Wiktoria, Weronika and Kornel constituted Polish delegation during the fourth edition of the conference. CATS connects young people from all over the world to whom the idea of social participation of children is close. Annual meetings aim at encouraging the representatives of the most important areas for children's life, that is education, health, justice and private sector, to common actions for raising awareness of children's participation. In 2016 the CATS participants met under the theme: "From locality to inclusiveness: How will we affect the policy?".

During the lectures, discussions, workshops, group meetings, games and plays, children with adults were giving thought to the possibilities and limitations of their participation in social life, and to all what is needed to realise the Sustainable Development Goals – SDGs, which indicate the global directions of actions until 2030.

The Ombudsman for Children also held lecture, in which he underlined the subjectivity of a child and the duty of adults and countries to consider the voice of children in matters they are involved in.

- **Meeting with Olav Kjørven, the Director of the UNICEF's Public Partnerships Division in New York, Warsaw, 8 September 2016**

The major issue of discussions was the possibility of improving the implementation of children's rights by taking common initiatives for children. Issues of the role and competences of the ombudsman for children in various European countries were touched on. The Ombudsman presented legal basis granting broad rights to the Ombudsman for Children as compared to European ombudspersons. The ombudsman expressed his readiness for further supporting of European institutions of ombudspersons in their effort to expand the scope of competences. The need for common promotion of initiatives for creating institutions for protection of children's rights in countries, where they fail, was also discussed.

Olav Kjørven presented the proposal of UNICEF to establish "Alliance for Children" by Visegrad countries and common support of actions for better protection of children's rights in several European countries. The Ombudsman for



Children expressed his view that each initiative promoting children's rights and methods of their protection is valuable and deserves to be supported.

- **Conference of the International Institute for the Rights of the Child (IDE) devoted to alternative forms of care, Geneva, 3-5 October 2016**

The representative of the Ombudsman for Children participated in the conference titled "International conference of alternative care" in Geneva, organised by the International Institute for the Rights of the Child in partnership with the University of Geneva. The meeting was attended by numerous representatives of international governmental and non-governmental organisations, researchers, experts for creating alternative forms of care and practitioners who specialize in work with children placed in care and children getting independent.

The conference was an opportunity to exchange experiences within implementation of the UN General Assembly guidelines of 2009 for alternative care of children. During the meeting the issues, among other things, from the following topics were discussed: family foster care and family type facilities, deinstitutionalisation process with particular stress on facilities for children below 3 years, strategy for family support, work with disabled children, becoming independent, action of non-governmental organisations as regards foster care, quality of care in foster care.

- **Meeting with Marek Bernheim, researcher of Janusz Korczak from the USA, Warsaw, 17 October 2016**

Prof. Marek Bernheim is a PhD of comparative literature, graduate of Rutgers University New York. Professor was associated mainly with Miami University in Oxford, Ohio, where he worked as a lecturer of world literature and journalism, among other things. He was a fellow of Fulbright programme for six times, and worked also at the universities in Aosta, Florence, Vienna, Grenoble and Grande École de Commerce in Dijon. He is the author of the book titled Father of the Orphans ["Ojciec sierot"], biography of Janusz Korczak addressed to youth. He visited the Ombudsman in connection with preparation to a new, revised edition. The first edition of the book was launched in 1989, the new one should be available in 2017. The Ombudsman brought closer to the professor the activities of the Office based on the concepts of Janusz Korczak.

- **Conference on the access of the child to judicature, Malta, 21-22 October 2016**

The representative of the Ombudsman for Children participated in the conference organised by the International Institute for Peace and Wellbeing and the University of Malta. Marta Santos Pais, UN Special Representative of the Secretary-General on Violence against Children was one of the participants. In her speech, she underlined the importance of zero tolerance for violence against all children. The other lecturer, Regina Jensdottir, Head of the Children's Rights Division of the Council of Europe, discussed issues related to protection of the rights of children in foster care. Attention was also paid to the judicature seen from the child's prospective and the situation of children in migration.

- **Meeting with Gail Sadalla, American expert on mediation, Warsaw, 17 November 2016**

The Ombudsman for Children has supported initiatives related to promoting dispute resolution in mediation for years. During the meeting, the Ombudsman presented Polish experiences in introducing mediation mechanisms in varied fields, particularly as regards peer mediation and familiarized himself with significantly broad experience in this field, presented by the guest. Gail Sadalla is an author and precursor of peer mediation programmes in the United States, the author of numerous publications and programmes in this field. The mediation model created by her is implemented all over the world, and in Poland. At the end of 80's of previous century, Gail Sadalla carried out training for education workers, and her manual of problem resolution for elementary schools was translated into Polish and adapted to our conditions.

- **Meeting with the representatives of Belarusian non-governmental organisations, Warsaw, 24 November 2016**

The representative of the Ombudsman for Children had a meeting with lawyers and defenders of human rights – activists of Strategic Litigation Centre, Wiasna Human Rights Centre, of Belarusian Helsinki Committee and Belarusian Democracy Centre. The main objective of the meeting was to present actions of Polish institutions upholding human rights with particular consideration to the implementation of international mechanisms to the visitors from Belarus.

- **Children's Rights Forum in Brussels, 29-30 November 2016**

The representative of the Ombudsman for Children participated in 10th Children's Rights Forum in Brussels. It is a cyclic event organised by the European

Commission. European Ombudspersons for Children meet scientists, activists of non-governmental organisations, politicians and develop standards and practices within protection of children's rights. The major topic of the meeting was protection of rights of migrant children, particularly in the context of current migration and asylum crisis.

Opinions of the European Commission, the Council of Europe, UNHCR and member countries were presented during subsequent sessions on challenges related to securing the best interest of a child within actions of member countries and international organisations taken in the field of asylum and migration. Particularly, the following issues were addressed: identification of child and protections against risks, reception procedure, health care, access to asylum procedures and protection, appointment of guardian, assessment of age, work on solutions, integration and return to the country of origin. Opinions presented during the Forum can be useful in a further work of the Ombudsman connected with rights of minor refugees coming to Poland.

- **Visit in Taiwan, 30 November - 3 December 2016**

At the invitation of the Warsaw Trade Office in Taipei, the Ombudsman for Children with prof. Barbara Smolińska-Theiss, Social Advisor of the Ombudsman for Children and Batia Gilad, Head of International Janusz Korczak Association attended a series of meetings on the children's rights in Taiwan.

The Ombudsman for Children met the representatives of Taiwan Minister of Health and Social Care, and the representatives of Taiwan Supreme Audit Office. During the visit of the Ombudsman for Children, the exhibition devoted to children's rights and Janusz Korczak (the same, which was initiated by the Ombudsman in Janusz Korczak's Year 2012) was opened, and the book premiere *Jak kochać dziecko?* ["How to love a child?"] written by The Old Doctor took place, which was published in Mandarin language with the introduction prepared by the Ombudsman for Children. The crowning of Janusz Korczak's legacy was the seminar at the University devoted to children's rights and the philosophy of the Old Doctor with participation of prominent local scientists, lawyers, sociologists and educators, where the Ombudsman for Children held a lecture titled "Convection on the rights of the child, that is from the Korczak time until now". He presented ideas for utilizing Korczak's concept in forming the contemporary reality.

The Ombudsman also participated in the meeting with non-governmental organisations fighting for children's rights.

- **Conference “Promoting good practices in protection of unaccompanied children” organised in Stockholm by the Council of the Baltic Sea States, 7-7 December 2016**

The representatives of the Ombudsman for Children participated in the conference focused on the following issues:

- ▶ migration management as a tool for supporting youth on the move and preventing their abuse,
- ▶ protection of security and needs of children in the receiving country,
- ▶ challenges and good practices of transit countries.

Moreover, the issue of human trafficking was touched on as it is closely connected with migration crisis. Panels were partly devoted to the following issues:

- ▶ prevention of children trafficking at international level and in the region of the Baltic Sea,
- ▶ good practices,
- ▶ risk factors,
- ▶ communication with children: skills, techniques, attitudes,
- ▶ interdisciplinary and inter-divisional cooperation.

The representatives of the Ombudsman for Children familiarized the participants of the conference with Polish legal solutions relating to minor unaccompanied foreigners staying in Poland.

- **PROMISE project planned for 2015-2017**

In December 2016 the Ombudsman for Children joined PROMISE project founded by the European Union in the framework of Law, Equality and Citizenship Programme. The project is led by the Council of the States of the Baltic Sea. PROMISE aims at promoting child-friendly, interdisciplinary and intersectoral system for supporting children – victims and witnesses of violence. PROMISE project is based on Scandinavian model BARNHAUS (Children’s Home). Barnhaus is an interdisciplinary centre cooperating with police, public prosecutor’s office, courts, medical personnel and social services.

### III. COURT AND ADMINISTRATIVE CASES WITH THE PARTICIPATION OF THE OMBUDSMAN FOR CHILDREN

- **Proceedings before the Supreme Court**

Polish Law appoints the Ombudsman for Children the authority to appeal in cassation against every legally valid decision of a court which closed the course of justice, if that decision infringed the rights of the child. And so, the Ombudsman received petitions for appeal in cassation against legally valid decisions of criminal courts.

It must be stressed that the catalogue of cases against the Ombudsman for Children may appeal in cassation is not unlimited, as in case of the Minister of Justice – the Prosecutor General and the Human Rights Defender. The Ombudsman's mandate is conditioned by the premise that a given decision has indeed infringed or violated the child's rights. This requirement must be interpreted in its strictest sense. The Ombudsman for Children may appeal in cassation in criminal proceedings only when a court, on issuing a decision in a given case, did so against the regulations that settle the rights of the child. A possibility of bringing an appeal in cassation by the Ombudsman for Children in case in which the improper decision concerning an adult directly influenced the sphere of child's rights is rejected (e.g. erroneous sentence for a parent that violates the right of the child to be raised in a family). Similarly a possibility to bring an appeal in cassation in a case in which a child was involved in a different role than a party to the proceedings, for example as a witness, shall also be excluded, as then, although the child's rights could have been infringed in the procedure, but it did not result directly from the issued decision<sup>744</sup>.

In the period covered by this Information, the Ombudsman brought an appeal in cassation against a decision of a regional court which upheld the decision of the regional Prosecutor's Office on dismissing an investigation against a mother of two minor boys, suspected of exposing her children to direct threat of life or health loss. When taking care of them, she consumed alcohol until she was

<sup>744</sup> J. Grajewski, S. Steinborn, Komentarz aktualizowany do art. 521 Kodeksu postępowania karnego, System Informacji Prawnej LEX 2015

completely intoxicated and fell asleep, leaving the children unattended, which falls into the scope of Article 160 § 2 of the Penal Code<sup>745</sup>.

The legal reason why the investigation was dismissed was the assumption that the suspect had not committed the act she was accused of.

This decision was appealed against by a court appointed guardian who represented one of the harmed minors, claiming that procedural law was infringed by depriving minors of proper representation in the investigative procedures (the guardian was appointed for only one of the minors), the guardian was not informed on the rights and duties of the harmed and, in consequence – the minors were deprived of their right to participate in the investigative procedures, including filing motions for specific operations in the course of the investigation.

The regional court agreed though with the position of the prosecutor, who applied for dismissal of the proceedings. The court did not see any irregularities in the attitudes or activities of all persons who performed all the operations under the proceedings so that it could deem them wrong of having negative effect on the findings. The court decided that it was not necessary to appoint a guardian for the other boy, as the boy had a father who was not deprived of his parental authority and could effectively represent the child's interests.

In the appeal in cassation the Ombudsman claimed that both harmed minors should have been represented in the case by a court-appointed guardian. In the light of position of the Supreme Court, a parent of the minor cannot execute rights of the harmed minor as his statutory representative in criminal proceedings, if the other parent is the accused<sup>746</sup>. This refers also to representing the child in criminal proceedings in the preparatory stage when the parent is not the accused but only a suspect. The Ombudsman stressed that the purpose of appointing a guardian for a minor in criminal proceedings is to provide the minor with appropriate protection during the proceedings. Appointment of a guardian should take place immediately after an information about a reason to exclude the parent from representation of the harmed minor. A decision under which the guardian is appointed authorises him or her to undertake activity on behalf of the harmed minor, both in operations in the preparatory proceedings and in the course of the court proceedings. The harmed minors were not informed don their rights in the course of justice and deprived in this way of the possibility to participate in the proceedings as parties, including the possibility to file motions for evidence and expressing their opinion with re-

<sup>745</sup> ZSR.441.568.2016.MK

<sup>746</sup> Resolution of the Supreme Court of 30 September 2010, I KZP 10/10

spect to every piece of evidence. The regional court did not recognise with due diligence the charge of lack of proper representation in the investigation and presented an incorrect opinion that the father of the minor could represent the interests of the child.

The appeal in cassation referring to the harmed minor represented by the guardian was dismissed by the Supreme Court as groundless, and with respect to the harmed minor who was not represented by a court-appointed guardian was left unheard<sup>747</sup>. In the statement of reasons the Supreme Court agreed with the Ombudsman for Children that the authorities responsible for the investigation and court proceedings groundlessly abandoned procedural operations to provide proper representation of one of the minors in the course of investigation by appointing a guardian to realise the minor's rights as a party to the proceedings. At the same time the Court stated that this made the prosecutor's decision on dismissing the investigation legally invalid, though the regional court upheld it. This allowed to convalidate the procedural operations by appointing a guardian for the minor and delivering him copy of the decision on dismissing the investigation with a statement of reasons. Yet the Supreme Court did not give reasons why it dismissed the appeal in cassation with respect to the other harmed.

- **Proceedings at the Supreme Administrative Court**

Pursuant to Article 173 § 2 of the Law on proceedings before Administrative Courts<sup>748</sup>, the Ombudsman for Children is authorised to, in court and administrative proceedings, bring an appeal in cassation against a sentence issued by a voivodeship administrative court or a final decision in proceedings. In such case, pursuant to Article 8 of the above mentioned act, the Ombudsman may act as a party to the proceedings. The purpose of this authority of the Ombudsman in proceedings before administrative courts is to protect the rule of law and the rights of the child. Hence, the Ombudsman does not have to prove his legal interest when lodging an appeal in cassation. The authority of the Ombudsman to lodge an appeal in cassation is not then conditioned by his participation in preceding proceedings before the voivodeship administrative court. The Ombudsman may take part in the court-administrative proceedings at every stage. The first operation of the Ombudsman in court proceedings may be the development of appeal in cassation as well as participation in hearing before the Su-

<sup>747</sup> Ref. no. II KK 250/16.

<sup>748</sup> Dz. U., Journal of Laws of 2016, Item 718.

preme Administrative Court upon the appeal in cassation brought by another entity.

One of the cases in which the Ombudsman decided to bring an appeal in cassation concerned a minor who, based on the regulations of the Act on access to public information<sup>749</sup> sent a request to the Research and Academic Computer Network – NASK for public information in the form of a scan/ copy of an agreement signed in 2011 on renting internet domain names<sup>750</sup>.

In response NASK called the minor to file a declaration on his majority within 7 days under the pain of having the request unheard, arguing that pursuant to Article 11 of the Civil Code only persons who reached the age of 18 – that is the majority age, had full legal capacity. Such persons may undertake legal action on his or her own. In administrative proceedings, also persons who do not have full legal capacity – minor persons – may also participate as parties. Yet such persons, pursuant to Article 30 § 2 of the Code of Administrative Proceedings, natural persons who do not have full legal capacity must act through the agency of their statutory representatives.

The minor refused to file a declaration on majority, referring to the rule of maximum deformalisation of procedure to make public information available and lack of regulation that would oblige the person who exercised the right to public information to file a declaration on majority. The he sent a reminder to NASK regarding his request for public information, stating that in case the request was still unheard, he would undertake legal action. And so he did.

The Ombudsman for Children decided to officially join the proceedings before the voivodeship administrative court pertaining to the complaint of the minor to idleness of NASK, and his request to oblige NASK to hear the minor’s request.

The Ombudsman stressed that a public body was idle in providing access to public information when the body was obliged to provide public information and did not do it or did not issue a relevant decision that refused to provide the information, which was the case here.

The voivodeship administrative court dismissed the proceedings.

Hence the Ombudsman for Children lodged an appeal in cassation against the sentence of the court.

<sup>749</sup> Dz. U., Journal of Laws of 2016, Item 1764.

<sup>750</sup> ZSS.441.107.2016.KK



The Ombudsman charged the proceedings with infringement of the regulations of procedural law that had great meaning in the case, that is Article 58 § 1 point 5 of the Act on proceedings before administrative courts in connection with Article 32 item 1, Article 61 item 3 and Article 31 item 3 of the Constitution of the Republic of Poland, in connection with Article 13 item 1 of the Convention on the Rights of the Child, in connection with Article 2 item 1 of the Act on access to public information by its misapplication and dismissal of the complaint in situation when, pursuant to Article 26 § 2 of the Act on proceedings before administrative courts, the minor as a natural person with limited legal capacity was legally capacitated to act in cases arising from legal activities which he or she might perform on his or her own.

The Ombudsman pointed to Article 61 item 1 of the Constitution which said that the citizens were entitled to be provided with information on activity of public authorities and the Act on access to public information which specified this constitutional right, provided in Article 2 item 1 that the every person was entitled to be provide with public information. The above mentioned regulations did not indicate that only major persons could apply for such information. The Ombudsman for Children presented his view that the interpretation of Article 2 item 1 of the Act on access to public information had to consider the constitutional rights of every citizen to obtain information. Pursuant to Article 13 item 1 of the Convention on the Rights of the Child, a child is entitled to communicate freely and this right comprises the right to seek, receive and pass information.

In opinion of the Ombudsman for Children, creating a culture of involved civic attitude should be started from the earliest age and the state should support and promote this activity, avoiding arbitrary and too far reaching restrictions.

Being guided with the above described principle, pursuant to Article 185 § 1 Act on proceedings before administrative courts, the Ombudsman applied for repealing the appealed decision in its whole and passing the case to be heard again by the *voivodehsip* administrative court. The case is in progress.

In another case a minor asked the Ombudsman for help as the Head of the Registry Office (*Urząd Stanu Cywilnego*) refused to give him a photocopy of the death certificate of his great grandfather. The minor filed a complaint about

this to the voivodeship administrative court against idleness of the Head of the Registry Office<sup>751</sup>.

Due to the minority of the complainant, the court obliged his parents to file a declaration that they upheld the complaint lodged by their son and to correct formal defects by having the complaint signed by a person authorised to represent the complainant within 7 days under the pain of dismissing the complaint. Neither of the parents did what the court ordered. The Voivodeship Administrative Court dismissed the complaint.

The Ombudsman for Children appealed against the decision of the voivodeship administrative court to the Supreme Administrative Court that dismissed the complaint about the idleness of the Head of the Registry Office in providing the copy of the death certificate.

The Ombudsman charged the proceedings with infringement of the regulations of procedural law that had great meaning in the case, that is Article 26 § 2 point 5 of the Act on proceedings before administrative courts in connection with Article 17 of the Civil Code and Article 45 and Article 130 item 5 of the Act on civil registry records<sup>752</sup>, in connection with Article 58 § 1 point 5 of the Act on proceedings before administrative courts by assuming incorrectly that receiving a death certificate is not an activity which a person with limited legal capacity might perform on his or her own.

In the statement of reasons the Ombudsman stated that the analysis of the case regarding the provision of the copy of the death certificate should be made under the regulations of the Act on civil registry records, which was abandoned by the voivodeship administrative court. Pursuant to Article 45 of this Act, a copy of a civil record certificate and a certificate of data entered or not into the civil registry regarding a specific person was given to a person whom this act concerns or this person's spouse, ascendant, descendant, brother or sister, statutory representative, carer and a person who proved his or her legal interest, the court, the prosecutor, social welfare organisation if it was in line with their statutory objective and for the sake of public interest and to bodies of public administration, if it was necessary for their performance of their statutory tasks.

The Ombudsman stressed that undoubtedly the minor – as the great grandson of the person the death certificate concerns – was among the catalogue of per-

<sup>751</sup> ZSS.441.1171.2016.KK

<sup>752</sup> Dz. U., Journal of Laws of 2016, Item 2064.

sons entitled to receive the document. Hence, applying for a copy of death certificate had to be deemed an activity which could be performed by a person of limited legal capacity on his or her own. This activity is not a dispositive activity nor liabilities-creating activity. Both the performance of this activity and its realisation by the body in the form of a substantive- material operation did not in any way influence the rights and duties of the applicant also with respect to his or her administrative and legal status, and so it remained within the scope of competence of a person with limited legal capacity.

The Ombudsman made reference here to the judgement<sup>753</sup> of the Voivodeship Administrative Court in Gorzów Wielkopolski, which was issued in a similar case. The application was filed by a minor who asked for a photocopy of his birth certificate. Wojewódzki Sąd Administracyjny w Gorzowie Wielkopolskim uznał, że dokonanie tej czynności mieści się w zakresie kompetencyjnej samodzielności osoby posiadającej ograniczoną zdolność do czynności prawnych. And so, if the party was entitled to file an application for a copy of his or her birth certificate to a relevant Head of Registry Office, this person was adequately capable to act in administrative proceedings (lodging a complaint) and court proceedings (lodging a complaint, a written statement of claim).

Being guided with the above described principle, pursuant to Article 185 § 1 Act on proceedings before administrative courts, the Ombudsman applied for repealing the decision in its whole and passing the case to be heard again by the voivodehsip administrative court. The case is in progress.

In another case a commune president informed the Ombudsman about extremely different interpretation of law by regional accounting chambers with respect to possible expenses from the commune budget for transportation of students from out of the district of the local school or from outside the local administrative unit<sup>754</sup>.

In this case, the commune council decided to enter into financial commitment amounting to 60,000.00 PLN for 2016 to perform the task entitled “Transportation of students from outside to borders of the commune to the Associated Schools from 01 September 2015 to 24 June 2016 for amount higher than the one defined in the local budget for 2015”, stating that payment of the commitment would be realised from the commune’s own income, that is the income

<sup>753</sup> The sentence of the Voivodeship Administrative Court in Gorzów Wielkopolski of 23 June 2016, II SAB/Go 41/16

<sup>754</sup> ZSS.441.1262.2015.KT

from legal persons, natural persons and other entities that did not have legal personality.

The body of the local accounting chamber, by the Act of 02 June 2015, deemed invalid the Act of the local authorities of 07 May 2015 on authorising the president of the local administrative unit to enter into financial commitment mentioned above. In the statement of reasons, the body concluded that there were no grounds for the local administrative unit to bear costs in connection with transportation of children living outside the borders of the administrative unit to schools as the regulations of Article 6 item 1 and 2, Article 18 if the Act on commune self-government<sup>755</sup> and Article 17 item 3 of the Act on education system<sup>756</sup> in connection with Article 7 item 1 of the Act on commune self-government did not constitute the ground to spend public financial resources pursuant to Article 216 item 2 of the Act on public finances<sup>757</sup>.

The commune lodged a complaint to the voivodeship administrative court against the regulation of the body of the regional accounting chamber, charging the decision with infringement of Article 6 item 1 and 2 and Article 18 of the Act on commune self-government, in that it assumed that the commune could not bear costs from its budget for transportation of students from outside its borders in case the students lived outside the borders of the education district in the neighbouring commune. In the statement of reasons the commune stated that if the legislator, by regulations in Article 20a item 2 and Article 20c item 7 of the Act on the education system left the communes with the possibility to admit to schools and kindergartens students from other communes left the managers of schools and kindergarten free to decide in that matter, it was inappropriate to assume that the legislator's intention was also to limit the options to provide for equal treatment of all students attending a given school, also by providing free transport for them and care during the transport or by reimbursing costs of public communication. Lack of positive regulation in the Act on the education system that would settle the issue could not be the basis for finding a commune regulation invalid, as pursuant to Article 6 item 1 and Article 18 item 1 of the Act of commune self-government and Article 164 item 3 of the Constitution of the Republic of Poland, they determined the activity of communes in its sovereign or proprietary capacity.

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<sup>755</sup> .Dz. U., Journal of Laws of 2016, Item 446.

<sup>756</sup> Dz. U., Journal of Laws of 2016, Item 1943.

<sup>757</sup> Dz. U., Journal of Laws of 2016, Item 1870.

The voivodeship administrative court<sup>758</sup> repealed the regulation of the body of the regional accounting chamber because of wrong interpretation of Article 17 item 3 of the Act on the education system. The court concluded that the interpretation presented by the regional accounting chamber did not take into account the order to interpret regulations of law in line with the Constitution of the Republic of Poland, that is in conformity with the rule of equality expressed in Article 32 and the necessity to apply teleological and systemic interpretation, also internally (regulations included in the Act on the education system guarantee freedom of choice of school). As a result of this decision, the right of children to education had been infringed, in particular – the right to learn in a chosen school, as lack of relevant transport made it difficult.

The regional accounting chamber lodged an appeal in cassation against the above mentioned sentence to the Supreme Administrative Court, arguing that the substantive law was infringed by its misinterpretation, that is the assumption that Article 17 item 3 of the Act of 07 September 1991 on the education system was the basis not only for the commune to provide free transport and care during the transport to school or reimburse the costs of children's travelling to school by means of public communication but also in situation when the child lived out of the school district or even out of the commune borders.

The Ombudsman for Children officially joined the proceedings before the Supreme Administrative Court, instituted upon the appeal in cassation lodged by the regional accounting chamber, and applied for dismissal of the appeal.

The Ombudsman stated that the complainant based the appeal on the charge of infringement of Article 17 item 3 of the Act on the education system, and that this regulation was not crucial for settlement of the case. In this case, it was the decision of the commune that was crucial, as it qualified a specific social need (provision of transport for children who did not live in the school district) as a public affair of local nature and as a collective problem of the community which was subject to being satisfied by the commune's authorities. Hence, the basis of the settlement should be Article 18 item 1 in connection with Article 6 item 1 and Article 7 item 1 point 8 of the Act of 08 March 1990 on local self-government. The regulation of the education system act could be only an argument serving to prove similarity between the task that were obligatory for the commune and task that the commune decided to complete voluntarily – as an argument to support a thesis that organisation of such transport was enshrined in the meaning of specific task in the field of public education.

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<sup>758</sup> Ref. no. I SA/Rz 669/15

The Ombudsman agreed with the representatives of the commune expressed in the complaint to the voivodeship administrative court and in the response to the appeal in cassation of the regional accounting chamber, which stressed the existence of two fields of communal activity as the basic unit of local self-government: its sovereign and proprietary capacity. While the proprietary activity of the commune makes it a subject of specific obligations imposed on it by specific acts of common law, may be the addressee of claims brought by competent entities and it cannot abandon procedures as provided by the regulations of law, its sovereign capacity allows it to act as a good host who tries to recognize the current needs of community and meet them in a relevant way. The idea of self-governing is incorporated in provision of full freedom of choice of public tasks a commune decides to perform. The commune was right to qualify the need to provide transport to the Public Associated Schools for students from outside the commune as a common need of community in the field of public education, that is its internal task. As the commune's obligation to provide for transport to the children to schools, arising from Article 17 item 3 of the Act on the education system does not refer to children from other school districts, the commune interpreted in positive way Article 166 item 1 in connection with Article 164 item 3 of the Constitution of the Republic of Poland, noticing that provision of transport to those children is a need of the self-governing community and is a public task which should be performed by the commune as its individual task.

The Ombudsman stressed that the commune's decision about financing this transport serves also the realisation of the idea of freedom in choosing a school a child wishes to attend. This freedom is guaranteed under Article 20a item 2, 20c item 7, 20e item 3 and 20f of the Act on the education system. The above mentioned regulations allow to choose a place to learn, especially with respect to primary schools and lower secondary schools (gymnasium) may admit candidates from other school district. If the legislator guaranteed the option to choose a school, it would be recommended to provide for free transport for every child regardless of whether the child attends a school of his district or other district, if interested self-governing communes conclude that such need is a common need of the community. The Ombudsman notices that the regulation of the commune realised the constitutional rule of equal access to education (Article 70 item 4 of the Constitution of the Republic of Poland), as it made it possible for the students of the Public Associated School to learn in the school they had chosen without any obstacles like living too far away from the school. In this way the students gained equal chances in access to education in a chosen school, which is in line with the child's right to realise education under the

rule of equal chances set forth in Article 28 of the Convention on the Rights of the Child. What is more, such activity is a token of best protection of the child's interest, provided by Article 3 item 1 of the above mentioned Convention.

The Supreme Administrative Court, having heard the appeal in cassation of the regional accounting chamber against the sentence of the voivodeship administrative court on the complaint of the commune against the regulation of the regional accounting chamber pertaining to finding invalid the regulation on financial commitment, dismissed the appeal in cassation of the regional accounting chamber<sup>759</sup>.

In another case, the Ombudsman lodged a complaint to an administrative court about the operation of the Minister of National Education consisting of determination of the amount of part of education subsidy for city and commune with a health resort for 2015<sup>760</sup>. The amount of the determined subsidy was lower by more than 1 million PLN from the subsidy awarded in previous years which clearly influenced the financing of educational tasks within the city and the health resort. The reason for the difference was the assumption that as of the day 31 December 2013 (date defined by law to calculate the subsidy for 2015), the city and the health resort commune had more than 5 000,00 inhabitants. Determination of the amount of the subsidy was based on data of the Main Statistical Office whereas the data from the registry of people living within the city and the health-resort showed lower population number.

According to the Ombudsman, calculating educational subsidy on the basis of data that did not reflect the reality led to underestimation of the subsidy and deprivation of the local self-government unit of due part of financial resources.

The complaint of the Ombudsman for Children was dismissed.

In the statement of reasons the court indicated that the operation of the Minister of National Education consisting of determination of the amount of part of education subsidy for city and commune with a health resort for 2015 was correct in term of the regulations of law. The level of educational subsidy depends on the population of a given commune. The way that the number of population is defined in Article 2 point 4 of the Act on incomes of local self-government units<sup>761</sup>, pursuant to which whenever the Act says 'the number of population' it means a number of inhabitants living within this unit or within the whole

<sup>759</sup> II GSK 3305/1

<sup>760</sup> ZSS.420.27.2015.JW

<sup>761</sup> Dz. U., Journal of Laws of 2016, Item 198.

country according to the state of 31 December of the year preceding the basic year issued by the Central Statistical Office, until 31 May of the basic year. The manner in which the amount of the subsidy is determined is identical for all units of self-government, also for those communes which have the number of population of about 5,000 persons.

The above mentioned case is subject to proceedings before the Supreme Administrative Court.

In another case, the Ombudsman for Children lodged an appeal to the Supreme Administrative Court was the case of minor citizens of Russia<sup>762</sup>. The children came to Poland with their parents in the middle of 2013. Their father applied to the Head of the Office for Foreigners for international protection within the territory of the Republic of Poland. The body, having conducted the hearing of evidence, issued a decision which refused to grant the minors and their parents the status of refugees, supplementary protection and consent for a tolerated stay. With respect to the consent for a tolerated stay the father was refused to be granted, the first instance body indicated only the the fact that the children did realise the obligation of education in Poland was irrelevant as they would have access to common and free education as well. The father of the minors did not agree with this decision and appealed against it to the Council for Affairs of Refugees. In the appeal the petitioner included an application for hearing of evidence of the testimony of his minor children to investigate the extent to which they had integrated with Polish society, their command of Polish language and possible negative effects of return to their country of origin for their development.

Having heard the appeal, the Council for Affairs of Refugees decided to uphold the decision of the Head of the Office of Foreigners. The body of appeal refused also to conduct the hearing of evidence claiming that the children were too small to remember the trauma they had experienced with their father in their country of origin. At the same time the Council decided, that in its opinion there were no grounds in the case to consider any level of progress in the process of integration of minors with Polish society. The father appealed against that decision to the voivodeship administrative court, which the court dismissed, stating in the statement of reasons that the court agreed with the body of appeal with respect of the groundlessness of hearing the children. According to the court, all the bodies had correctly analysed the situation of the minors in terms of the reasons to grant them international protection and the case files

<sup>762</sup> ZSM.441.135.2015.AC



did not imply that in case they returned to their country of origin their rights would be infringed to the extent that it would endanger their psychological and physical development.

After the judgement and the statement of reasons were delivered to the father, he asked the Ombudsman for Children for help. The Ombudsman analysed the files of the administrative proceedings and court proceedings and lodged an appeal in cassation against the above mentioned judgement to the Supreme Administrative Court. The Ombudsman argued that the voivodeship administrative court wrongly omitted when hearing the situation of the minors that the Council for Affairs of Refugees infringed the regulations of administrative procedure to the extent that it could have influenced the settlement of the case. The Ombudsman pointed to the misinterpretation of the motion for evidence filed by the party and refusal to conduct the hearing of evidence of the children's testimony. The Ombudsman stated that hearing minors was meant to be a way to examine the extent to which the children had integrated with Polish society and the bonds the children had with the country of origin, that is, to examine a crucial circumstance from the point of view of possible consent for a tolerated stay. Pursuant to Article 97 item 1 point 1a of the act on granting protection to aliens within the territory of Republic of Poland, this kind of consent is granted when removing a child from Poland would infringe his or her right to an extent that it would considerably endanger his or her further psychological and physical development. In this way – in the Ombudsman's view – the Council for Affairs of the Refugees, by not acceding to hearing of evidence of the testimony of children, infringed Article 73 item 3 of the Constitution of the Republic of Poland and Article 12 of the Convention on the Rights of the Child. The body of second instance abandoned the procedure of hearing minors in the course of defining their rights. This resulted in turn – according to the Ombudsman – in the infringement of the rule of objectivity and crossing the line of free assessment of evidence with respect to the position presented by the Council that the minors had not integrated with Polish society in so far as mandatory return to their country of origin creates a danger to their further psychological and physical development. As a result, the Ombudsman motioned for repealing the appealed judgement and passing the case to be heard again by the voivodeship administrative court.

The case is in progress.

The Ombudsman for Children, acting as a prosecutor, participated in 295 court proceedings among which – due to the nature of cases – a couple of categories may be selected:

- **Cases pertaining to parental authority**

In this category of cases, activity of the Ombudsman was necessary to support to guarantee the right of the child to be raised in a family. It must be stressed that the right to have family bonds is the personal right of every man, and family remains under constitutional protection of the state.

The Ombudsman for Children received a request<sup>763</sup> for help by a mother of a minor boy with disability. A regional court had deprived her of her parental authority over the boy and placed the child in a social rehabilitation residential institution. The guardianship court concluded that despite positive bonds between the mother and the son, she was not capable of meeting his life needs correctly due to her intellectual disability. She did not correctly recognise the needs of the minor, did not understand them and had no idea about them. She had no sufficient knowledge and skills to guide the minor in his educational process, though the boy, due to his health condition, required specialist assistance and stimulation to develop.

The mother of the minor addressed the regional court with a motion for restoration of parental authority over her son, with limitation of her parental authority by establishing a related foster family for the boy, who declared to support her in exercising care of the minor.

The Ombudsman for Children officially joined the proceedings and supported the mother's motion for limitation of her parental authority by establishing a related foster family. In his opinion, there were no reasons to deprive the mother of her parental authority. Only gross negligence in exercising parental authority may be the reason for a court to deprive a parent of his or her parental authority. This may take the form of serious neglect or mild negligence that acquire the features of incorrectness and persistence<sup>764</sup>. The Ombudsman stressed that family bonds might be broken only by way of exception and everyone should do their best to protect the family as an entity. He also pointed out that the mother of the minor required assistance and guidance, had difficulties in performing social and parental roles, but, at the same time, it had to be taken into account that there was a very strong bond between the mother and the child. As much as she could, she took care of the child and tried to satisfy his needs. The minor had made positive relations with the candidates for his foster family. It appeared that this family did guarantee proper performance of their duties as foster family, was capable of providing the child with safe and stable

<sup>763</sup> ZSR.441.573.2015.MK

<sup>764</sup> Resolution of the Supreme Court of 19 June 1997, III CKN 122/97

environment for education and upbringing. The minor would have a chance to grow up under care of family members and with his mother present in his everyday life.

The regional court took into account the demands of the Ombudsman for Children and altered the decision with respect to parental authority in that instead of depriving the mother of her parental authority, it limited the authority by placing the minor in related foster family.

In another case of similar nature the Ombudsman intervened upon notification<sup>765</sup> sent by a mother of a minor. The women, already when pregnant, decided to give the child to adoption, due to her unsettled situation. She contacted, by means of the Internet, a marriage who wanted to adopt a child. After the boy was born, they signed an agreement which was to be the basis for future adoption. The marriage took the boy immediately after he was born. The father of the child did not know that he had a son nor that the mother had signed an adoption agreement. As soon as he learned about it, he took measures to regain the boy. At first, he tried to take him back personally, together with the mother, and then, officially by filing a motion to the guardianship court for returning the minor.

At the same time, the regional court received a motion from the married couple who actually took care of the boy who requested deprivation of biological parents of their parental authority of the child and entrusting the petitioners with custody of the minor. The couple filed also a motion for interim measure by placing the boy with them on permanent basis. The guardianship court dismissed this petition. As a result of complaint filed by the couple, the district court altered the appealed decision in that it applied interim measure for the time of the proceeding, placing the boy with them.

The competent guardianship court instituted proceedings pertaining to limitation of parental authority of the biological parents over the minor and the case pertaining to deprivation of parental authority was combined with this case to be heard jointly.

Having reviewed the body of evidence collected in proceedings that lasted almost two years, the Ombudsman decided to officially join the proceedings. In his court paper, he asked for conclusion that there were no grounds to deprive the parents of their parental authority over their minor son, for ordering the biological parents to return the boy and to provide the family with assistance in

<sup>765</sup> ZSR.441.340.2015.LJ

upbringing the child by appointing a guardian for supervision. Having in mind the existing relations between the boy and the married couple who actually took care of him, the Ombudsman's intention was that the change of the boy's residence be preceded by a transitional period that would mitigate the effects of separation with the current carers.

Upon the request of the Ombudsman and the biological parents, the court defined the contact between them and their son. Then the court issued a conclusive decision by which it dismissed the motion for depriving the biological parents of their parental authority, found that there were no premises to limit their parental authority and, at the same time, suspended its exercising. Under the same decision, the court dismissed the motion of the Ombudsman for returning the minor to his biological parents, and prolonged, pursuant to Article 757 of the Code of Civil Procedure the effect of the interim measure which placed the child with his current carers until issuance of legally valid decision or repealing the decision on suspending the exercising of parental authority of the biological parents or until legally valid decision on establishing legal carer for the minor.

The Ombudsman appealed against the decision of the guardianship court, stating that apart from infringing the procedural law, the court grossly infringed the substantive law i.a. Article 110 of the Family and Guardianship Court and Article 18 of the Constitution of the Republic of Poland and Articles 8 and 9 of the Convention on the Rights of the Child.

The district court agreed to hear the evidence of the team of court experts and, upon the Ombudsman's motion, the evidence of supplementary oral opinion of experts.

The district court decided that there were no grounds to suspend the parental authority of biological parents over the minor ordered to return the child to them. At the same time the court limited the parental authority of the biological parents by establishing a guardian's supervision and obliged the to provide psychological care for the child as soon as they took over care of the boy.

The current carers of the boy again motioned for limiting the parental authority of the biological parents by placing the minor with a foster family in the person of the petitioners and providing an interim measure for the time of the proceedings by entrusting care of the boy to them. The proceedings are in course.

In another case the regional court deprived a mother of her parental authority over her daughter and placed the child in institutionalised form of foster care.

Making use of an opinion of an expert psychologist, the guardianship court decided that parental authority over the child because of a permanent obstacle in the form of the mother's mental condition. According to the court, the specificity of the mother's illness and its history indicated that it was not possible to define any ending to it so that the mother could exercise parental authority of the child. The regional court, when determining the mental condition of the mother and its influence on her parental skills, omitted the evidence of the opinion of expert psychologist, having concluded that the mother's condition was clearly defined in the medical records collected as part of the case files. The mother of the minor appealed against the court's decision and asked the Ombudsman for Children for help<sup>766</sup>.

The Ombudsman found it necessary to officially join the proceedings and support the appeal of the mother. In his opinion the decision to place the child in foster environment was premature. In the court paper he stressed that depriving her of parental authority was possible only under very exceptional circumstances which should have been properly proved. And the court did not analyse nor diagnose the family thoroughly enough. To determine the existence of mental condition of other mental disorders and their influence on proper exercise of parental authority over a child some special medical knowledge was necessary. A psychiatrist, not a psychologist was the relevant competent person who had this knowledge in the field of mental functionality of a man. An expert psychologist should have assessed the current mental condition of the mother and state whether her condition was of permanent nature and how it influenced her parental competences. A circumstance in that a judge had knowledge in this area of expertise did not release the court from the obligation of hearing the evidence of expert's opinion, as the judge could not substitute the expert. Neither could such evidence be substituted by other types of evidence<sup>767</sup>.

The Ombudsman stated also that the Act on family support and foster care system imposed an obligation on the local self-government units and bodies of governmental administration to support families in difficult situations in their performance of educational and custodial tasks. He stressed that the court had not inspected whether, if adequately supported by social institutions, it was possible to leave the child under care of his mother.

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<sup>766</sup> ZSR.442.332.2015.MK

<sup>767</sup> Resolution of the Supreme Court of 20 January 2016, I PK 196/15

He also pointed out that pursuant to the regulations of the Family and Guardianship Code<sup>768</sup> the court should not place the child in institutional forms of foster care if placing the child in family-type foster care was not possible or not relevant for other reasons. Hence, placing a child in a foster family should be a guiding rule. On the other hand, placing a child in institutionalised form of care should be a measure applied exceptionally and as last resort, after the options to place a child in a natural family or foster family were exhausted. Court's decision on placing a child in a foster care of any type, issued in connection with limitation, suspension or deprivation of parental authority is the most far reaching interference in relations between the parents and the children and, at the same time, into the rights of the child, which is an argument for issuing a comprehensive and not only 'blanket' in that matter. A guardianship court, on adjudicating placement of a child in a foster family, designates a specific family or family children's home, and it is the obligation of the court to comprehensively, based on case-law investigate the child's situation and find a suitable form of foster care and persons who would exercise it<sup>769</sup>.

In opinion of the Ombudsman for Children, lack of findings in that matter made it necessary to repeal the appealed decision and refer the case to be heard again.

The court of second instance agreed with the Ombudsman and admitted the evidence of expert's psychiatrist to determine the mental condition of the minor's mother, whether the possible mental illness and its effect were permanent, how it influenced the mother's parental skills, whether the mother could guarantee correct exercise of parental authority and whether her mental condition allowed her to exercise the parental authority on her own, and scheduled the hearing of appeal.

The Ombudsman for Children took also a case of a minor who, in connection with the difficult housing condition of her family, was endangered with placement in foster care<sup>770</sup>.

The child and her parents were living in an apartment owned by the mother's ex-husband. The owner demanded that the family leave the wrongly occupied apartment and referred the case to a court bailiff who, in the course of enforcement proceedings, addressed the family court with a request for placing the child – as the child had no place to live – in foster care. At the same time the

<sup>768</sup> Article 1127 § 1 of the Family and Guardianship Code

<sup>769</sup> Resolution of 7 judges of the Supreme Court of 14 November 2014, III CZP 65/14

<sup>770</sup> ZSS.442.45.2015.KK

mother could not succeed in her efforts to receive a flat from the resources of social housing.

The Ombudsman filed a motion to the city office for urgent and positive consideration of the minor's mother and allocation of a social housing flat. At the same time, he addressed the Municipal Social Services Centre requesting for assistance.

The Ombudsman officially joined the proceedings instituted by the bailiff, and applied for conclusion that there were no grounds to limit the parental authority of the parents and scheduling and additional deadline for the parents to find a new place to live for them and their daughter. He stressed that it was a rule that a natural family who was raising a child, must be supported so that it could be capable of bringing up a child on its own. Only ineffectiveness of provided support might lead to child placement. In the opinion of the Ombudsman, placing the minor in foster care was against her well-being, as she was strongly emotionally attached to her parents. He stressed that according to the information obtained from institutions that took care of the family, there were no reservations as to the way the parents exercised their parental authority over their daughter.

As a result of the intervention, the family received temporary accommodation. The court allowed the motion of the Ombudsman and concluded that there were no grounds to deprive the parents of their parental authority over their daughter.

In another case the Ombudsman for Children joined officially the proceedings before a regional court instituted ex officio pertaining to alteration of a decision on parental authority over a minor girl<sup>771</sup>. He did it because he was notified by the foster family where the minor had been placed, that the mother was not duly interested in her daughter's affairs, because she was addicted to alcohol and about unfavourable disposition of the child's property. According to the foster family, there were no premises to argue for the return of the child to her family environment, but there was an urgent need to provide the minor with the sense of stability and safety. The girl also refused to meet or contact her mother.

The above mentioned information, confirmed by analysis of files collected in subsequent guardianship proceedings, led the Ombudsman for Children to file a motion for depriving the mother of her parental authority and applying an

<sup>771</sup> ZSR.441.298.2016.MS

interim measure for the time of the proceedings by entrusting the management of the girl's property to foster carers.

It must be stressed here that the motion for interim measure resulted from the Ombudsman's findings that the mother infringed the girl's rights by improperly managing her property and lack of proper representation of the girl in matters related to her propriety, which was connected to her addiction. It must also be highlighted that these irregularities were shown i.a. In that the mother made a declaration on behalf of her daughter on subjecting to execution, as a result of which the girl was charged with debt arising from mortgage loan, paid from the minor's due family pension, non-payment of housing fees and indebting the apartment which partially belonged to the minor, selling out its equipment and damaging it. The Ombudsman concluded that it was necessary to undertake immediate action – already at the stage of the proceedings that were in course – in order to secure the minor's property against its further reduction and to provide for the option of profitable investment the minor was entitled to e.g. of the pension and maintenance income, so as to secure the child's future.

The regional court dismissed the Ombudsman's motion for interim measure by entrusting the management of the minor's property to her foster parents. In the statement of reasons the court stated that although the mother neglected her parental duties against the child, also in the scope of managing her property, there were no reasons to further limit her parental authority as she currently did not manage the girl's property and did not take any steps to take over the minor's income. The court concluded that if the mother really did not actually enjoy the right to manage the minor's property, it seemed doubtful that she would make any attempt to manipulate her property in the future.

The Ombudsman appealed against this decision, claiming that regardless of the neglect the mother had committed against the child's property, also now she was not acting with due diligence in that matter and did not guarantee that she would be duly performing her rights and duties, as proved by her ignorance against the child's property in the form of the apartment, which was partially owned by the minor.

The district court agreed with this line of argumentation, repealed the appealed decision and passed the motion of the Ombudsman for provision of interim measure to be heard again by the regional court. The case is in progress.



- **Cases pertaining to establishment of the origin of the child**

The Ombudsman took a case of a boy reported by a man who notified that he was the biological of the minor<sup>772</sup>. As the minor was born when the marriage of the man was still valid, pursuant to Article 62 § 1 of the Family and Guardianship Code, the boy could allegedly be the son of the mother's husband. The petitioner addressed the Ombudsman with a request for bringing legal action to deny paternity of the mother's husband, declaring the will to accept his son with all consequences connected with acceptance of paternity, including the obligation to participate in child maintenance. The mother of the minor admitted to having had sexual relation both with her husband and the petitioner.

In Article 7 item 1 of the Convention on the Rights of the Child it is said that the child has the right, if possible to know his or her parents and to remain in their custody. This regulation reflects the idea to define biological paternity and maternity. As indicated by the Supreme Court in its judgement of 03 October 2014<sup>773</sup>, to provide legal protection of parenthood, the fact of being a parent must be first established. The statutory right to parenthood may be subject to limitation due to the need to protect the continuity of family relations and the child's well-being, but in good proportions and balance between those two goods.

The Ombudsman concluded that the well-being of the child argued for regulating his legal status and defining his real biological origin and the well-being of the family created by his mother and her husband would not be endangered by this settlement. A bond based on love and attachment, defining family life, could still exist between the husband of the mother and the child. The need to provide harmonious development for the child in a family did not justify deprivation of the boy of his right to have a relationship with his biological father, as those values were not contradictory to each other. Being guided with the above mentioned idea, the Ombudsman instituted proceedings before the regional court pertaining to denial of paternity.

In the course of the proceedings, the court allowed the Ombudsman's motion for hearing the evidence of DNA tests to exclude the paternity of the mother's husband. It must be added here that currently there is no obligation to undergo DNA tests which is often abused by the defendant in cases pertaining to determination and denial of paternity. In the case instituted by the Ombudsman for Children, the DNA tests were not accomplished and the mother and

<sup>772</sup> ZSR.441.2145.2015.MK

<sup>773</sup> Resolution of the Supreme Court of 03 October 2014, V CSK 281/14, OSNC 2015/9/106

the child did not come in the given time. In case the minor's mother again does not agree to collect genetic material from her son and again does not come to the test, there is an option to motion for suspending the proceedings pertaining to denial of paternity and institution of proceedings pertaining to limitation of parental authority of the mother by obliging her to take her son to DNA tests<sup>774</sup>. The case is in progress.

The Ombudsman for Children took also a case of a minor girl, reported by a foundation acting for children with disabilities and endangered with disabilities<sup>775</sup>. The minor, though she was born in 2014, did not have a birth certificate nor PESEL number (personal identification number).

The minor was born after her mother changed her sex, who, belonged to the masculine sex in the light of law, did not subject to operation of her sexual organs and got pregnant. Pursuant to Article 619 of the Family and Guardianship Code, a person who gave birth to a child, is the child's mother. Hence, the regulation implies that the only a woman may be the mother of the child. And so, a problem appeared, if a person of masculine sex could be entered into the birth certificate as the mother of the child.

The Head of the Registry Office addressed the regional court with a request for establishing the content of the birth certificate. Due to the serious legal doubt that arose, the regional court passed the case to the district court – it was unclear whether a person of masculine gender registered at birth should be entered into the child's certificate of birth, or should it be the person of her previous gender should be entered into it, or whether maybe some other solution should be applied in this case.

The district court decided on the the content of the minor's birth certificate, entering into it the father, who gave birth to the child after changing his legal sex status, as her father. The above mentioned decision was appealed against by a district prosecutor's office.

The Ombudsman for Children officially joined the proceedings before the court of appeal.

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<sup>774</sup> As the Supreme Court indicated in its decision of 05 May 2000 in a case pertaining to denial of child's origin, instituted by a prosecutor under Article 86 of the Family and Guardianship Code, the one of the parents who is entitled to give consent to blood sampling in a child under 13, and refuses to give such consent, the guardianship court may, under Article 109 of the Family and Guardianship Code, order blood sampling if the child's well-being requires so.

<sup>775</sup> ZSS.441.69.2016.KK

At the hearing the Ombudsman stressed that the minor, despite the fact that she had been born in 2014, did not have a birth certificate. In his opinion, lack of such document and then, considerable delay in preparing it, undoubtedly proved that her rights and guaranteed fundamental values were violated. The right to define one's own identity and the obligation arising from it to recognise and respect that identity by the external world is a unique element of the life of an individual and in an indissoluble way is connected to the inborn and inalienable dignity of the man. He also stated that a delay in issuing a birth certificate of the minor implied additional negative effects in that she had no PESEL number, no identity document that confirmed her nationality and her other rights were limited, namely access to care in crèches, free health care or rights connected with social insurance.

In the Ombudsman's view, a priority in this case was to to prepare the minor's birth certificate as soon as possible, paying due respect for constitutional values, private and family life.

The court of appeal defined the content of the birth certificate, and entered the child's mother in the person of a person of masculine gender registered at birth.

Another care referred to establishment of paternity<sup>776</sup>. Legal action against a minor was brought by her alleged father, who, apart from the demand to establish paternity, motioned for giving the child her father's surname and awarding him with full parental authority. The mother of the girl died in 2015. From that moment the minor was living with her maternal grandmother who was appointed her legal carer and took care of her. In response to the lawsuit, the legal carer of the minor motioned for determining that the plaintiff was the father of the girl, depriving him of his parental authority, leaving the minor's current surname unchanged (the surname of her other) and establishing maintenance to be paid for the girl in amount of 600 PLN per month.

The Ombudsman for Children, having officially joined the proceedings, applied for appointing a guardian for the minor to represent her interests, stating that custody of the child comprises three basis elements, similar to that of parental authority: care of the child, management of the child's property and representation of the child. As far as other issues not covered by the regulations of guardianship and custody were concerned, the legislator ordered to apply respectively the regulations on parental authority.

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<sup>776</sup> ZSR.441.1356.2016.MK

The circumstances of the case implied that the plaintiff and the legal carer of the child were in conflict. Hence, there was a risk that they would instrumentally manipulate with the interest of the child. The grandmother filed a motion for depriving the plaintiff of his parental authority of the child, accusing him of lack of any interest in his daughter. Yet the plaintiff denied that, claiming that after the girl's mother died, his contact with the daughter was hindered.

In a motion addressed to the court the Ombudsman stated that the purpose of the ban on representation is to eliminate risks arising from the conflict of interests and to entrust the appointed guardian with representation, as he/she would represent the child being guided only by the child's well-being. The case is in progress.

- **Case pertaining to determining the place of the child's residence**

In one of the cases of this category, the Ombudsman for Children, having in mind that the child's interest had to be protected, decided to join the divorce proceedings<sup>777</sup>. The court, concluding that the minor's well-being was endangered, applied interim measure and determined the minor's place of stay at the father's place of stay and obliged the mother to return the child. It also authorised the father to change the school the child attended and defined the procedure of contact with the mother. The minor was being raised by the mother in the atmosphere of hostility against the father, who wanted to contact his son but was denied. Also, the minor did not attend any school.

The decision of the court was not enforced as the attempts undertaken by court-appointed guardians to remove the child from the mother did not succeed.

Having officially joined the case, the Ombudsman for Children filed a motion for interim measure by entrusting custody to the father for the time of the proceedings pertaining to parental authority, with limitation of the mother's parental authority with respect to the right to co-decide on the child's treatment and foreign trips, obliging the mother to immediately return the minor to the father, under the pain of paying a fee of 5,000 PLN for the father.

The circumstances of the case implied that the mother did not guarantee due diligence in enforcing parental authority of the son. In the Ombudsman's view, due to endangered well-being of the minor, the court had to intervene in the

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<sup>777</sup> ZSR.441.294.2015.MK

sphere of parental authority exercised by the mother to prevent possible further negative effects of this authority from happening.

The Ombudsman’s motion was not heard. After a couple of months the minor was admitted to a mental hospital because of disorders connected with unstable situation. At the end of July 2015 the minor was to be discharged to come to his father but refused to be discharged, ran away, said that he did not want to have anything in common with him and kept calling him “biological father”. The hospital addressed the court with a motion for immediate placement of the child in foster care. The court, under interim measure, placed the boy in foster care, concluding that the conduct displayed by the boy proving that his relations with the father were disturbed, were the premise to temporarily place the minor out of his familial environment.

In the judgement of divorce, the district court limited the parental authority of the parents by placing the minor in foster care, defined the contact between the parents and the child, defined the participation by the parents in the costs of maintenance, and subjected the parental authority to supervision of a court-appointed guardian and obliged the parents to collaborate with family assistant. The decision was appealed against by both parents.

The Ombudsman motioned for interim measure for the time of the proceedings by obliging the mother to take and participate in a specialist therapy addressed to parents in conflict before or after divorce, to verify and improve the parental competences with respect to the child’s needs, including those connected with the person of the father and to define that until the case is closed with a legally valid judgement of divorce, the mother would have the right to see her son in the presence of court appointed guardian.

On filing this motion the Ombudsman stressed that the mother had manipulated with the child and his emotions, by which she led to a situation in which the relations between the father and the son were disturbed. The decision under which the child was supposed to move to his father had not been enforced for a long time, and when it was finally possible, the child was in such emotional condition that he could not start living with his father. The Ombudsman pointed out that according to the information provided by the facility, the boy, supported by specialists, was in the process of rebuilding relations with his father, but because of his mother’s conduct, found himself in a conflict of loyalty to his parents. It happened that the mother reacted with hostility to the information that the minor spent time with his father – she yelled, sabotaged the child, deprecated the person of the father in the eyes of the boy. In his court letter the

Ombudsman backed up the motion of the minor's father for interim measure until the divorce proceedings were closed with a legally valid sentence by establishing the boy's place of residence at the father's. In the statement of reasons, the Ombudsman pointed out that foster care was a temporary solution, not the target one. Removing a child from their parents had to be perceived as temporary measure which should be ended as soon as the circumstances allowed. Any temporary custodial measures should meet the final goal of joining the biological parents with the child. In the Ombudsman's opinion, the best option for the child was to come back to his father's custody, who was making attempts to improve his relation with his son, and started a therapy to improve his communication with the child. The boy finally said that he wanted to live with the father.

The court issued a decision on interim measure under which, until the proceedings were concluded with a legally valid decision, the boy was to live with his father, subjected the exercise of parental authority to supervision of a court-appointed guardian, defined the contact with the mother to take place in the residence of the foundation and obliged the mother to start trainings with psychologist and pedagogue to change her attitude towards the son and upgrade her educational competences, and subjected this obligation to supervision of a guardian. The case is in progress.

In another case the Ombudsman for Children was addressed<sup>778</sup> by a father of a minor. The parents of the child parted in 2013. The mother and the son left the apartment they had been jointly occupying. Since then, the parents were in strong conflict with respect to the manner of upbringing the child and maintaining contacts with the father. The parents could not reach an agreement with respect to basic affairs of the child. Issues connected with the child's place of stay and his contact with the father were regulated under guardianship court decision.

After numerous court proceedings, when the parents started to communicate and agree with each other with respect to affairs of their son, the mother of the boy, not having informed the father and without his consent, decided to change her place of residence and went with the child abroad, making it impossible for the child and the father to see each other. This resulted in institution of proceedings before a German court under the Hague Convention on civil aspects of

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<sup>778</sup> DTZ.441.146.2015.RR

international child abduction<sup>779</sup>. As a result of decision issued by German court, the mother and the son came back to Poland and addressed a guardianship court with a motion for permission for taking the minor abroad.

Having in mind the difficult situation of the boy and his correct family relations being at risk, the Ombudsman for Children decided to officially join the proceedings and file motions for evidence to comprehensively investigate the possible effects of the boy's travel abroad for his correct development, including whether his right to be raised by both parents would not be infringed. Now the Ombudsman is waiting for his motions to be heard. The case is in progress.

- **Cases pertaining to contacts**

Every year, the Ombudsman for Children receives many cases regarding limited contacts between the parent and the other child. Each case is investigated by the Ombudsman individually, with special consideration of the child's right to both parents. It must be here stressed that disputes connected with contact with the child are especially difficult due to their nature, the attitude of both parents or one of them, strong emotions, mutual reluctance to each other and lack of collaboration.

For example, there was a case of a minor whose parents parted after five years of marriage<sup>780</sup>. In the judgement of divorce, both parents were entrusted with parental authority, but the child's place of stay was defined to be at the mother's place of residence. Also specific details were given as to the contacts between the minor and the father. The parents reached an agreement to cooperate for the sake of their son with respect to his health and education. A couple of months after the judgement of divorce became legally valid, the mother filed a motion for change of the current contact between the father and the son, claiming i.a. that the child was afraid of him. The father of the minor filed a motion for dismissing the motion for changing the contact, claiming that the mother of the minor was turning the boy against him and ignored him on taking important decisions concerning the child. The Ombudsman for Children officially joined the proceedings before the court and filed a motion for admitting evidence of the opinion of expert psychologist to define the best possible form of contact between the father and the son and to determine whether the minor could have been manipulated and turned against the father. In the course of the proceedings, the court, having allowed the motion of the Ombudsman, admit-

<sup>779</sup> Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction written in Hague – Dz. U., Journal of Laws of 1995, Item 528)

<sup>780</sup> ZSR.441.165.2015.MK

ted the evidence of opinion of two expert psychologist to define the emotional bond between the minor and his parents, how the contact should be regulated with due consideration of the child's well-being and safety and whether the father took care of the boy in the time of his visit in appropriate way. The mother of the minor refused to participate in examinations by experts and did not come to scheduled meetings. She addressed a number of letters to the Ombudsman for Children in which she deprecated the person of the father, expecting the Ombudsman for Children to back her up in her intention to prevent the son from seeing his father. In response the Ombudsman informed the mother that contact with the father is advantageous to the child's well-being. Activity that makes it impossible for the child to personally see the other parent infringes the best interest of the child, who has the right to contact both parents. As the mother refused to let her child participate the examinations by expert psychologists, the Ombudsman for Children addressed the regional court with a motion for hearing the minor to define the bond between the minor and each parent, the minor's attitude to his father and contact with him, in the presence of an expert psychologist.

In the statement of reasons the Ombudsman stated that it was desirable to listen to what the minor had to say in order to achieve the most comprehensive, direct information on the child's will. He stated that the minor had already reached the age at which a child could specify his or her needs, feelings and wishes.

The Ombudsman's motion was allowed. The court scheduled the date and time of the child's hearing in a child-friendly room in the presence of an expert psychologist. The case is in progress.

In another case the Ombudsman joined the proceedings before a court pertaining to divorce between parents of two minors<sup>781</sup>. The children were taken care of only by the mother. There was a serious conflict between the parents regarding the issue of custody of the children and their contact with the father. The emotional bond and father's contact with the children were seriously disturbed.

The Ombudsman officially joined the proceedings and addressed the court with a motion for interim measure for the time of the proceedings by obliging both parents to start a therapy with their children organised by an institution providing family support services.

<sup>781</sup> ZSR.441.174.2015.MK



In the opinion of the Ombudsman it was necessary for the family to take advantage of a therapy, because of strong dispute between the parents and disturbed relations between the father and the children. In his court paper the Ombudsman stressed that when parents were in conflict, children's well-being was at risk in the first place. From the point of view of the minors, the most important thing would be to reconstruct the cooperative relation and mutual trust between the parents. He indicated that family therapy would allow to develop ways of communication between the conflicted parties – for the sake of the children.

The Court allowed the Ombudsman's motion. The case is in progress.

The Ombudsman took also a case of two children of a married couple of Polish citizens in Germany and dissolved in Germany. The German court awarded parental authority to the mother, including the right to decide in all major issues concerning children. In 2013 the mother came back to Poland with the children and the father stayed in Germany. In an agreement concluded before a court, the parents defined the contact between the father and the children, but the father applied to the court for changing this agreement to make the contact take place out of the mother's place of residence and without her participation, in a wider scope than previously.

The mother of the minors appealed for dismissal of this motion and then filed a motion for changing the procedure of contact between the father and children in that they take place in her presence and in the presence of a court appointed guardian.

The court admitted the evidence of the team of expert specialists' opinion to define, if and how should the contact between the father and children changed, whether the current relation between the father and minors and the personal and character predispositions justified regulation of the meetings of father and children that lasted a couple of days and weeks (summer holidays, winter holidays, weekends) with overnight stay, without the presence of the mother, whether it was good for children to extend the scope of their contact with the father and whether the children had negative attitude towards him.

The experts' opinion said that there was a serious conflict between the parents which had lasted for a couple of years and that it transferred also to the sphere of their relations as parents. In their final conclusions the experts wrote that it would be advisable for the parents to start collaboration with a specialist facility offering therapeutic help, in order to work out their parental attitudes,

better understanding of their conduct and emotional situation of the children, acquiring the skills of positive influencing the development of children's relation with the other parent. Moreover, in the opinion of the experts, it was necessary for the youngest child to undertake a special therapy who, due to actions taken by the mother, had a wrong picture of the father in his mind.

The Ombudsman for Children, having investigated all the circumstances of the case, officially joined the proceedings and filed a motion for interim measure by obliging the parents to undertake and participate in a therapy addressed to parents in separation and conflict, to verify their parental attitudes, make them aware of the emotional needs of their children of the need to collaborate for the sake of their children and for obliging the mother to undertake a psychotherapy with the minor son in order to rebuild the boy's sense of safety in his relations with the father, develop positive feelings towards the father and to contacts with him.

In his motion for interim measures the Ombudsman stressed that the familial situation of minors requires immediate reaction to correct the wrong conduct of the parents that put the well-being of children at risk.

The court acceded to the motion of the Ombudsman and applied the interim measures in that it obliged the parents to undertake and participate in individual psychotherapy addressed to parents in conflict to verify their parental attitudes and better understanding of the conduct and emotional condition of the children and obliged the mother to undertake and participate in psychotherapy with her son to rebuild the sense of safety in his relations with the father. Moreover, he issued a final decision, which extended the scope of the contact between the father and the children without the presence of their mother, out of their place of residence and obliged the parents to take and participate a therapy of the same topic and subject as in the decision on interim measures. Due to the fact that the father filed an appeal, the case is still in progress.

The Ombudsman took also a case of a minor boy whose parents, since the moment they parted in 2008, did not communicate with each other and the mother persistently acted to disregard the contact between the son and the father. The father of the son addressed the court with a motion for depriving the mother of her parental authority over her son<sup>782</sup>. The regional court found that there were no reasons to deprive the mother of her parental authority and limited the parental authority of both parents by establishing supervision of

<sup>782</sup> ZSR.441.288.2015.MK

a court-appointed guardian. The court decided that the parental competences of both parents required correction. The mother did not satisfy fully the psychological needs of her son, in particular his need to maintain relation with his father; she did not let her son develop freely. The father, on the other hand, did not have a specified programme of upbringing and left the child free to decide which was inadequate to the child's age, and was not aware of the child's developmental problems. In the appeal against the above mentioned decision the father of the minor applied for establishing of family assistant and obliging the parents to cooperate with him.

The Ombudsman for Children officially joined the proceedings and backed up the motion of the father in the part which referred to his request for cooperation with family assistant. The Ombudsman stressed that the activity of family assistant was scheduled according to the working plan developed in active cooperation with the family. Development of such a plan must take into account individual problems of the family and offer solutions to them. In the opinion of the Ombudsman, supervision of a court-appointed guardian, without any educational plan for the family, did not guarantee full protection of minor's well-being. The parents, due to strong conflict between them and mutual hostility, would not be able to collaborate with each other without relevant support. Such state of affairs justified a conclusion that the minor should be brought up by parents with relevant assistance of social institutions, under the supervision of a court-appointed guardian.

The district court changed the decision of the regional court, taking account of the Ombudsman's motion in such way that it obliged the parents to cooperate with a family assistant, whom the court appointed for the family.

In another case regarding the right of the child to maintain contact with both parents, there was a strong conflict between parents of a girl concerning the procedure of contacts established by a court decision<sup>783</sup>. The mother of the girl had reservations as to the legally valid decision on the procedure of contact which allowed that the child stay overnight at the father's place of residence. The above mentioned decision was not followed by the mother who initiated another proceedings in order to change the decision on contact. And so, the father initiated proceedings to penalise the failure to fulfil the obligations under the decision on contact with a fine. The guardianship court suspended the proceedings initiated upon the motion of the father, as a response to the proceedings initiated by the mother to change the contact procedure.

<sup>783</sup> ZSR.441.2055.2015.JM

The Ombudsman for Children officially joined the proceedings pertaining to execution of contacts, and backed up the father’s complaint about the decision on suspending the proceedings and indicating that settlement of the case pertaining to execution of contacts did not depend on the result of the case pertaining to change of the contact procedure. The guardianship court allowed the complaint of the Ombudsman and repealed the decision on suspending the proceedings. The court issued a decision on penalising the failure to fulfil the obligations under the decision on contact with a fine.

- **Cases pertaining to provision of foster care to a child**

Pursuant to Article 1127 § 1 of the Family and Guardianship Code the court should not place the child in institutional forms of foster care if placing the child in family-type foster care was not possible or not relevant for other reasons. The above mentioned regulation implies the rule of placing a child in family-type foster care. On the other hand, placing a child in institutionalised form of care should be a measure applied exceptionally and as last resort, after the options to place a child in a natural family or foster family are exhausted.

Pursuant to Article 95 item 1 and 2 of the Act on family support and foster care system, only children over 10 who require special care or having difficulties in adjusting to family life should be placed in a residential institution for social rehabilitation, for emergencies or for special therapy. Placing a child under 10 years old in a sociotherapeutic, emergency or specialist therapeutic residential institution is possible only in case the mother or the father of that child is also placed in that institution and in other exceptional cases, in particular when the child’s condition requires so or when the placement refers to siblings.

The above mentioned regulation comprises important limitation with respect to placing children under 10 in residential institutions for social rehabilitation, emergency cases and specialist therapies.

The analysis of cases received by the Ombudsman for Children shows that still it does happen that courts place little children in institutionalised forms of care against the regulations of the above mentioned regulations.

For example, there was a case undertaken by the Ombudsman for Children ex officio, which involved a boy who was born in June 2016<sup>784</sup>. Under a court decision, the baby was placed in an institutionalised form of care.

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<sup>784</sup> ZSR.442.116.2016.MD

The Ombudsman for Children officially joined the proceedings and appealed against this decision, motioning for repealing it and passing the case to be heard again by the court of first instance. In his statement of reasons the Ombudsman stated that the appealed decision was not in line with the widely interpreted well-being of the minor and was against the regulations of law which imposed an obligation on the state to guarantee relevant care for the child, which the parents, for various reasons could not provide for the child, in the form of adequate foster care. He stressed that the currently binding law prohibited placing the youngest children in residential institutions for social rehabilitation, emergency cases and specialist therapy. He also stated that in each case the court was obliged to inspect whether there were any possibilities to place the child in a family-type foster care. In the Ombudsman's opinion, considering the age of the boy, his needs and the above mentioned regulations, the minor should have been placed in a family-type foster care. Such was also the opinion of an expert psychologist who concluded that in order to provide the best conditions for the boy to develop, his stay in an institution should be as short as possible. And so the Ombudsman concluded that it was necessary to file an appeal in the case. The court of second instance did not allow the Ombudsman's appeal.

In another example, the Ombudsman took a case<sup>785</sup> regarding change of the foster family established for a minor girl. The sister of the minor addressed the guardianship court with a motion for establishing her as the minor's foster family. In the course of the proceedings, the court dismissed the motion for interim measures by placing the minor in foster family in the person of her sister. The above mentioned decision was issued by the court without having heard the minor's opinion, as she was over 13 years old.

Hence, the Ombudsman officially joined the proceedings, and filed a motion for hearing the minor to learn her opinion about the current foster family and care they provided for her, relations and bonds between the child and the participants of the proceedings and to learn the minor's opinion with respect to her future and possible indication of persons who, according to her, would provide proper care for her and upbringing in foster care.

The Court allowed the Ombudsman's motion for hearing the minor.

Having heard the child, and taken account of the child's opinion, and in the face of lack of any contraindications to place the minor in a related foster family, the guardianship court placed the minor in related foster family for the time of the

<sup>785</sup> ZSR.441.2790.2015.MS

proceedings. Having established that the family correctly fulfilled its function, the court, in final decision, dissolved the previous foster family and established a new foster family for the minor.

- **Proceedings in juvenile cases**

The Ombudsman for Children received information about cases of infringing the right and dignity of children in proceedings under the Act of 26 October 1982 on juvenile delinquency.

Among others, the Ombudsman undertook a case<sup>786</sup> of a juvenile who was temporarily placed, under Article 26 of the Act on juvenile delinquency, by a regional court in a mental hospital of increased security.

Pursuant to Article 26 of the Act on juvenile delinquency, a court may temporarily order supervision by a youth supervision organisation or other social institution or work place, or supervision by a court-appointed guardian or other trustworthy person or, if such measure proves to be insufficient – placement in a youth education centre or professional foster family, if the family accomplished a course in taking care of a juvenile, or apply therapeutic and educational measures under Article 12, against a juvenile. Pursuant to Article 12 of the Act on juvenile delinquency in case a *juvenile* is found to be mentally handicapped, mentally ill, or otherwise mentally disturbed or addicted to alcohol or other substances consumed to be in stupor, a family court may adjudicate placement of the *juvenile* in a mental hospital or other relevant medical facility. If the *juvenile* must be only provided with care, the court may adjudicate placement of the juvenile in a youth education centre and in case the *juvenile* is severely mentally handicapped and requires only care – in a social service home.

It must be noted that a court, having applied interim measures provided in the above mentioned regulations, should be principally guided by the well-being of the juvenile. The interim measures are applied according to the educational and upbringing needs of the juvenile.

The files collected in the case revealed that the court placed temporarily the minor in a mental hospital of increased security, being guided only by the opinion of the guardian who mentioned in his report that it was reasonable to place the juvenile in a mental hospital for observation.

<sup>786</sup> ZSR.441.963.2016.MK

Yet, as it is provided in Article 25a of the Act on juvenile proceedings, a medical examination of juvenile's mental condition may be combined with observation only when the evidence collected in the case imply that there is high probability that the juvenile is highly demoralised or have committed a prohibited act that bears all the hallmarks of a crime. A decision on observation, its time and place, is taken by the court after it hears the juvenile. Other parties and the defence counsel should also be allowed to take part in the hearing (unless they do not come to it).

The mother of the juvenile filed a complaint against the court's decision, stating i.a. that the juvenile's condition did not generate the necessity to place her in a mental hospital of increased security. In a medical certificate issued by an expert psychiatrist, it was stated that the juvenile did not require in-patient treatment, but further social and psycho-therapy was recommended.

The juvenile addressed the Ombudsman and asked him for help, expressing her fear that she would be put to hospital before the complaint was heard.

The Ombudsman for Children addressed the President of the district court with a request for inspection of the case under internal administrative supervision. He stressed that observation was a form of deprivation of liberty and was acceptable under strict conditions provided by the Act – when it was absolutely necessary. In the Ombudsman's opinion, enforcement of this decision was against the juvenile's well-being.

In response the President of the district court informed that he had addressed the reporting judge with request for urgent consideration of the complaint. Then the district court altered the decision of the regional court in the way that it repealed the interim measure of in-patient observation in mental hospital and applied another interim measure that is supervision of a court-appointed guardian who was supposed to submit reports every two weeks.

In the final decision the guardianship court concluded that the juvenile did display conduct that proved her demoralisation and applied the measure of court-appointed guardian, who was obliged to submit reports every six months.

In another case, the Ombudsman for Children was addressed a mother of a boy who suffered from the Asperger's Syndrome and who -as she claimed – was laughed at and humiliated by his friends during water polo trainings at a sports

centre and by means of “Facebook”. The boy was also exposed to violence inflicted by his peers during the training sessions<sup>787</sup>.

Four boys were suspected of harassing the boy. The body of evidence collected by the Police was submitted to the competent courts.

The Ombudsman reviewed the files of all proceedings under the Act on juvenile delinquency. He was alarmed by the procedure followed by one of the regional courts. The court, having reviewed the body of evidence collected by the Police, issued a decision to institute proceedings and hear the case of the juvenile, against whom there was a reasonable suspicion that he had committed a punishable act in that he bullied, together with other juveniles, the boy by using offensive words against him.

In the course of the proceedings, the juvenile was called by the court to a hearing as a witness to hear him, abandoning at the same time the procedure of hearing a harmed minor under Article 185a of the Code of Criminal Procedure. The Article provides for special protection of a minor in the procedure of hearing him.

The Ombudsman for Children officially joined the proceedings before the court, indicating i.a.t that pursuant to Article 20 § 2 the procedures of hearing of evidence that involve minors other than juveniles should be conducted under special procedure as provided by the Code of Criminal Procedure. This meant that the family court when hearing a minor witness should apply the criminal procedure.

Having this in mind, the Ombudsman applied for admitting the evidence of minor’s testimony under procedure provided by Article 185a of the Code of Criminal Procedure and for repealing the decision to admit the evidence of minor’s hearing at the court hearing.

As a result of this intervention, the court withdrew from the decision to hear the minor at a court hearing and referred the case to mediation procedure. The case is in progress.

- **Cases pertaining to protection of child’s property**

For example, the Ombudsman received a notification<sup>788</sup> from a mother of two children in connection with the fact that a court had dismissed her motion for

<sup>787</sup> ZSS.441.147.2016.AT

<sup>788</sup> ZSS.441.1215.2015.AT



consent to perform procedure that exceeded the scope of regular administration of a minor's property by refusing to accept a legacy of a deceased relative on their behalf.

The mother of the minors wrote that the deceased was her uncle. The daughters of the deceased and the mother of the children submitted a declaration that they refused to accept the legacy. The legacy did not include any valuable objects but only the debts of the deceased. The mother wanted to protect her children against responsibility for them.

The court dismissed the motion for consent to refuse the legacy on behalf of the minors. In the statement of reasons the court concluded that the deceased had a property in the form of land and apartment and that the value of this property much exceeded the value of his debts. A refusal to receive the legacy would be then against the well-being of the minors.

According to the Ombudsman for Children, this decision violated the best interest of the minors. The Ombudsman joined the proceedings and backed up the mother's appeal against the decision of the court of first instance.

In his statement of reasons the Ombudsman pointed out that hearing the motion for consent to refusal of legacy on behalf of minor children should be preceded by an analysis of the content of the legacy, estimation of its value and the debts it included. This was not done by the court. It erroneously assumed that the deceased person's legacy included the whole apartment, yet the documents collected with respect to the legacy proved that the deceased was the co-owner of the apartment, under the law of joint property of spouses. The court did not conduct and hearing of evidence to determine whether the deceased was the only heir of his deceased wife. According to the Ombudsman, the court did not reliably determine what were the exact debts included in the legacy. Only a detailed estimation of the value of the debt would allow to reliably estimate whether accepting the inheritance would actually serve the well-being of the minors. The Ombudsman pointed out also that accepting the inheritance with the benefit of inventory limited the liability of the decedent for the debts only to the assets of succession, which did not mean however that enforcement of debts could be limited to only one of the elements of the legacy.

The district court agreed with the Ombudsman and altered the decision of the regional court in the way that it allowed the statutory representatives of the minors to perform the activity exceeding the scope of regular administration of their property by refusing to accept the legacy of the deceased on their behalf.

- **Cases pertaining to international and European family law**

In cases pertaining to international and European family law the Ombudsman for Children joined the proceedings before courts under the Hague Convention on international child abduction and the Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (hereinafter: Brussels II bis).

For example, the Ombudsman intervened in a case under the Hague Convention regarding civil aspect of international child abduction, which involved a minor boy<sup>789</sup> His mother took him to Poland from Israel because her visa was coming to an end because she and the boy's father had parted. In the proceedings before the regional court the father demanded that the court issue a decision on mandatory return of the child. Yet the mother argued that there was no premise under Article 13b of the Hague Convention which would not allow the court to refuse to adjudicate mandatory return of the child to the child's previous place of stay. She claimed that she could not come back to Israel with the child as she was not permitted any longer to stay there and she would be deported. This meant that if the court adjudicated mandatory return of the minor, the boy would be separated from her. To prove that it would be harmful to the child's mental condition, the mother filed a motion for admitting evidence of expert's opinion, which was dismissed by the regional court.

The mother repeated her motion and added a private opinion by a psychologist which confirmed a strong bond between the child and the mother. She also asked the Ombudsman for Children for help. Having analysed the case files, the Ombudsman officially joined the proceedings and filed a motion for changing the decision by admitting the evidence of the experts' opinion. According to the Ombudsman for Children, due to the age of the child and the risk of being separated from the mother in case the court issued a decision on the child's mandatory return to Israel, obtaining experts' opinions was necessary to determine whether this return would not expose the minor to any mental or physical harm or put the minor in any other unbearable situation. The Ombudsman stressed also that the court, pursuant to the case law of the European Court of Human Rights<sup>790</sup> was procedurally obliged to insightfully inspect and verify arguments

<sup>789</sup> ZSM.441.50.2016.AD.

<sup>790</sup> Case of X v. Latvia, judgement of the Grand Chamber of 26 November 2013, complaint no. 27853/09

brought by the participant which indicated that the return of the minor would be against his well-being.

The regional court shared the Ombudsman's view and admitted the evidence from the experts' opinion. It said clearly that the child was strongly attached to his mother and separating him from her at this stage of development would lead to trauma resulting in emotional disturbances of the child. The court obtained also – through the agency of the central body – information on the legal status of the mother in Israel and the Israeli regulations on immigration. The court learned that indeed the mother could be deported if she came back to Israel. Hence, having in mind the risks for the minor proved by the other in connection with his return to his previous country of residence, the Ombudsman for Children demanded in his final position that the court dismiss the father's motion for mandatory return of the child. The court agreed with the position of the Ombudsman and dismissed the motion of the father. The decision is not yet legally valid.

Another example of an intervention initiated by the Ombudsman for Children with respect to proceedings ongoing before a court based on the provisions of the Hague Convention on civil aspects of international child abduction and the Brussels II bis Regulation was the case of minor girl<sup>791</sup> The daughter of French citizen and Polish citizen was born in Poland and living here since she was 4. Then, for the next two years, she moved to France. As the conflict between the mother and the father grew and was becoming more and more violent, the mother decided to come back to Poland with the girl, though the father did not agree to it. The father instituted proceedings before Polish court pertaining to mandatory return of the child under the Hague Convention, as a result of which the regional court issued a decision that ordered the mother to return the child to France within 14 days from the issuance of the decision.

The mother asked the Ombudsman for Children for urgent help, stating that the court of first instance issued the decision after only one hearing, and not having considered her motion for admitting the evidence of expert's opinion, and not having heard the minor. The Ombudsman immediately asked the court to send him the case files and then – having reviewed it – joined officially the proceedings and filed a motion for submission of the court's statement of reasons. The court decided then, under Article 521 § 2 of the Code of Criminal Procedure, to suspend the enforcement of the decision until it became legally valid, stating that as it was possible that the decision would be changed by the

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<sup>791</sup> ZSM.441.100.2016.AD

court of appeal, it would be against the child's well-being to enforce the decision before the proceedings were closed.

The Ombudsman for Children brought an appeal against the decision of the court of first instance. In his appeal the Ombudsman stated that abandoning the procedure of hearing minor and presenting her opinion to the court only through the testimony of her mother, information provided by the court-appointed guardian after a conversation with the mother and private opinions of psychologists she had ordered was against Article 11 item 2 of the Regulation Brussels II bis, Article 576 § 2 of the CCP, Article 12 of the Convention on the Rights of the Child and Article 72 item 3 of the Constitution of the Republic of Poland. Pursuant to those articles, the court was obliged to provide the minor with a possibility to be heard, unless it would seem inappropriate due to her age or degree of maturity. The Ombudsman stressed that the above mentioned regulations regarding the obligation to provide for a minor to be heard served the procedural protection of the child-centredness in proceedings that involved him or her. In this case, the court abandoned the procedure of hearing minor, stating at the same time that it knew her position through the agency of other evidence, which, in the Ombudsman's opinion, could not be deemed unbiased. It was all the more important that the court concluded that the opposition to come back to France expressed by the child and reported in the above mentioned evidence could not be decisive in the case because of the mother's influence on the girl.

The Ombudsman pointed out also that it would be best for the child to exclude the option of serious risk that the minor's return to France would expose her to physical or mental harm or would put her in any other unbearable situation. According to the Ombudsman, the evidence called by the court were not sufficient in that matter. He pointed out that according to the decision of the French court issued as interim measure, the custody of the girl was entrusted to the petitioner, who also filed a notification of crime committed by the mother's minor to the French prosecution, as she took the child to Poland without his consent. He also argued that omission of the above mentioned circumstances that could imply the risk of long-term separation of the minor from her mother in case she had to return to France resulted in erroneous dismissal of the motion for evidence by the court. As a result, the body of evidence did not include an independent, unbiased report on the minor's position but also on her emotional bond and attachment to her parents.

The Ombudsman stressed that in proceedings under the Regulation Brussels II bis, pursuant to its Article 11 item 4, the court could not refuse to adjudi-

cate return of the minor under Article 13b of the Hague Convention if it was determined that relevant arrangements had been already made to secure the child and protect the child after his or her return. In case it appeared that there was a serious risk that the return of the minor to France would exposed her to serious mental harm resulting from her being separated from the mother, the adjudicating court would be obliged to address the French bodies to make relevant arrangements to secure the well-being of the minor. This would require cooperation between the Polish and French bodies to make it possible for the mother to come back to France with her daughter.

The district court agreed with the Ombudsman for Children and admitted the evidence of the experts' opinion to determine the position of the minor regarding her return to and stay in France, and whether there was any risk of mental or physical harm connected with it. The proceedings are in course.

- **Cases pertaining to protection of rights of minor foreigners in Poland**

In cases of this category the Ombudsman for Children joined administrative and court-administrative proceedings pertaining to, i.a. The right to child support benefit (the 500+ benefit), under the regulations of the Act on state support in child upbringing, to proceedings pertaining to provision of international protection to minor foreigners under the regulations of the Act on granting protection to aliens within the territory of Republic of Poland and to proceedings pertaining to mandatory return of minor foreigners under the Act on foreigners.

The cases pertaining to the right to the 500+ benefit under the Act on state support in child upbringing, interventions undertaken by the Ombudsman for Children referred to erroneous interpretation of the imprecise definition of the group of foreigners entitled to receive the benefit (Article 1 item 2 point 2 of the Act). For example, the Ombudsman had to intervene in a case of minor citizens of Turkmenistan, who were granted the status of refugees in Poland<sup>792</sup>. The mother of the minors addressed the city president with an application for the 500+ benefit for her children. The first instance body refused, arguing that pursuant to Article 1 item 2 letter d of the Act on state support for child upbringing, status of a refugee did not allow to apply for the benefit. The president stated that there was no note "access to labour market" in the stay permit the mother was given, which, in the light of the above mentioned article, was the condition to grant the benefit. The local council of appeal upheld the decision of the president, after the mother appealed against it.

<sup>792</sup> ZSM.441.69.2016.AC

Having reviewed the case the Ombudsman brought a complaint against the voivodeship administrative court against the decision of the local council of appeal. He stated in the complaint that the administrative bodies misinterpreted Article 1 item 2 point 2 letter d of the Act in question. Their interpretation omitted the circumstance that the note “access to labour market” put in the stay permit, was only informative in its nature. This meant, according to the Ombudsman, that it could not be assumed, that lack of such notice in the permit did not allow to grant the 500+ benefit to the foreigner, in case this foreigner (as the minors’ mother) was in fact entitled to work in Poland. The Ombudsman pointed out then that to accept this interpretation by the administrative bodies would mean to accept that this regulation was against Article 32 of the Constitution which laid down the rule of equal treatment and ban on discrimination. Furthermore, such interpretation would also lead to a conclusion that the regulations were also inconsistent with Article 72 item 1 sentence one of the Constitution and Article 26 item 1 and Article 2 item 1 of the Convention on the Rights of the Child which ordered to acknowledge the right of every child to benefit from the social security system. He continued that decisions issued in these cases violated also Article 23 of the Geneva Convention on the status of refugee which ordered to provide the refugees with the same public support privileges as the Polish citizens. Hence, the Ombudsman for Children filed a motion for repealing both decisions of the administrative bodies.

After hearing the case, the voivodeship administrative court repealed the decision of the local government appeal council and the preceding decision of the city president. The court fully agreed with arguments presented by the Ombudsman for Children. In its decision the court stated that in case the regulations of the Act on state support in child upbringing were imprecise with respect to the definition of the group of foreigners entitled to receive the 500+ benefit, they should be interpreted consistently with the Constitution. This means that the administrative bodies should have determined first whether the regulations of the Constitution and the international law ordered to provide for special treatment with respect to access to all forms of support to some groups of foreigners. The court agreed with the Ombudsman for Children that it was not the technical issue – a short note – but the real right to enter the labour market in Poland without special permit that was decisive in defining whether the foreigner was entitled to receive the benefit or not. In this case, the court decided that the mother of the minors, as a foreigner who was granted the status of refugee in Poland, did have such right.

The Ombudsman for Children intervened also proceedings pertaining to mandatory return of foreigners, as for example in the case of minor citizen of Ukraine<sup>793</sup>. The girl came to Poland in the middle of 2014 with her mother who filed an application to the Head of the Office for Foreigners for international protection for her and her daughter. After she was refused, she went to Germany and initiated a similar procedure. After a couple of months they came back to Poland and again addressed the Head of the Office for Foreigners. At the same time, the Commandant of the Border Guard Unit, due to the fact that the woman had crossed the border illegally, instituted proceedings pertaining to mandatory return of the mother and the daughter to her country of origin. In the course of the proceedings the mother of the minor referred to the process of education and integration the girl was in, as well as to her health problems which did not allow her to come back to Ukraine. The mother attached many certificates, opinions, medical records to her petition. The body of first instance allowed only part of them, reviewing them only superficially and issued a decision on mandatory return of the mother and the child. After the mother appealed against it, the Head of the Office for Foreigners upheld the decision of the first instance body.

Having reviewed the case files the Ombudsman for Children filed an appeal to the voivodeship administrative court against the above mentioned decision. The Ombudsman claimed that the decision was issued against the procedural law. This could affected the result of the proceedings. In his opinion, procedural mistakes made by the first instance body and then repeated by the Head of the Office for Foreigners. Led to a wrong assumption that there were no circumstances which would justify a positive decision to grant the foreigner the permit to stay for humanitarian reasons under Article 348 point 2 and 3 of the Act on foreigners. Pursuant to this Article, such permit may be granted if mandatory return would infringe the rights of the child to a degree that it would considerably endanger the child's development and the foreigner's right to private life.

The Ombudsman stated that neither the first instance body nor the body of appeal heard the minor pursuant to Article 72 item 3 of the Constitution and Article 12 of the Convention on the Rights of the Child nor did the conduct any hearing of evidence of opinion of experts in child psychiatry or psychology. In his opinion, such evidence would allow to determine the level to which the girl had integrated with the society and her attitude against the possible return to Ukraine. On the other hand, the other piece evidence would allow to thorough-

<sup>793</sup> ZSM.441.136.2016.AC.

ly estimate whether possible return of the girl to her country of origin would disturb her development or not. The Ombudsman then argued that both bodies, without any reason, did not take into account the problem whether return of the minor to her country of origin would not infringe her right to identity (Article 8 of the Convention on the Rights of the Child). Similarly, the bodies did not make any reference to the question whether issuing and enforcement of the decision of mandatory return would not infringe Article 24 item 1 and Article 39 of the Convention on the Rights of the Child) in the part that the return would mean wasting the results of the undertaken psychotherapy. Having this in mind, the Ombudsman filed a motion for repealing the decision of the Head of the Office of Foreigners and considering the option to repeal also the decision of the first instance body. The proceedings are in course.

Regardless of the above, the Ombudsman joined the proceedings pertaining the provision of international protection to the mother and the daughter in Poland. In his position presented to the Head of the Office for Foreigners the Ombudsman pointed out that the risk (in case of mandatory return of the minor to Ukraine) of infringing her right to private life protection in Poland, the right to identity and to best possible environment of mental recovery matched the premise of the risk of serious harm in the form of inhuman treatment as set forth in Article 15 point 2 of the Act on granting protection to aliens within the territory of Republic of Poland. And so, the Ombudsman for Children filed a motion for international protection for the minor and her mother. Having reviewed the position of the Ombudsman, the Head of the Office for Foreigners issued a positive decision by which he granted the minor and her mother this kind of protection in Poland.

In another case, the Ombudsman for Children intervened in proceedings pertaining the mandatory return of minor foreigners and their parents to Ukraine<sup>794</sup>. The whole family came to Poland in 2014 and applied for international protection in our country. After they were refused, the family did not go to Ukraine, so the Commandant of the Border Guard Unit instituted the proceedings pertaining to their mandatory return. After hearing the evidence, the first instance body issued a decision on mandatory return of the minors and their parents. The parents appealed against this decision to the Head of the Office for Foreigners, who repealed it and referred to reinvestigation. In his statement of reasons the body of appeal concluded that the degree to which the minors had integrated with Polish society should have also been taken into

<sup>794</sup> ZSM.441.82.2016.AC



account, and that it was necessary to determine whether mandatory return would not be harmful to psycho-physical development of the children.

Having reviewed the case the Ombudsman for Children joined the re-investigation proceedings before the body of first instance. The Ombudsman pointed out that after analysis of the body of evidence collected in the case and particularly of the psychologist's opinion on the children, it could be concluded that the minors had considerably integrated with Polish society and were functioning well in the Polish education system, finding the sense of stabilisation and safety here. Such circumstances could be a major premise to grant the permit to stay in Poland for humanitarian reasons. The Ombudsman pointed out that in his opinion, issuing a decision on mandatory return would infringe the minors' right to identity (Article 8 item 1 of the Convention on the Rights of the Child) and the right to private life protection (Article 8 item 1 of the Convention on the Rights of the Child) to a degree that would seriously endangered their further psycho-physical development. And so, the Ombudsman field a motion for abandoning the order to return and for granting to them the permit to stay for humanitarian reasons. The Commandant of the Border Guard Unit agreed with the Ombudsman and granted the permit to all members of the family.

## IV. MONITORING ACTIVITY

In 2016 the Ombudsman for Children conducted 217 inspections.

He inspected:

- ▶ forms of foster care,
- ▶ youth education centres,
- ▶ a primary school,
- ▶ a court-appointed guardian centre,
- ▶ a medical facility,
- ▶ centres of recreation for children and youth.

The Ombudsman for Children conducted also:

- ▶ The results of review of case files indicated by the the Minister of Justice regarding placement of a child in foster care only for the reason of ad economic condition of the parents,
- ▶ Report on the study on educational and care and legal status of children in the age from 0 to 10 staying in institutionalised forms of foster care,

### 1. INSPECTIONS IN FOSTER CARE FACILITIES

In 2016, the Ombudsman inspected the following facilities in terms of child's rights observance:

- 1) Children's Home in P,
- 2) Children's Home in K. W,
- 3) Family Residential Institution in L.,
- 4) Family Residential Institution for Girls in T,
- 5) Family Residential Institution in S.,
- 6) Family Residential Institution in L. K.,
- 7) Residential Institution Complex in S.,

The inspection revealed many irregularities. Mental and physical violence is still a great, unsolved problem of those facilities; in one case it was the reason for notifying the prosecutor's office of suspected crime. Investigation in that case has not yet been completed.

Another problem is that the children are not provided with relevant psychological and pedagogical support and that facilities do not adjust their activity to the needs of the pupils. Classes and activities were not organised on a regular basis and were not part of a systemic activity. Neither were curricula of those activities updated regularly. Also the documentation kept by specialists and educators required adjustment to applicable regulations of law and it did not reflect the course of work done with the child and trends of undertaken activities which in consequence made it impossible to examine in terms of efficiency. Collaboration with biological family of a child is another alarming issue. It must be stressed that it is very often managed improperly and irregularly. Among other irregularities observed in inspected facilities there are: applying penalties that violate the child's dignity or rights, non-adjustment of the internal rules and regulations of the facilities to the currently binding regulations of law and improper functioning of the pupils' governments.

After completion of each inspection, the Ombudsman for Children submitted information on its results with comments and post-inspection conclusions to managers of the facilities. The process of implementing those recommendations is subject to permanent monitoring by the Ombudsman for Children, until all of them are fully realised and the situation of children is improved.

## 2. INSPECTIONS CONDUCTED IN YOUTH EDUCATIONAL CENTRES

The purpose of the undertaken inspection was to examine whether the rights of the pupils were observed and what were the real conditions of their stay in the facilities.

**Inspections were conducted in the following facilities:**

- 1) Youth Educational Centre in K.;
- 2) Youth Educational Centre in O.;
- 3) Youth Educational Centre in W.;
- 4) Youth Educational Centre in R.

The inspections revealed irregularities in individual work with children. The records kept by the facilities, the information about the course and results of individual therapy was not included. Here, similarly as in case of foster care facilities, the educational therapy is not managed correctly, systematically and according to a more general plan, but ad hoc and rather as a form of reaction to a specific incident. All this leads to a conclusion that too little focus and stress was put on the therapy for children.

The inspection revealed also other irregularities like: applying penalties that infringe the rights of children; hindering the contact between children and parents; improper functioning of pupils' government; deficiencies in food provision; too little importance attached to organisation of leisure and free time and reinforcing the individual potential of each pupil.

In each case, the quality of the pedagogical supervision provided by managers was subject to scrutiny and necessary changes were indicated, with special consideration for the need to reinforce the activity to provide safety for the children.

### 3. INSPECTION IN EDUCATION CENTRE IN Ł.

The purpose of the inspection in the Education Centre in Ł. was to evaluate whether the rights of the child were observed. The reason why the Ombudsman for Children undertook the intervention was that he received information about improper treatment of children after the manager changed. As a result of the inspection, numerous comments and conclusions were formulated. Currently the Ombudsman is waiting for them to be implemented by the Centre.

### 4. INSPECTION IN PRIMARY SCHOOL IN J.

The purpose of the inspection was to check whether and how the rights of children were observed in the Primary School in J., including the rights of children with disability.

The manager of the school informed parents of the student with physical impairment that the boy was not allowed to use his wheel chair at school, though the child had been already using it there without any problems. The manager argued that heavy and big wheelchair could be dangerous to other children.

As a result of the inspection, the manager changed his decision. The boy now can use his wheelchair within the school territory. As a result of the inspection, numerous comments and conclusions were formulated. The Ombudsman is monitoring the process of its implementation.

## 5. INSPECTION IN THE CHILD'S HEALTH MEMORIAL INSTITUTE

The inspection in situ was undertaken after the Ombudsman for Children received the information about the nurses going on strike, beginning from 24 May 2016, which influenced the situation of minor patients.

The team of inspectors, upon the order of the Ombudsman for Children, immediately inspected the situation and evaluated the level of protection provided to minor patients of the Institute, i.a. by:

- ▶ Interviewing the Management of the Institute,
- ▶ Visiting the wards of the Institute,
- ▶ Interviewing the nurses in the particular wards of the Institute,
- ▶ Interviewing the managers of Clinics,
- ▶ Interviewing parents and carers of children being treated in the Institute,

During the inspection it appeared that there was a real threat to life and health of the children (the hospital was being evacuated, admissions and scheduled procedures were cancelled).

As a result of the inspection the Ombudsman for Children formulated comments and conclusions which he submitted to the Minister of Health and to the relevant prosecutor's office.

## 6. INSPECTIONS IN RECREATION CENTRES AND FACILITIES FOR CHILDREN AND YOUTH

The inspections were aimed to diagnose the level of provision of safe and hygienic conditions for leisure activities and checking the observance of children's rights.

In the time of summer holidays 201 places of summer leisure were inspected:

Analysis of results of the conducted inspection revealed that:

- ▶ In 201 inspected places of summer recreation, 11,578 children were staying, including 3,003 in the age up to 10;

- ▶ Only 31 children (0.27%) of all recreating children were children with disabilities (mainly intellectual disability, the Asperger's Syndrome, the Down's Syndrome);
- ▶ In most cases, summer recreation providers were NGOs (25%), travel agencies and tourist service agencies (21%), sports clubs (14%) and other entities like schools, cultural centres, city and district offices (9%), parishes and church organisations (7%);
- ▶ summer recreation means mainly summer camps – 109 of them (54%), various camps: recreational, linguistic, thematic, dance, scouts', therapeutic- 50 (43%), semi camps- 11 (3%);
- ▶ The issue of having relevant information from the National Criminal Record or relevant declaration has much improved. In all inspected places of recreation the personnel had relevant qualifications as defined by the regulations of law<sup>795</sup>;
- ▶ In all places of recreation, the number of employed educators was sufficient, also additionally volunteers were activated;
- ▶ in 4 centres the inspectors found that there was no certificate of reporting the recreation to the Chief Education Office, which constitutes 2% of all inspected facilities,
- ▶ 20 accidents took place in the inspected places. In all cases, children were provided with medical help and the accidents were properly documented;
- ▶ in 42 centres (21%) acts of aggression of physical and verbal nature and bullying were noted. After the incidents the educators conducted conversations with the participants, trying to motivate them to behave properly, their conduct was subject to supervision, observation and putting the emotions down. In extreme cases, because the child could not adjust to the conditions of the camp, the child was taken home by the parents (8 children);
- ▶ In 19 inspected places (%) the managers did not determine nor assign detailed scopes of activities for educators;
- ▶ Summer mountain camp provider (in a national park) employed also local guides who accompanied children during their trips;
- ▶ Children having fun at the seaside or in swimming pools were provided with additional care of a lifeguard. In most cases, the lifeguards were employed by the recreation centres; all inspected places provided for relevant medical care. In most cases, the provider or the centre employed a nurse or a paramedic, and in some cases – a doctor who were on duty for a couple of

<sup>795</sup> Act of 07 September 1991 on the education system (Dz. U., Journal of Laws of 2015, Item 2156) and the Ordinance of the Minister of National Education of 30 March 2016 on recreation of children and youth (Dz. U., Journal of Laws of 2016, Item 452)

hours everyday and for the remaining time they were available by phone. In 59 cases (30%) children were treated in clinics. Nursing care was provided by the centre where the recreation was organised in 80 cases (41%) and by the recreation provider – in 57 cases (29%). Children who took medicines, according to a note in the record and declaration of the parents, were given the relevant medicines by the nurse or the educator. The inspectors found no irregularities in that matter. Any kind of medical visits and examinations were entered into the qualification chart of the child and the records kept by the nurse;

- ▶ All participants of the inspected recreation places had qualification charts;
- ▶ In 6 cases (3%) the educators did not keep daily activity records of their groups. The manager of the recreation camp was informed of his obligations in that matter

The information on inspection results in summer recreation centres in 2016 were submitted by the Ombudsman for Children to the Minister of National Education<sup>796</sup>.

## 7. THE RESULTS OF REVIEW OF CASE FILES INDICATED BY THE MINISTER OF JUSTICE REGARDING PLACEMENT OF A CHILD IN FOSTER CARE ONLY FOR THE REASON OF AN ECONOMIC CONDITION OF THE PARENTS

The Ombudsman for Children, following the publication by the Ministry of Justice a report entitled Preventing from removing children because of poverty – a draft adopted by the Council of Ministers, addressed<sup>797</sup> the Minister of Justice with a request for presenting the 61 one cases of child removal and placement mentioned in the report. It was said that in such situations, poor economic and living conditions were the only reason why courts issued decisions on placing children.

Analysis of case files indicated by the Minister of Justice did not confirm in any of them that financial condition and living standards were the only reason for child placement. In Ombudsman's opinion the rights of children or the

<sup>796</sup> GAB.43.202.2016.EG

<sup>797</sup> ZSR.422.28.2015.MK

well-being of children had not been violated or offended by placing a child in foster care solely for the reason of poverty in any of the analysed cases.

The Minister of Justice received the report entitled “The results of review of the case files indicated by the Minister of Justice regarding placing a child in foster care only for the reason of an economic condition of the parents”, – see Appendix no. 12 to this Report.

## 8. REPORT ON THE STUDY ON EDUCATIONAL AND CARE AND LEGAL STATUS OF CHILDREN IN THE AGE FROM 0 TO 10 STAYING IN INSTITUTIONALISED FORMS OF FOSTER CARE

The Ombudsman for Children has been consistently, since 2014, undertaking measures to prevent little children from being placed in residential institutions.

The Ombudsman for Children addressed all voivodes with a request for data on the number of children in the age from 0 to 10 that were staying in institutional foster care and the number of foster families in particular voivodeships.

Pursuant to Article 95 item 95 and 1 of the Act on family support and foster care system, only children over 10 who require special care or having difficulties in adjusting to family life should be placed in a residential institution for social rehabilitation, for emergencies or for special therapy. On the other hand, Article 95 item 2 present exceptions to this rule, according to which placing a child under 10 years old in a social-therapeutic, emergency or specialist therapeutic residential institution is possible only in case the mother or the father of that child is also placed in that institution and in other exceptional cases, in particular when the child’s condition requires so or when the placement refers to siblings.

As the Ombudsman for Children was informed, there was a numerous group of minors placed against the regulations of Article 95 item 2 of the Act, among the children in institutional forms of foster care. In facilities all across Poland 257 children from 0 to 10 were placed against the Act, including 13 children of 0-1, 40 children of 1-3, 93 of 3-7 and 11 children of 7-10 years of age.

According to the information given by the voivodes, the reasons why children were placed in institutions were in particular:



- ▶ The content of family court decisions which directly decided about placement in institutions or indicated a specific residential institution;
- ▶ Too little number of foster families;
- ▶ Lack of candidates for foster families;
- ▶ Too little number of foster families who would be able to provide relevant care to children requiring special help or special therapies due to their health condition;
- ▶ Child's stay with minor mother or father;
- ▶ older siblings staying in residential institutions;
- ▶ Emergency measures (lack of available foster families for emergency cases);
- ▶ Insufficient number of specialists who could provide specialist counselling and relevant support to foster families.

The Ombudsman for Children verified the data collected from the voivodes, inspected the situation of children under 10 placed in institutions individually. Comments and conclusions of the study were presented by the Ombudsman for Children to the Minister of Family, Labour and Social Policy and the Minister of Justice. Further actions (including records study) will be conducted after all institutions provide relevant information.

The Report on the study on educational and care and legal status of children in the age from 0 to 10 staying in institutionalised forms of foster care is attached as Appendix no. 13 to this Report.

## V. COOPERATION WITH AUTHORITIES AND NATIONAL INSTITUTIONS

- **Cooperation with the President of the Republic of Poland**

The Ombudsman collaborated with the President of the Republic of Poland under the activity of the Bureau of Research at the Chancellery of the President. In June 2016, the members of the team were officially nominated. The Bureau is composed of the representatives of the Chancellery of the President of Poland, the Office of the Ombudsman for Children, the Office of Human Rights Defender, the Office of the Financial Ombudsman and the Office of the Ombudsman for Patient's Rights.

Establishment of the Bureau was motivated by the need to analyse the law in its current condition in terms of possible improvements, so that the law can better serve its citizens. Owing to cooperation of all institutions, exchange of experiences and good practices was possible, as well as information on the most urgent legal problems requiring legislative measures.

At the first session, issues raised by the Ombudsman for Children were discussed. The debate focused on measures to increase the legal and penal protection of minors against the most serious crimes.

- **Cooperation with the Supreme Audit Office (NIK)**

In 2016, the Ombudsman for Children cooperated with the Supreme Audit Office under the agreement concluded in 2015, in which both constitutional bodies committed to exchange information that would be useful in supervising procedures, elaborating supervision programmes and consulting the methodology and means of those supervisions.

Within the framework of cooperation, the Ombudsman for Children addressed<sup>798</sup> the Supreme Audit Office to carry out nationwide ad-hoc control of communes as regards prevention of homelessness. The Ombudsman for Children pointed out that the complaints of parents staying in homeless shelters

<sup>798</sup> ZSS.442.18.2016.AJ

with children, information about their inadequately satisfied needs, as well as large number of children placed in this kind of institutions, justify the need for comprehensive diagnosis of the problem related to the homelessness among the youngest.

The other example of cooperation was the request<sup>799</sup> of the Ombudsman for Children to the Supreme Audit Office to expand the scope of control within execution of tasks by organizers of foster carers, particularly in terms of observance of statutory deadline, i.e. 18 months, for regulating legal status of a minor. The Ombudsman pointed out that the organizer of family foster care who has information that a child is not permitted by the law to return to biological family, is obliged to request that the court regulates legal status of the minor within one and a half year since the child placement. The President of the Supreme Audit Office informed<sup>800</sup>, that all issues addressed in his speech has been included in the programme of the coordinated control titled Selection of persons for the role of foster carers, which he supervises.

- **Co-activity with the Human Rights Defender**

This cooperation is permanent and concerns in particular referral on a current basis and within terms of reference – of individual cases of citizens and exchange of information on undertaken actions in cases investigated by both offices.

In 2016, a Team for Child Maintenance Affairs was established<sup>801</sup>. It is composed of the representatives of the world of science, organisations of employers and NGOs and the environment of judges, penitentiary institutions and attorneys in law. The task of the Team was to develop systemic and comprehensive mechanisms which would allow to improve the situation of children in terms of their maintenance by parents. The works resulted in i.a. joint addresses of the Ombudsmen on: introducing the option to do a sentence under Article 209 of the PC of imprisonment in the system of home detention (SDE – System Dozoru Elektronicznego); the need to develop an educational campaign to mobilise maintenance debtors to settle their dues against their children; the problem of concealing the true income of employees obliged to pay maintenance by their employers; eliminating obstacles to effective child maintenance and creating a central register of maintenance debtors.

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<sup>799</sup> ZSR.442.14.2016.AMIK

<sup>800</sup> KPS.0511.002.2016

<sup>801</sup> ZSS.420.37.2016.KT

- **Co-activity with the Ombudsman for Patients**

The cooperation is regular and refers to individual cases of minor patients and their right to health. The rule of information exchange between the Offices of the Ombudsmen was established in 2106, with respect to information on risks and irregularities in health care facilities.

For example<sup>802</sup>, the Ombudsmen appointed a working team composed of the representatives of both institutions, the objective of which is to elaborate a common position regarding the problem that in order to examine a pregnant minor, the doctor has to obtain the consent of her carers – legal or actual.

- **Collaboration with the Inspector General for the Protection of Personal Data (GIODO)**

In October 2016 the Ombudsman for Children and the Inspector General for the Protection of Personal Data undersigned an official agreement on collaboration to improve the level of observance of the regulations on personal data protection with special consideration of safety of little children. The agreement was concluded during a common educational conference entitled: “Respecting the rights of the child and the student at school”.

Collaboration between the Ombudsman for Children and the Inspector General for the Protection of Personal Data included i.a. Mutual exchange of knowledge and experience, upgrading the qualifications of employees of both institutions, also cooperation in developing the training curricula, cooperation with lecturers, joint educational activity and exchange of alarming information on irregularities on a current basis.

Under this cooperation the Ombudsman for Children, the Inspector General and the Cardinal Wyszyński University in Warsaw opened the cycle of all-Polish scientific conferences entitled: “The rights of the child in social areas”. The first of them focused on the problem of the rights of the child in the context of family and educational facilities.

Both institutions cooperated also under the regular Programme “Twoje dane – twoja sprawa” [“Your data – your business/matter”].

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<sup>802</sup> ZSS.420.19.2016.KT

- **Participation in the work of the interministerial Team for Eliminating and Preventing Human Trafficking – the Ombudsman for Children as the institution invited to participate**

The tasks of the team include assessment of implementation of the National Action Plan against Trafficking in Human Beings, suggesting and evaluating actions taken in order to efficiently eliminate human trafficking and prevent the phenomenon from taking place, cooperation with state administration bodies, local self-governments and non-governmental organisations in the field of preventing and eliminating trafficking in human beings. The Team consists of representatives of: minister in charge of education affairs, minister in charge of social security, minister of justice, minister in charge of foreign affairs, minister in charge of health affairs, minister in charge of the interior, Head of the Office of Foreigners, Chief Commandant of the Police, Chief Commandant of the Border Guard and other invited institutions and organizations: the Ombudsman for Children, the Defender of Human Rights, National School of Judiciary and Prosecutors, the Chancellery of the President of the Council of Ministers, the Prosecutor General, the Chief Labour Inspectorate and non-governmental organizations that deal with human trafficking (“La Strada” Foundation, Caritas Polska, “Dajemy Dzieciom Siłę”, ITAKA Foundation for missing persons).

- **Collaboration under the mandate of the Team for helping the pupils of foster care, youth education centres, youth shelters and juvenile detention centres become independent**

The Team was composed i.a. Of the representatives of the Minister of Family, Labour and Social Policy, the Minister of Justice, local self-governments, NGOs, youth education centres, juvenile detention centres and juvenile shelters. The Team elaborated the Ombudsman for Children’s recommendations for poviats which are the continuation of the work of the Ombudsman undertaken in order to protect the rights of children deprived of regular and proper care of their closest family and were presented in 2015 to starosts in the form of recommendations regarding children staying in residential institutions, and were also signed by the relevant minister for social security affairs.

The Ombudsman for Children had many times stressed that activities connected with gaining independence by children brought up by various types of facilities should be oriented towards comprehensive diagnosing of their “strong points” that is their potential. Only this educational basis allows to achieve real educational success. This is the foundation of educational work, which should impose the direction of all pedagogical and custodial activities and measures.

This requires, on the one hand, a far reaching open-mindedness of the facilities to external environment, and on the other hand, a change in the formula of working methodology, the substance of which should be to strive for support in cognitive and social development of pupils by accustoming them to extra-institutional social networks that provide positive “teaching situations” in a society at large.

As a result, the Ombudsman for Children addressed the Minister of Family, Labour and Social Policy with respect to correction of the currently binding regulations in that matter. In other fields the Ombudsman saw the need to undertake collaboration with starosts – as the bodies competent in and responsible for introducing changes regarding the procedure of becoming independent – and so he submitted a separate address to them<sup>803</sup>.

Recommendations of the Ombudsman for Children regarding effective independence gaining by children under a court decision in foster care and other types of facilities and by mothers who leave homes for mother with children and pregnant women is attached as Appendix no. 15 to this Report.

- **Cooperation in the framework of the Team for developing adoption standards established by the Ombudsman for Children**

Representatives of the Ombudsman for Children, the Minister of Family, Labour and Social Policy, as well as the representatives of adoption agencies participated in works of the Group.

The work of the Group resulted in developing unique document titled Performance standards in operation of adoption agencies, which can bring a completely different quality of work to the adoption agencies, and, above all, will guarantee appropriate, loving family to the child placed in foster care, who applies for adoption.

The main objective of the project is to develop uniform principles – the pattern for functioning of adoption agencies. The developed “Standards” constitute guidelines and clues helping in adoption proceedings. While working on “Standards”, subjectivity of child and provisions of the Convention on the rights of the child were taken into account, being the most crucial from the perspective of the Ombudsman for Children.

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<sup>803</sup> ZEW.442.46.2016.ZA, ZEW.442.47.2016.ZA

Performance standards in operation of adoption agencies contain guidelines related to: principles of adoption proceedings, supervision of adoption agency over the personal contact of children with potential adoptive parents, conditions for preparing adoption interview, documentation kept by adoption agencies, personnel, equipment and venue of adoption agency.

In the opinion of the Ombudsman for Children, the proposal elaborated by the Group should constitute the basis for a broad discussion and result in the implementation of provisions which are vital in terms of security, interests and welfare of children.

In the speech<sup>804</sup> addressed to the Minister of Family, Labour and Social Policy, the Ombudsman for Children submitted a document developed by the Group on developing adoption procedures, requesting to familiarize and promote Performance standards in operation of adoption agencies in order to implement them into daily work routine in adoption agencies. At the same time, he requested to consider introduction of changes into regulations related to adoption procedures.

Moreover, the Ombudsman for Children presented the President of the Republic of Poland with the proposals of amendments to the Act on Family Support and the System of Foster Care.

Performance standards in operation of adoption agencies Appendix no. 14 to this information.

- **Cooperation with the General Headquarters of the Police**

The Ombudsman cooperated with the General Headquarters of the Police on regular basis, mainly by submitting to the Ombudsman information on alarming situations involving youngest citizens, such as sudden deaths or severe violence against children staying under parental supervision, or brought up in institutional and family types of foster care.

As a result of this cooperation, in 2016 11 cases were commenced by the Ombudsman after receiving information on alarming event which requires actions to the benefit of a child (information was submitted directly at the phone number of the Ombudsman for Children in the form of text messages). These issues involved both severe care negligence, and violence or even deaths of minors.

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<sup>804</sup> ZSR.442.31.2016.MS

- **Cooperation in the framework of support for crime victims**

Like every year, the Ombudsman for Children joined the celebration of the Victim Support Week held on 22-27 of February 2016, and organized by the Ministry of Justice. Throughout the week, a lawyer and a psychologist were on call in the Office of the Ombudsman available for all seeking advice and support.

The Victim Support Week has been organized by the Ministry of Justice since 2000. The idea of celebration aims at paying attention to the needs and rights of crime victims, both adults and the youngest citizens.

Apart from the Ombudsman for Children, the following institutions were actively involved in the organization of celebration: The Commissioner for Human Rights, Prosecution General, the General Headquarters of the Police, National Boards of Guardians, National Chamber of Legal Advisors, National Chamber of Notaries, Border Guard Headquarters, National Council of Judicial Officers and Supreme Medical Chamber.

- **Cooperation of the Ombudsman with local self-government units with-in the duty of the specialist from the Office of the Ombudsman for Children.**

In 2016, free advisory within respecting children's rights was provided in four towns – Włocławek, Toruń, Grudziądz and Inowrocław, were services of specialist from the Office of the Ombudsman for Children were settled within the cooperation of the Ombudsman for Children with self-governmental authorities from Kujawsko – Pomorskie voivodeship.

In the course of the duties, all persons concerned received detailed information about protection of the rights of minors and possibility to protect them against illegal interference. People who had information about violation of children's rights were particularly welcome during the meeting with experts of the Ombudsman for Children. In the course of duties, the following individual cases involving, among other things, negligence or violence against minors, threats to their rights during conflicts of parents, or problems with providing children with optimum educational and care conditions could be reported.



- **Cooperation with A. Szczygieł Polish National Food and Nutrition Institute and the Institute of Mother and Child and Chief Sanitary Inspectorate**

The objective of the carried out actions was to develop the most efficient conditions to prevent obesity and overweight among children and youth and to promote healthy life-style. It was the continuation of the previous cooperation in this area. Conclusions from the expert discussion were submitted to the Parliamentary Committee on Prevention and Solving Problem of Obesity already in 2015. In 2016 the Ombudsman, along with these institutions and bodies, monitored the implementation of children and youth nutrition reform at schools and educational facilities<sup>805</sup>.

- **Cooperation in the framework of the Group for developing standards of peer and school mediation established by the Ombudsman for Children**

The Ombudsman for Children established the Group for developing standards of peer and school mediation. It consisted of distinguished experts in the field of mediation, law and psychology. The objective of the Group is to develop standards of peer and school mediation and, among other things, the Code of Conduct for Peer Mediators and the Code of Conduct for School Mediators. The documents will help to promote patterns of meaningful method for resolving disputes in education, by strengthening educational methods applied at schools, and support in building centres of school and peer mediation, or student clubs for peer mediators in educational centres.

By means of mediation, a young man learns the limits of freedom, manner of achieving goals and satisfying needs. Mediation learns how to take responsibility for one's actions and decisions. By means of mediation, youth learn how to solve disputes, to respect each other, to think in a creative and open way, and be open to the opinions of others.

The youth has opportunity to acknowledge and understand the situation from the other perspective. Students, being parties to the conflict, can decide about the manner to correct the situation, and the initiative for conflict resolution and responsibility for implementing the agreed solution lies in the hands of the parties.

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<sup>805</sup> ZEW.441.488.2016.KD, ZEW.442.4.2016.KD

Apart from education, the task of the school is to prepare a young man for the full participation in the life of the group. School is a place, where people from different family and social backgrounds meet, or more often people from different national cultures, brought up in varied outlook on life. Meaningful conflict resolution stimulates development of social abilities, which prepare student to live in a democratic rule of law. It also gives a new quality of school by strengthening subjectivity and human dignity, as well as respect for other human, improving the culture of dialog and joint responsibility for creating the atmosphere at school.

Mediation, both peer and school, brings direct, individual benefits for their receivers and the indirect benefits at the level of changes in school institution, influence on culture of conflict handling and positive relations between teachers and other employees of school, students and parents in a situation of conflict.

- **Cooperation with the Parliament of Poland**

The Ombudsman for Children has participated in sessions of the Sejm and Senate of the Republic of Poland numerous times, as well as in sessions, among other, of Commissions for Education, Science and Youth, Internal Affairs, Local Self-government and Regional Policy, Public Finances, Social Policy and Family, Justice and Human Rights, Health, Legislation and other Parliamentary Commissions and Sub-commissions. The cooperation with the Parliament of Poland involved particularly the participation in parliamentary works on the drafts of legislative acts. The Ombudsman participated also in sessions of particular parliamentary groups numerous times.

- **Within the cooperation with authorities and national institutions, the Ombudsman for Children took part in consultations of the following drafts of legislative acts and documents:**

- 1) Draft Act amending the Act – Teacher’s Charter<sup>806</sup>,
- 2) Draft Act implementing provisions – Law on education<sup>807</sup>,
- 3) Draft Education System Act<sup>808</sup>,
- 4) Draft Act on State assistance in raising children<sup>809</sup>,

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<sup>806</sup> ZEW.400.1.2016.JF

<sup>807</sup> ZEW.400.37.2016.JF

<sup>808</sup> ZEW.400.37.2016.JF

<sup>809</sup> ZSS.400.5.2016.JW

- 5) Draft Act amending the Act – Family and Guardianship Code<sup>810</sup>,
- 6) Draft Act amending the Act – Penal Code and the Act on procedures with minors<sup>811</sup>,
- 7) Draft Act amending the Act on entitlements to concessionary travel with public means of transport and several other acts<sup>812</sup>,
- 8) Draft Act amending the Act on foreigners and several other acts<sup>813</sup>,
- 9) Draft Act on preventing risks of sexual crimes (Sejm paper no. 189)<sup>814</sup>,
- 10) Draft Act amending the Act on National Court Register and several other acts<sup>815</sup>,
- 11) Draft Act of the Council of Ministers on Governmental aid programme for children and youth in the form of special assistance grant for educational purposes, assistance for students in the form of therapy and educational trips and caring, therapy and educational activities in 2016.<sup>816</sup>,
- 12) Draft Statement of the Republic of Poland on the execution of the Convention against Discrimination in Education in 2012-2015<sup>817</sup>,
- 13) Draft Regulation of the Minister of National Education on leisure of children and youth<sup>818</sup>,
- 14) Draft Regulation of the Ministry of Health amending the Regulation on mandatory protective vaccinations<sup>819</sup>,
- 15) Draft regulation of the Ministry of National Education on detailed investigation and disciplinary procedure for teachers and resuming disciplinary procedure<sup>820</sup>,

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<sup>810</sup> ZSS.400.8.2016.JW

<sup>811</sup> The opinion of the Ombudsman for Children was presented during parliamentary works

<sup>812</sup> ZSS.400.24.2016.KT

<sup>813</sup> ZSM.422.12.2016.AC

<sup>814</sup> ZSR.442.13.2016.MK

<sup>815</sup> ZSS.400.2.2016.MW

<sup>816</sup> ZEW.400.6.2016.ES

<sup>817</sup> ZEW.400.20.2016.JR

<sup>818</sup> ZEW.400.2.2016.AS

<sup>819</sup> ZSS.400.6.2016.KT

<sup>820</sup> ZEW.400.3.2016.JF

- 16) Draft regulation 2201/2003 on jurisdiction, the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility, repealing Regulation (EC) No. 1347/2000<sup>821</sup>,
- 17) Draft Regulation of the Ministry of National Education amending the Regulation on the core curriculum for kindergartens and general education in various types of schools<sup>822</sup>,
- 18) Draft Regulation of the Ministry of National Education amending the Regulation on detailed qualifications required from teachers, and determination of schools and cases in which it is possible to employ a teacher who has no university education or has not completed teachers' education department<sup>823</sup>,
- 19) Draft Regulation of the Council of Ministers on detailed conditions of assistance for children and youth in the form of special assistance grant for educational purposes, assistance for students in the form of therapy and educational trips and caring, therapy and educational activities in 2016<sup>824</sup>,
- 20) Draft Regulation of the Minister of National Education amending the regulation on detailed conditions and assessment manner, qualification and promotion of students and auditors in public schools<sup>825</sup>,
- 21) Draft Regulation of the Ministry of National Education amending the Regulation on the organization of school year<sup>826</sup>,
- 22) Draft Regulation of the Minister of National Education on teacher in-service training institutions<sup>827</sup>,
- 23) Draft Regulation amending the Regulation of the Minister of National Education on the proceedings for the recognition of a certificate or other document or confirmation of the educational qualifications or the entitlement to continue education, acquired in a foreign education system<sup>828</sup>,

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<sup>821</sup> ZSM.422.9.2016.AD

<sup>822</sup> ZEW.400.4.2016.MP

<sup>823</sup> ZEW.400.5.2016.JR

<sup>824</sup> ZEW.400.6.2016.AS

<sup>825</sup> ZEW.400.7.2016.JBR

<sup>826</sup> ZEW.400.8.2016.ES

<sup>827</sup> ZEW.400.9.2016.ES

<sup>828</sup> ZEW.400.10.2016.ES

- 24) Draft Regulation of the Minister of National Education on application form for obtaining information from central register of teacher disciplinary decisions<sup>829</sup>,
- 25) Draft Regulation of the Minister of National Education on Examination Arbitration Council<sup>830</sup>,
- 26) Draft Regulation of the Minister of National Education on remuneration for heads of disciplinary commissions and their deputies, heads of adjudicating panels and disciplinary commissioners and their deputies, and the amount of remuneration for public defenders<sup>831</sup>,
- 27) Draft Regulation of the Minister of National Education amending the Regulation on competition for a post of Director of the Central Examination Board and the Director of Regional Examination Board<sup>832</sup>,
- 28) Draft Regulation of the Ministry of National Education amending the Regulation on the framework of training programme of candidates for examiners, manner of conducting register of examiners and the procedure for entering and removal of examiners from the register<sup>833</sup>,
- 29) Draft Regulation of the Ministry of National Education on educating persons who are not citizens of Poland and Polish citizens who attended schools of foreign educational systems<sup>834</sup>,
- 30) Draft Regulation of the Minister of National Education on recruitment procedure and additional procedure to public nurseries, schools and facilities<sup>835</sup>,
- 31) Draft Regulation of the Minister of National Education amending the Regulation on remuneration for examiners for participating in test and examination procedure and for academic teachers for oral maturity examination<sup>836</sup>,

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<sup>829</sup> ZEW.400.11.2016.JF

<sup>830</sup> ZEW.400.12.2016.JF

<sup>831</sup> ZEW.400.13.2016.JF

<sup>832</sup> ZEW.400.14.2016.JBR

<sup>833</sup> ZEW.400.15.2016.JBR

<sup>834</sup> ZEW.400.16.2016.ES

<sup>835</sup> ZEW.400.17.2016.ES

<sup>836</sup> ZEW.400.19.2016.JF

- 32) Draft Regulation of the Minister of National Education on criteria and procedure of assessment of teacher work, appeal procedure and representation and procedure for appointing assessment group<sup>837</sup>,
- 33) Draft Regulation of the Minister of National Education on adaptation training and competence test within applying for recognition of qualifications for practicing a profession of teacher<sup>838</sup>,
- 34) Draft Regulation of the Minister of National Education on terms and conditions of competition for school superintendent and the work procedure of competition council<sup>839</sup>,
- 35) Draft Regulation of the Minister of National Education on certificates, national diplomas and other school documents<sup>840</sup>,
- 36) Draft Regulation of the Ministry of National Education amending the Regulation on the organization of regional education authorities and principles for creating regional offices<sup>841</sup>,
- 37) Draft Regulation of the Ministry of National Education amending the Regulation on keeping documentation of educational process, educational and caring activities by kindergartens, schools and facilities, and types of the documentation<sup>842</sup>,
- 38) Draft Regulation of the Minister of Health on types, scope and templates of medical documentation, and the manner of its processing<sup>843</sup>,
- 39) Draft Regulation of the Minister of Health on the groups of food products intended for selling in children and youth educational facilities and requirements which must be met for mass catering for children and youth in these facilities<sup>844</sup>,
- 40) Draft Regulation of the Minister of Health on the manner of collecting genetic material and conditions and procedures for its storage<sup>845</sup>,

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<sup>837</sup> ZEW.400.22.2016.JBR

<sup>838</sup> ZEW.400.23.2016.ES

<sup>839</sup> ZEW.400.24.2016.ES

<sup>840</sup> ZEW.400.25.2016.ES

<sup>841</sup> ZEW.400.26.2016.JF

<sup>842</sup> ZEW.420.8.2016.MP

<sup>843</sup> ZSS.400.1.2016.KT

<sup>844</sup> ZSS.400.10.2016.KT

<sup>845</sup> ZSS.400.25.2016.KT

- 41) Draft Regulation of the Ministry of Justice on the amount and detailed principles of determination of minor proceedings costs<sup>846</sup>,
- 42) Draft Regulation of the Council of Ministers on the National Programme on Mental Health Protection<sup>847</sup>,
- 43) Draft Regulation of the Ministry of Justice amending the Regulation on juvenile detention centres and juvenile shelters<sup>848</sup>,
- 44) Draft Regulation of the Ministry of Health amending the Regulation on detailed principles of referring, accepting, transferring, releasing and staying of minors in public healthcare institutions<sup>849</sup>,
- 45) Draft Regulation of the President of the National Health Protection Fund amending the Regulation on determining conditions for signing and executing agreements for dental surgery<sup>850</sup>,
- 46) Draft of the Parliamentary Group on children's rights to both parents within changes of family law and care law, the civil code, the penal code, the Act on court guardians, the Act on assistance for persons entitled to maintenance, the Civil Code Act and the Act on opinion-giving group of court specialists<sup>851</sup>.

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<sup>846</sup> ZSR.442.6.2016.MK

<sup>847</sup> ZSS.400.21.2016.KT

<sup>848</sup> ZSR.442.22.2016.MK

<sup>849</sup> ZSS.400.3.2016.KT

<sup>850</sup> ZSS.400.13.2016.EK

<sup>851</sup> ZSR.442.13.2016.MK

## VI. PROMOTION OF CHILDREN'S RIGHTS

The Ombudsman for Children, in realizing his statutory obligation to promote the rights of the child, initiated and participated in events meant for raising the awareness and better understanding of the rights of the youngest citizens. The activity was targeted both at children and adults. The crucial part of undertaken activity was the cooperation with NGOs and social advisers of the Ombudsman for Children who, on his behalf, met children and adults all over the country.

### 1. CURRENT ACTIVITY

#### 1.1. Meetings

The Ombudsman for Children held meetings with children at schools, in kindergartens, hospitals, after-school day care clubs, local culture centres, recreation centres and residential institutions within the whole territory of Poland. Organized groups also visited the Ombudsman in his Office. Each meeting was devoted to dissemination of knowledge on children's rights, general discussions and discussions over individual cases reported by children.

In general, about seventy thousand children participated in meetings held by the Ombudsman in 2016.

Meetings in the Ombudsman's Office took the form of workshops run by teams of psychologists of the Team for Child Help Line and Petitioner Service. Each workshop was concluded by a discussion during which the children reported issues that bothered them and obtained information how to manage in difficult situations. In the end, each child received a set of materials with information on the rights of the child and the Child Helpline of the Ombudsman for Children.

In his activity connected with child's rights promotion the Ombudsman for Children met also students who intended to work with children on an everyday basis. He visited universities i.a. in: Chełm, Gdańsk, Cracow, Wrocław, Legnica, Warsaw and Szczecin.



During his meetings with students and employees of universities, the Ombudsman for Children put special emphasis on the necessity to undertake measures for prevention of any forms of violence against children and the need for immediate reaction to harm done the youngest, both physical and mental. Each of those meetings was concluded with a substantive, lively discussion on the rights of the child in Poland concerning theoretical and practical aspects supportive in future professional activity of the students.

## 1.2. Occasional letters

The Ombudsman for Children addressed the following occasional letters in 2016:

- ▶ to Children and Youth on the occasion of winter holidays (13 January),
- ▶ To the Scouts on the occasion of the Day of Brotherhood (22 February),
- ▶ to Students of 6th grades of primary schools, in connection with the test concluding their education in primary school (23 March),
- ▶ to Students of 3rd grades of lower secondary schools in connection with the lower secondary school test (12 April),
- ▶ to Foster Parents on the occasion of Foster Parenting Day (30 May)
- ▶ to Parents, Caregivers and Tutors on the occasion of the International Day of the Child (31 May),
- ▶ to Students on the occasion of end of the 2015/2016 school year (21 June),
- ▶ to Students on the occasion of beginning of the 2016/2017 school year (29 August),
- ▶ on the occasion of the Nationwide Day of the Pre-school Pupil (8 September),
- ▶ on the occasion of the World's Day of the Order of Smile (17 September),
- ▶ to Teachers, Tutors and Education System Employees on the occasion of the Day of National Education (7 October),
- ▶ To Kindergarten and School Managers, Educators and Teachers in connection with the All-Polish Day of the Rights of the Child (20 October),
- ▶ To Children on the occasion of the All-Polish Day of the Rights of the Child (15 November),
- ▶ to Social Service Workers on the occasion of the Day of Social Service Worker (18 November),
- ▶ to Volunteers on the occasion of the International Volunteer's Day (5 December),
- ▶ to Adults celebrating the New Year's Eve (30 December).

### 1.3. Honorary Badge for the Merit for Protection of the Rights of the Child

The Ombudsman for Children again awarded persons and institutions with the Honorary Badge for the Merit for Protection of the Rights of the Child INFANTIS DIGNITATIS DEFENSORI established<sup>852</sup> by the President of the Republic of Poland. In 2016, 66 persons and institutions were distinguished.

### 1.4. Social Advisory Council of the Ombudsman for Children

Similarly as in previous years, the Social Advisory Council of the Ombudsman for Children continued its work. It is composed of, i.a., representatives of academic, medical, legal, artistic circles and NGOs, the Police and other persons actively engaged in activity for improvement of the quality of life of children in Poland.

The task appointed to its members is to support the Ombudsman for Children in all fields of his activity, according to its skills and competences. The Council undertakes measures mainly for the purpose to upgrade the level of child's rights observance in Poland and to provide widely interpreted education in that field. The Council Members, through meetings with children and adults all over the country promoted the rights of the child. Authorised by the Ombudsman for Children they also undertook monitoring activity and intervened in individual cases.

Personal compositions of the Social Advisory Council is attached as Appendix no. 10 to this Report.

## 2. EVENTS:

### 2.1. Best games connected with rights of the child

On 28 January 2016 the Ombudsman for Children adjudicated the competition for best board game connected with children's rights. A couple of tens works entered the competition. The games were designed both by children and by adults who appeared to be creative and artistically skilled. The Jury assessed

<sup>852</sup> Dz. U., Journal of Laws of 2013, Item 333.

the works in the following criteria: the choice of subject, the subject matter value, realisation and manufacturing options, general impression and playability.

The first prize was awarded to the team of: Marta Grabowska, Katarzyna Wolfigiel and Antoni Łuchniak; II prize: Ewa Jakaczyńska and Piotr Siłka, III prize – to Adam Kwapiński.

Also computer games were among those submitted for the competition. After a consultation the jury abandoned awarding them. Yet it decided to distinguish the work of Piotr Zatwarnicki.

The award ceremony took place on 22 February. The meeting the authors of games was an opportunity to test the works in terms of their playability.

## **2.2. The Week of Support for Persons Harmed with Crime**

As usually, the Ombudsman for Children participated in Victims of Crime Assistance Week (22-27 of February), organized by the Ministry of Justice. A lawyer and a psychologist were on additional duty in the Office of the Ombudsman for Children throughout the week. Free advisory of specialists from the Office of the Ombudsman for Children was provided directly and at the phone number 800 12 12 12 (Children Helpline of the Ombudsman for Children).

## **2.3. Forum „Smart promotion – presentation of social activities”**

On 15 of March 2016 the Ombudsman for Children participated in the Forum „Smart promotion – presentation of social activities”, organized by Polish Children and Youth Foundation. During the event, the representatives of non-governmental organizations from all over the country discussed various aspects related to promotion of social activities addressed to children and youth. The topics of workshops included, among others, designing visual identification, planning of events or local cooperation.

## **2.4. First anniversary of Polish Radio for Children**

On 31 of March 2016, the Ombudsman for Children hosted the special first anniversary concert of Polish Radio for Children. The event in the Witold Lutosławski Concert Studio of Polish Radio was attended by several hundred of

kindergarteners accompanied by their guardians. The concert was organized by the Polish Radio for Children with Jedyńska Radio Station.

The Ombudsman called on creating radio channel dedicated to children a few years ago. Polish Radio for Children was launched on the 1 of April 2015. Educational and entertainment programmes were broadcasted, as well as programmes which broaden knowledge of the youngest and promote creativity.

## 2.5. 5th Anniversary of PaT Group in Góra Kalwaria

The Ombudsman for Children participated in the 5th Anniversary of PaT group in Góra Kalwaria on the 2 of April. PaT is a part of vital peer preventive programme which effectively promotes a trend for non-violent and addiction free life.

## 2.6. "Moc bez Premocy" ("Force without forcing")

Winners of the competition "Force without forcing", organized by Child and Family Foundation and po DRUGIE Foundation, were determined on the 8 April 2016 in the Office of the Ombudsman for Children. It was held in the framework of the campaign "19 days against violence and harming of children and youth", under the honourable patronage of the Ombudsman for Children. The competition was intended for children above 11, and involved preparation of literary work on peer violence.

## 2.7. Lecture at the Children's University

On 7 May 2016, the Ombudsman for Children held a lecture titled "Children's rights in Poland and in the world" for students of the Children's University in Wrocław. During his speech he responded to the following questions: what are the children's rights, why aren't children's rights observed equally in all parts of the world, what is the Convention on the rights of the child and what are the duties of the Ombudsman for Children.

300 students of the Children's University Foundation at the age 10-11 years attended the lecture. This is the first and the largest non-profit children's university in Poland.

## 2.8. Conclusion of competition "Ośmiu Wspaniałych"

On 19 May 2016 the Ombudsman for Children participated in XXIII Capital Gala of Self-governmental Competition for Teenagers "Ośmiu Wspaniałych". The initiative aims at promoting positive, pro-social attitudes and actions of youth for the close vicinity: peer group, neighbors, real estate, school, class, and popularizing positive behaviors on daily basis, as antidote to aggression and brutality of life. Competition is addressed to young people who stand out for impeccable attitude in daily life, such as effectiveness of social, exemplary action, impeccable manner, without addictions, empathy and kindness. It is organized in 85 towns in the whole Poland.

Prizewinners were presented during Gala, but participants of the educational project Kluby Ośmiu (Ósemeczki) prepared by „Świat na TAK” Foundation and directors and educators were appreciated as well.

## 2.9. XXII session of Children and Youth Parliament

On the 1 of June 2016 the Ombudsman for Children participated in the XXII session of the Children and Youth Parliament. The leitmotiv was sites of national memory. The youth from all over the country adopted a resolution on sites of national memory by majority of vote – material evidence of events which are vital for local and national identity. Members of parliament undertook hereby to take actions aiming at promoting knowledge on these sites, to promote them and improve interest in the objects of historical value among local community.

During his speech the Ombudsman pointed out that it is necessary to respect children's rights to express their opinion. He added that 1 of June is a good opportunity for children's voice to be heard and understood.

460 young members of parliament took part in the session and discussed the adopted resolutions. Parliamentary meeting of youth in Warsaw was attended by children who executed recruitment task with positive result.

Children and Youth Parliament meets once a year on 1 of June (International Children's Day). Poland was the first country in Europe to organize such event. Young members of parliament selected in the competition for pupils of elementary and secondary schools met in the parliament earlier – in 1994 on the

initiative of Chancellery of the Sejm and the Janina Ochojska, president of Polish Humanitarian Action. Similar events are organized in Portugal, France, the Great Britain, Finland and the Czech Republic nowadays.

## 2.10. The final of "Twoje dane – Twoja sprawa" („Your data – your problem”) programme

On the 7th of June 2016, the Ombudsman for Children participated in the seminary summarizing the VI edition of „Your data – your problem” programme. The main objective of the programme, organized since 2011 by the Inspector General for Personal Data Protection under the honorable patronage of the Ombudsman for Children, is to promote the most interesting initiatives aiming at popularizing the knowledge on the protection of personal data and right to privacy among students and teachers.

In his speech, the Ombudsman for Children highlighted that the right to privacy is one of the most fundamental human rights, including children. Education within the protection of privacy and personal data prevents tragedies caused by improper or unaware use of Internet.

Jury decided that the best educational initiative during VI edition of the Programme is educational board game “Your data – your problem”, invented by students of Jan Karski Public Secondary School no. 18 in Łódź. The Ombudsman for Children awarded laureates with in-kind prizes.

## 2.11. School and Peer Mediation Academy

First summer edition of the School and Peer Mediation Academy was held on 29-30 June 2016 in Mosty near Gdynia. During the meeting with children and youth, the Ombudsman for Children argued that mediations allow for resolving conflicts between people or institutions, and for interacting on equal rights so they can be seen as a binding material of human rights.

School and Peer Mediation Academy is a joint undertaking of the Centre of Legal Education of National Council of Legal Advisers and School and Peer Mediation Centre in Gdańsk. Teachers and students of schools in Gniezno, Ostrów Wielkopolski, Poznań and Gdańsk are participants of the Academy. Entities established cooperation in 2015 to create systemic frames for school and peer mediation in Poland. Popularization of mediation involves cyclic activities such

as: summer and winter School and Peer Mediation Academy and yearly training for teachers and students.

First summer edition of the Academy was a great opportunity to exchange experiences about outlook on mediation from the point of view student – teacher (resolution of conflicts in school environment) and children – adults.

## 2.12. World FAS Day

On 9 September 2016, the Ombudsman for Children participated in the World Fas Day in Gdańsk, organized by Fundacja na Rzecz Dzieci i Rodziny Fascynacje and Special Education School Complex No. 1 in Gdańsk.

The Ombudsman supported this initiative yet again. This time he appealed to pregnant woman for being responsible and to restrain from drinking alcohol.

Kites released over the Mołtawa river symbolized this day in Gdańsk. They personified children with fetal alcohol syndrome FAS who can “fly high” when given appropriate support. The organizers want to break stereotype that children with FAS syndrome are born only in families with alcohol problem.

One of the attractions for participants of the Day were stands for future mothers who could ask questions related to pregnancy.

The Ombudsman for Children addressed the following ministries regarding protection of health and life of unborn child: Ministry of Justice, Health, and Family, Labor and Social Policy to take measures aiming at protection of broadly defined child welfare posed to risk of irresponsible behavior of mothers.

## 2.13. Agreement of the Ombudsman for Children and the Inspector General for Personal Data Protection

The Ombudsman for Children and the Inspector General for Personal Data Protection signed official agreement on cooperation for better personal data protection, in particular data of children. The agreement was concluded during joint training conference titled “Observance of children’s and students’ rights in school practice” held on 12-13 October 2016.

More information on cooperation within the agreement of the Ombudsman for Children and Inspector General for Personal Data Protection can be found in chapter Cooperation with authorities and state institutions

## 2.14. Monitoring of social acceptance for violence as educational tool among the Poles

On 14 November 2016, the conference in the Office of the Ombudsman for Children was held, during which the most recent data on the monitoring of social acceptance for violence as an educational tool among the Poles were presented. The report of 2016 shows that 46% of Poles accepts slapping of children, and every sixth claims that so called beating is not harmful for children. During the conference the Ombudsman for Children reminded that reducing violence against children is his priority.

In 2011 69% of survey participants finds that slapping is nothing wrong, 18% of them are staunch supporters of the method. Nowadays the number decreased significantly – 46% and 12% respectively. However, the percentage of parents who accept beating decreased from 36% to 17%.

Appendix no. 11 to this information is an extract from the report.

## 2.15. “Children’s rights in social aspects”

On 15 November 2016, the Ombudsman for Children, the Cardinal Stefan Wyszyński University in Warsaw and Inspector General for Personal Data Protection initiated the cycle of nationwide scientific conferences titled “Children’s rights in social aspects”. The first event in the framework of the cycle was focused on the issue of the children’s rights in family and in educational centres.

The organizers declared that they will pay attention to children’s rights in various social aspects during the conferences so employees of all institutions working for children or with children can participate.

## 2.16. Dziecko swoje prawa ma – release of an important book

On 26 November 2016 the Ombudsman for Children took part in book release Dziecko swoje prawa ma written by Dorota Zawadzka, psychologist and Social Advisor of the Ombudsman. Pages of the book contain historical overview of



the children's rights and approachable report of the most important children's rights. The author introduced children and children's rights experts to discussion. The publishing remains the most essential thoughts of Janusz Korczak, list of books recommended for children and parents, as well as discussion of social campaign organized by the Ombudsman for Children. The book was launched under the honorary patronage of the Ombudsman for Children.

## 2.17. Polish Children's Rights Day 2016

### • Celebrations in Brzeg

Celebrations of Polish Children's Rights Day in 2016 were held in Brzeg in the Opolskie voivodeship. The town became the winner of the competition organized by the Ombudsman for Children.

On 7 November 2014 the Sejm of the Republic of Poland, upon the request of the Ombudsman for Children, adopted the resolution on establishing Polish Children's Rights Day (20 November). The members of Sejm agreed that Polish calendar of holidays should contain a day, on which a louder voice should be heard on rights of children, recalling they are inalienable and must be always observed.

The celebrations commenced on 14 November with the workshop meeting with parents of pre-school children carried out by Dorota Zawadzka and art workshops with Edward Lutczyn for elementary school children.

The following events took place on next days: scientific session for secondary school children which hosted the Ombudsman for Children and Anna Maria Wesołowska, a judge; author session with Anna Czerwińska-Rydel in Public Municipal Library for Children, as well as workshop meetings for parents of children aged 0-3 and teachers. Youth debate "My rights" was held in the town hall in Brzeg. Moreover, on 15 and 18 of November legal advisory on children's rights was provided in the Ceiling Room of the town hall in Brzeg.

On Thursday, 17 of November, the performance *Był taki dom* was presented by children, youth and adults from the Culture Centre in Brzeg and the School Complex no. 2 with integrated classes, in the Culture Centre in Brzeg. After the performance the open meeting with the Ombudsman for Children took place.

On Friday 18 of November a satisfactory attempt to break world record in group singing of a song on children's rights was made at the Polonia Amerykańska

Square. The song titled Dziećmi jesteśmy tylko raz was sung together by 2800 people.

Priest Prof. Adam Solak, Social Advisor of the Ombudsman for Children, lecturer at Maria Grzegorzewska Academy of Special Education in Warsaw highlighted during the Sunday homily the importance of children's rights and appealed to bring up children without violence. At 10 a.m. city game "Ambassadors of the Children's Rights" commenced in the Ceiling Room Of the town hall in Brzeg. The final took place in Freedom Park, along with unveiling of "The Korczak's Bench" with quotes of the Old Doctor written on it.

In the afternoon, Majka Jezowska played the concert on the Grand Stage of the Culture Centre in Brzeg, and the commemorative plate was located on the facade of the building was unveiled. To memorize the Polish Children's Rights Day 2016, the town of Brzeg was named Children's Rights Friendly Town. In the afternoon, grand celebration summarizing the celebrations of the Polish Children's Rights Day took place and the preventive performance Secret by youth from Brzeg was firstly shown in Brzeg.

- **Celebrations throughout Poland**

The competition on the local celebration of the Polish Children's Rights Day attracted several hundred applications with detailed descriptions of initiatives, photo reports and links to websites where the events were described.

Centres participating in the competition informed about organized debates, school academies and competitions dedicated to children's rights. The youngest played the roles of journalists, actors, directors, or even judges. The young people reached the outside of school walls with their message. Many demonstrations, marches and happenings took place. There was also time dedicated to the legacy of Janusz Korczak and thoughts on the Convention on the rights of the child. Similarly to last year, it was difficult to choose one winner. The Ombudsman for Children decided to give diplomas to 32 centres which had sent the most interesting reports.

## **2.18. 15th Anniversary of the Ombudsman for Children and 35th Anniversary of the Committee for Protection of Children's Rights**

The main point of the 15th anniversary of establishing the institution of the Ombudsman for Children and the Committee for Protection of Children's Rights

was the conference “The children’s rights in theory and practice” held in Janusz Korczak Lecture Hall in Maria Grzegorzewska Academy of Special Education in Warsaw. It gathered specialist dealing professionally with issues related to the children’s rights protection and the legacy of Janusz Korczak. The following persons participated in the plenary session: Marek Michalak, the Ombudsman for Children, Mirosława Kątna, the Chairman of the National Committee for the Protection of Children’s Right, Prof. Barbara Smolińska-Theiss, Ph.D. and Prof. Ewa Jarosz. The following persons took the floor: priest Prof. Adam Solak, Prof. Agnieszka Gmitrowicz MD, Ph.D., Beata Sobocińska – Director of Education and Upbringing Group in the Office of the Ombudsman for Children, Patrycja Kurowska-Kowalczyk, on behalf of the Committee for Protection of Children’s Rights, sexology, psychotherapist, and Karolina Budzik, psychologist, psychotherapist, sexology.

The Anniversary Gala took place on 29 of November in 6th Floor Theatre in Warsaw. The Ombudsman for Children and the Chairman of the National Committee for the Protection of Children’s Right summerized the years of their operation to the benefit of children in Poland, reminded the most crucial achievements of both institutions and the profiles of the most important persons. Many people who value a child at the highest took part in the Gala, including Prof. Jadwiga Bińczycka, representatives of constitutional bodies (among others Supreme Audit Office, the Inspector General for Personal Data Protection, Central Statistical Office), members of Sejm and Senate, representatives of self-governments, distinguished scientists, social advisors of the Ombudsman for Children, Smile Orders Knights, the Korczak people, members of local offices of the Committee for Protection of Children’s Rights

## 2.19. The competition of the Ombudsman for Children for dissertation

In 2016, as in previous years, the Ombudsman for Children announced the competition for master and doctoral thesis on the children’s rights. It was the 7th edition of the competition.

The received works were assessed by the Competition Committee composed of Prof. Barbara Smolińska-Theiss (Chairman), Prof. Ewa Jarosz, Prof. Marek Konopczyński, Prof. Leszek Stadniczenko, priest Prof. Adam Solak, Pawel Jaros PhD, Agnieszka Rękas, judge. After acquainting with the presented works, none of them was recommended to the Ombudsman for Children for the prize.

### 3. SOCIAL CAMPAIGNS

In 2016 the Ombudsman for Children continued his two awareness raising campaigns.

In February and June, an advertisement of Child Help Line was shown in the cinemas of Cinemacity and Multikino. The campaign was addressed to the general public and its objective was to promote the help line and turn public attention to the fact that nobody can violate the rights of children guaranteed under the Convention on the Rights of the Child and, last but not least, to make the youngest aware of sources of support they can address if they have a problem. It reached more than 320,000 viewers.

Then in December the billboards and posters of the campaign "React. You've Got the Right" were reminded, as they appeared in many regions in Poland, altogether in 328 places on large format boards and public transport advertising media. The campaign initiated by the Ombudsman for Children in 2013 "React. You've got the right", aims to change passive attitudes towards act of hurting children and decreasing social acceptance of using violence.

### 4. EVENTS UNDER HONORARY PATRONAGE OF THE OMBUDSMAN FOR CHILDREN

The Ombudsman for Children took 275 events under his patronage in 2016. The events were realized by i.a. NGOs, scientific facilities and public authority bodies. When granting a patronage, the Ombudsman for Children was particularly motivated by the criterion of promotion of the child's rights and activities resulting in improvement of the child's rights observance in Poland.

The list of events under the honorary patronage of the Ombudsman for Children is attached thereto as Appendix no. 7

## 5. COOPERATION WITH NON-GOVERNMENTAL ORGANIZATIONS

### 5.1. Cooperation with the Great Orchestra of Christmas Charity

It was already a tradition for the Ombudsman for Children to support the action of the Great Orchestra of Christmas Charity, he gave the undersigned copy of Janusz Korczak caricature and a pen with official name of the Ombudsman for Children engraved on it for auction. During the 24th Final in Polish Television studio, he met a 9-year old boy named Bartek, who saved his mum, as he called 112 and gave all the details for the medical service to come and help her.

Both WOŚP and the Ombudsman for Children many times pointed out the need to extend the curriculum of general education schedule for primary schools with the information on first aid, also with respect to education in grades I-III. First aid classes in primary schools, lower and upper secondary schools should be given the rank of educational classes.

### 5.2. With Fundacja Pokolenia Foundation and the Foundation Centre for Social Research and Analysis about the rights of the child

On 06 May 2016 a report on the study “Monitoring praw uczniowskich w szkołach obszaru nadwiślańskiego” [“Report on the rights of students of schools in the Vistula region”] was presented in the Office of the Ombudsman for Children. The report developed by the Fundacja Pokolenia Foundation and the Foundation Centre for Social Research and Analysis was the effect of half-year comprehensive research on the rights of students in schools of the Vistula region, conducted under the honorary patronage of the Ombudsman for Children. The authors were guided by the need to develop a multidimensional diagnosis of how the rights of students were respected in lower, upper secondary schools, and other schools of the poviats: tczewski, nowodworski, malborski, starogardzki, kwidzyński and sztumski. Students, teachers, administration workers, parents and even office workers took part in it.

It revealed that Polish students suffer from three types of deficiencies: (1) they are not free to express their personality, emotions and views; (2) they do not feel “noticed” by the adults at school (the school focuses on results, not the

developmental process); (3) they do not feel part of the school community, authentic relations are missing and so is the process of building a community.

The report points also out such issues like: ineffectiveness of school rules and regulations; contextual nature of education on the rights of students or barriers in the process of democratisation of school relations.

### 5.3. With NGOs at the Dolnośląski Congress of Citizenship

On 16 May 2016 the Ombudsman participated in the second Dolnośląski Congress of Citizenship which was held in Krzyżowa near Świdnica. The participants of discussion panels debated about why and how to involve young people to act for citizenship (the panel was led by the Ombudsman for Children with young people from Głogów and Świdnica), and whether public administration really wanted to collaborate with NGOs and they talked about local development supported by local community.

In his address the Ombudsman stressed that the non-profit sector did great job and great work, often doing things for the state institutions and being the drive for all fields of life. He said that NGOs needed support and the sense that they did have a voice in public space. He also expressed his satisfaction with involvement of young people in the work of NGOs.

The organiser of the Congress was the Dolnośląska Federacja Organizacji Pozarządowych with 33 associations, foundations and local self-governments.

### 5.4. With the Koalicja na rzecz Rodzinnej Opieki Zastępczej [Coalition for Family Foster Care] about the deinstitutionalisation of care of children

On 22 June 2016, the Ombudsman for Children took part in the 4th Congress of Foster Parenting "Dziecko jest najważniejsze" ["The child is most important"]. During the congress, many things were said about de-institutionalisation of care of children, building attachment in foster families, psychological support for children in foster care of the daily work of foster families. Placement of children in foster care was discussed from the point of view of judges, and tasks appointed to NGOs were presented. And local good practices were shown also in that field.

The Congress was organised – as every year – by the coalition Koalicja na rzecz Rodzinnej Opieki Zastępczej.

### 5.5. With Caritas against poverty

On 29 August 2016 the Ombudsman for Children took part in the ceremonial finale that summarised the 8th edition of the action “Tornister Pełen Uśmiechów” [“A backpack full of smiles”], organised by Caritas, under his honorary patronage. The event took place at the Plac Teatralny near the Centrum Spotkania Kultur in Lublin. Animations, magicians’ shows, performances of choirs, and the concert of the only rap-performing priest in Poland – Jakub Bartzak – those are only some of the attractions which accompanied the key point of the programme – awarding the student’s school sets. Similarly as in previous years, they were prepared by the Ombudsman for Children. They were given to: Ania (14), Marysia (12), Kacper (9), Aleksander (7) and Bartek (8). Their backpacks received the most needed school items: exercise books, sketching blocks, drawing pencils, pencils, markers or rulers. The children received also educational publications related the protection of the rights of the child, including books; *Moje prawa, ważna sprawa, Mam prawo i nie zawaham się go użyć* and *Dzieciaki z ulicy Tulipanowej*.

### 5.6. With the Empowering Children Foundation about the fighting violence inflicted against children

On 24 October 2016 the 13th Conference Ogólnopolska Konferencja Pomoc Dzieciom – Ofiarom Przystępst [All-Polish Conference of Supporting Children – Victims of Violence] took place in Warsaw. On the first day, a couple of hundreds of professionals from all over the world who face the problem of child violence in their everyday work, met with the Ombudsman for Children, who was the honorary patron of the event.

The All-Polish Conference has been organised by the Empowering Children Foundation since 2004 in cooperation with the Ministry of Justice and the Office of the Municipal City of Warsaw.

The leading motive of the meetings was support for children who had suffered various forms of violence and abuse and protection of rights of those children who participate in legal proceedings.

The Ombudsman for Children, when speaking of the drafted act of more severe penalties for crimes against the youngest, reminded the result of the study on Polish attitudes towards beating children and called for ratification of the 3rd Optional Protocol to the Convention on the Rights of the Child on communications procedure.

During the 13th edition of the Conference, national and foreign experts presented their model solutions of preventing crimes against children and the newest empirical and theoretical findings regarding the problem of harming children. Also projects and initiatives were presented with respect to practical support for child victims of crimes and for their families and professional publications in that field. The programme included plenary sessions, lectures and workshops in smaller groups of people.

## 6. PUBLICATIONS

The library of the Ombudsman for Children published the following titles in 2016:

- **Ochrona rozwoju dziecka przed zagrożeniami [Protecting the developing child against dangers] by Marzena Czaja**

It is the publication of the paper awarded in the 5th edition of the competition of the Ombudsman for Children for the best master's thesis on the rights of the child. It analyses and synthesises the legal state of affairs – both the international standards of child rights protection and the domestic system that serves that purpose. It also shows the way to adjust the Polish legal system to the requirements of the European Union and their influence on our legal system.

- **Ochrona praw dziecka w sytuacjach nadzwyczajnych [Protecting the rights of the child in extraordinary circumstances] by Małgorzata Andrzejczyk-Świątek**

It is the publication of the paper awarded in the 6th edition of the competition of the Ombudsman for Children for the best doctoral thesis on the rights of the child. It focuses on very important and very difficult, from the social point of view, issues connected with “suspension” of the rights of the child in extraordinary circumstances. In this way it extends the catalogue of publications on protecting the rights of children with a study of derogation of human rights obligations. More importantly, it does not limit to only armed conflict but refers also to other situations that bear all the hallmarks of the premises of the no-



tions used by derogation clauses: “War and other public threats that endanger the life of the nation”. The author has analysed the world law and European law in this context and provided detailed analyses of situations in the perspective of specific national and international structures.

- **Kocham. Nie biję? Pomoc wobec dzieci w dyskursie publicznym [I love. I don't beat? Support for children in public discourse] by Anna Siejak**

It is the publication of the paper awarded with the main prize in the 5th edition of the competition of the Ombudsman for Children for the best master's thesis on the rights of the child. The author shows in her paper the problem of child violence and discusses ways by which social campaigns and advertisements introduce the problem to public forum. Analyses by Anna Siejak have great praxeological value and may be used to improve the activity to limit the phenomenon of violence against children.

- **Dziecko jako podmiot sumienia i wyznania [The child as the subject of conscience and faith] by Izabela Lach**

It is the publication of the paper awarded in the 5th edition of the competition of the Ombudsman for Children for the best master's thesis on the rights of the child. The publication reminds that the so called 'difficult topics' are a problem for those generations, families or schools in which dialogue, listening, respect and understanding are missing. The author runs her deliberations on the basis of the pedagogical thought of Janusz Korczak.

- **Wykonywanie władzy rodzicielskiej i kontaktów w warunkach istnienia elementu zagranicznego [Performing parental authority and contacts under the condition of foreign element] by Kornelia Hendrych.**

It is the publication of the paper awarded in the 5th edition of the competition of the Ombudsman for Children for the best master's thesis on the rights of the child. The author refers to the most important issues in relations between children and parents – parental authority and contact with both parents. She discusses material and procedural issues in the context of domestic and international family law. Kornelia Hendrych compares Polish legal solutions with the international obligations, showing the degree to which domestic standards are harmonised with standards of international agreements and other instruments, pointing to the defects of those solutions and suggesting the desired changes.

The library of the Ombudsman for Children reissued also the following publications: Ustawa o Rzeczniku Praw Dziecka, Prawo Dziecka do szacunku i Jak kochać dziecko by Janusz Korczak, Konwencja o prawach dziecka. Wybór zagadnień (artykuły i komentarze) S. L. Stadniczeńko (ed.), Prawa Dziecka. Dokumenty ONZ Zbiór i opracowanie. Paweł J. Jaros, Marek Michalak.

The following publications were published under the honorary patronage of the Ombudsman for Children:

- 1) Moje prawa – ważna sprawa! (audiobook)<sup>853</sup>
- 2) Kuba i Buba w szpitalu, czyli o prawach dziecka – pacjenta niemal wszystko (audiobook)<sup>854</sup>
- 3) Teraz tu jest nasz dom<sup>855</sup>
- 4) Hebanowe serce<sup>856</sup>
- 5) Ciasteczkowa choinka Żuczka Blo<sup>857</sup>
- 6) Kot Karima i obrazki<sup>858</sup>
- 7) Mam prawo!<sup>859</sup>
- 8) Dziecko swoje prawa ma<sup>860</sup>

<sup>853</sup> A. Czerwińska-Rydel, R. Piątkowska, Moje prawa – ważna sprawa!, Warsaw 2016

<sup>854</sup> G. Kasdepke, Kuba i Buba w szpitalu, czyli o prawach dziecka – pacjenta niemal wszystko, Warsaw 2016

<sup>855</sup> B. Gawryluk, Teraz tu jest nasz dom, Łódź 2016

<sup>856</sup> R. Piątkowska, Hebanowe serce, Łódź 2016

<sup>857</sup> M. Borroughdame, Ciasteczkowa choinka Żuczka Blo, 2016

<sup>858</sup> L. Bardijewska, Kot Karima i obrazki, Łódź 2016

<sup>859</sup> G. Kasdepke, Mam prawo, Łódź 2016

<sup>860</sup> D. Zawadzka, Dziecko swoje prawa ma – Prawa dziecka dla rodziców, Warsaw 2016

# COMMENTS ON THE OBSERVANCE OF THE RIGHTS OF THE CHILD

## INTRODUCTION

When assessing the state of observance of the rights of the child in Poland, we must turn our attention to those demands of the Ombudsman for Children regarding better protection of the youngest citizens that had been satisfied.

In his comments to the observance of the rights of the child the Ombudsman for Children many times pointed in his addresses to the Minister of Health and the Comments on observance of the rights of the child that the dental services for children were underestimated and access to them was limited. He called many times for building a comprehensive domestic policy to improve the condition of oral cavity in children, covering effective prophylactics and better access to dental services.

As a result the Minister of Health appointed a Team for solutions to improve the condition of oral cavities in children, which was supposed to work out solutions allowing to develop relevant mechanisms to build proper attitudes to oral cavity health in all families. Representatives of the Ombudsman for Children also took part in the works of the Team. A document was developed which included a diagnosis of the dental care of children and youth, in which it was pointed that the condition of oral cavity in children was unsatisfactory, organisational problems in health care and possible reasons of incapacity of current solutions, particularly the improper estimation of costs of the dental service for children and youth. The diagnosis confirmed the conclusions presented by the Ombudsman. The suggested model of dental service organisation for children and youth assumes now that society in general will be educated in health issues connected with oral cavity, including the promotion of oral cavity health already among pre-schoolers. At the same time it assumed a new division into basic and specialist dental care of children so that every child had access to selected doctor of dentistry

And, under the Ordinance of the National Health Fund of 27 June 2016 amending the ordinance on defining the conditions of entering into and implementing agreements in dental services, a solution was introduced as had been proposed by the Ombudsman for Children for many years, that is a factor that corrects

the incorrect, very low estimation of dental care for children – 1,2. Such solution allows to increase the interest of children who are treated and reduce the debt level of centres for only children and youth.

Demands presented by the Ombudsman for Children referring to the need to change the means and the level of financing care of the youngest patients resulted in the Agency for Health Technology Assessment and Tariff System's including in the tariff system plan for 2017 the field of medical services in in-patient treatment of children. It focused altogether more than 2% of expenses incurred by the National Health Fund in the area of services in in-patient treatment. Real costs incurred by service providers offering services for patients in the age up to 18 shall be subject to analysis. So shall be reviewed the systemic solutions applied in other countries. The Agency announced also that it started the procedure under Article 311c item 4 of the Act of 27 August 2004 on health care services covered by public funds<sup>861</sup> regarding collection of financial and economic data for 2015 on medical therapy. This information was the answer to the demand presented by the Ombudsman for Children regarding the necessity to re-calculate the costs of general therapy services in in-patient treatment for children.

The Ombudsman has many times indicated that the schedule of mandatory vaccinations should be extended by the vaccination against the pneumococcus. Upon his request, the vaccine was included in the programme of mandatory vaccinations. The reason why the vaccine should be mandatory are the serious complications that may appear after being infected with pneumococcus. Since 01 January 2017, all children born after 31 December 2016 will be included in the programme.

The Ombudsman has many times stressed that children suffering from the Leśniewski-Crohn disease should be properly taken care of. The current therapy dedicated to them was too short to achieve remission of the disease. Since 01 January 2017, in line with the demands posed by the Ombudsman, the length of the therapy for children suffering from that disease is prolonged from 12 to 24 months. At the same time, the drug which was previously applied only to adults, is also available for children now.

The Ombudsman for Children, seeing the threat to children's health in availability of drugs sold OTC, appealed already in 2015 to the Minister of Health, presenting his negative position with respect to draft ordinance amending the

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<sup>861</sup> Dz. U., Journal of Laws of 2016, Item 1793 with later amendments

Ordinance of the Minister of Health of 18 October 2002 concerning selling OTC medical products and drugs<sup>862</sup>. The draft ordinance assumed absolute freedom for a child to purchase hormone drugs for internal use available without the doctor's prescription. The Ombudsman, presenting reasons for his negative opinion, argued that a child should not be left with the burden of responsibility for having used a hormone drug, as it was the responsibility of the adult – the parent and the doctor. A child might have no awareness of possible adverse events and side effects of the hormone measure the child was going to use. The Minister of Health did not agree with the Ombudsman for Children.

As a result of further pressure on the part of the Ombudsman in that matter, the Minister of Health undertook measures to limit the OTC availability of hormone drugs.

In his Comments on the observance of the rights of the child, the Ombudsman for Children many times indicated and still does to the problem non-provision of maintenance for children, in the context of low effectiveness in enforcing this obligation.

In order to guarantee the children full realisation of their right to decent social conditions, the Ombudsman for Children, together with the Human Rights Defender, appointed a Team for Child Maintenance Affairs. The analyses conducted by the Team allowed to draw a number of conclusions – demands addressed to relevant ministers, institutions and organisations with respect to better protection of children's rights. One of the demands of the Ombudsman which was fulfilled was the development and realisation by the Minister of Family, Labour and Social Policy a social campaign entitled "Odpowiedzialny Rodzic Płaci" ["A responsible parents pays"], the purpose of which was to expose the problem of non-payment of maintenance and to encourage to pay it.

With respect to numerous addresses regarding measures to activate the maintenance debtors on the labour market and the possibility to refer them to community service and the need for wider use of the home detention system among persons sentenced for non-payment of maintenance the Ministry of Justice had undertaken legislative work to amend Article 209 of the PC. The Ministry's draft act provides for example the fulfilment of the Ombudsman's demand to make it possible to do the sentence for this crime in the home detention system.

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<sup>862</sup> Dz. U, Journal of Laws, item 1531

The Ombudsman for Children has many times demanded to increase the protection of children against violence inflicted by adults in educational facilities. To this end, since 2011 he has been calling for introducing changes to the procedure of disciplinary proceedings for teachers. In his addressed he demanded to introduce a mechanism under which the Ombudsman for Children could bring a complaint against the decision of the representative of teacher disciplinary proceedings and define conditions under which a child could be heard in the course of the disciplinary proceedings. He also called for extending the disciplinary liability by applying the regulations of Article 6 of the Act the Teacher's Charter also to teachers employed in state kindergartens, schools and facilities run by natural persons and legal entities that were not the units of local self-government, and in non-state kindergartens and schools with rights of state schools, regardless of the basis of employment. Then he called for limits in hearing a minor witness and for creating child protection tools, including the rule of hearing only in case the minor's testimony might have a crucial meaning in the case, the rule of single hearing, the presence of psychologist at the hearing and the possibility to hear the child without the presence of the teacher involved in the proceedings.

The Ombudsman's motions were allowed. In May 2016, the amended Teacher's Charter entered into force<sup>863</sup>.

Children staying in youth education centres will be surely better protected by higher subsidy for pupils who are referred to the centre but not yet taken to it, as the Ombudsman demanded. The weight P46 was increased from 3 to 5.

The Ombudsman for Children has been consistently reporting his comments on the operation of day care facilities. In 2016 he was alarmed by the drafted changes in the regulations of the Act on family support and foster care system regarding location of those facilities. The Ombudsman presented<sup>864</sup> to the Chairman of the Sejm Commission of Social Policy and Family his reservations to the intended ban on placing a day care centre in one building with the organisational unit of the education system and the ban on locating two or more day care facilities in one building. The demands of the Ombudsman for Children were taken into account<sup>865</sup>.

The Ombudsman for Children took many actions to provide for fuller protection of the rights of minors in court cases under the Hague Convention on civil

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<sup>863</sup> Dz.U. z 2016 r. poz. 668

<sup>864</sup> ZEW.422.30.2016.BS

<sup>865</sup> Dz.U. z 2016 r. poz. 1583

aspects of international child abduction. His demands referred to bringing back the option to bring an appeal in cassation in cases under the Hague Convention and to abandon the immediate enforceability of decision issued under that Convention. In response to his demands, the Ministry of Justice undertook legislative work targeted at introduction of solutions demanded by the Ombudsman<sup>866</sup>.

The Ombudsman for Children took also measures to provide for uniform, pro-constitutional interpretation of the regulations of the Act on state support in child upbringing, by which the governmental programme “500+” was implemented. The Ombudsman saw the inconsistency between refusing foreigners, who had the status of a refugee, were provided with international protection or permit to stay for humanitarian reasons, to be granted the benefit for their children and the constitutional principle of equal treatment of actors who were in a similar legal and actual situation and the rule of providing support to families in difficult situation by the state.

The Ombudsman’s activity resulted in consolidation of the desired trend in administrative decisions and changed the practice of administrative bodies, who grant the “500+” to foreigners now.

Activity undertaken by the Government in the field of supporting families with children resulted in realisation of the demand so many times raised by the Ombudsman for Children, namely that families with many children needed to be supported financially. According to the study by the Main Statistical Office<sup>867</sup>, every eleventh person in households of married couples with 3 children and every sixth person in households of married couples with 4 or more children was living under the minimum level of existence. The situation has improved.

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<sup>866</sup> Draft Act on performance of some activities by the central body in family cases under the system of law subject to the law of the European Union and international agreements and amending the Act – the Code of Civil Procedure and some other acts (entered into the register of legislative work of the Code of Civil Procedure in the position UD123).

<sup>867</sup> The range of economic poverty in Poland in 2015, GUS, proof copy.

## THE RIGHT TO LIFE AND HEALTH PROTECTION

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

(Article 6 of the Convention on the Rights of the Child)

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

(Article 24 of the Convention on the Rights of the Child)

The state of observance of children's rights in the area of the right to life and health protection requires that special attention be put on:

- **insufficient availability of specialist doctors of medicine**

Still the waiting time before seeing a specialist physician is too long. The access of children to specialists is limited, this concerns paediatrics, neonatology, ophthalmology, laryngology, orthodontics, psychiatry, neurology, social rehabilitation and metabolic diseases.

- **Underestimation of paediatric procedures for children**

Still the estimation of costs of medical benefits for children is too low as compared to their factual costs.

- **the necessity for every child to undergo medical examination by a paediatrician every year**

Still the demand of the Ombudsman for Children to have each child – even healthy – examined by a paediatrician at least once a year has not been implemented. The purpose of the research is to make prevention more effective, including early identification of health and development irregularities and diagnosing the symptoms of hurting children.

- **lack of medical standards in health prophylactics for children from 5 to 18 years of age**

Still no medical standards in health prophylactics for children from 5 to 18 years of age have been adopted. This makes the evaluation of effectiveness of activity undertaken by physicians difficult.



- **quality of medical services provided to children**

Contracts for health services concluded by NFZ are based on the principles of free market. Most often, the contract is granted to a facility that offers the cheapest services which does not always translates into high quality of medical services for children.

- **threat to children's health**

Still the level of realisation of procedures indicated in the standards of perinatal care is not satisfactory. Irregularities in the procedure of labour resulting in bodily injuries or even death of a child require some remedial measures to upgrade the quality of performed procedures under the legally defined standards. The situation will worsen as the Ordinance of the Minister of Health which defines those standards become invalid at the end of 2018<sup>868</sup>.

- **threat of liquidation of the system of child's fate monitoring**

The fact that the Ordinance of the Minister of Health regarding perinatal care become invalid with the end of 2018, shall result in liquidation of the system of monitoring of the child's fate, for which the Ombudsman for Children had been fighting for so many years.

- **service quality and access to psychiatric care**

Low cost estimation of psychiatric services for children, unequal distribution of facilities and too little specialists in psychiatry results in lack of proper protection of children in the field of specialist care. The offer of therapies for minor patients is insufficient.

- **insufficient activity undertaken to improve the condition of children's teeth**

There is still no comprehensive state policy to improve the condition of children's teeth, a policy that would comprise prophylactics, treatment of dental injuries, performance of procedures under anaesthesia or orthodontic treatment. There is a need to include specific procedures and services to the catalogue of dental services for children and youth.

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<sup>868</sup> The Ordinance of the Minister of Health amending the Ordinance on standards of medical procedure at providing healthcare services of perinatal care for a pregnant woman, at labour, confinement and of neonatal care.

- **insufficient medical care in schools**

The standards of employment of nurses at schools dependant on the number of students result in this care being ostensible. A several hour contact with a nurse cannot meet the needs of children especially those with chronic diseases.

- **Health prevention at an early stage of education**

It is necessary to reinforce health prevention at an early stage of child's development by providing nurse's care in kindergartens. This is especially important in case of children with disabilities and chronic disease.

- **Children with rare diseases included in highly specialist health care**

Children with rare and ultra-rare diseases must be taken under highly specialist healthcare. Systemic changes are necessary in the accessibility to modern medicines and therapies.

- **unsatisfactory cooperation between entities that provide health care services**

Unsatisfactory cooperation between entities that provide health care services results in delays in provision of assistance or its ineffectiveness.

- **limited accessibility to therapies run under non-commercial clinical research and to some modern medicines**

A therapy carried in children under non-commercial clinical trials is undertaken without any defined procedures. This may lead to uncontrolled treatment, including no record of side effects. It is necessary to adopt legal solutions to regulate safety of such therapies. There is a need to adopt solutions regarding the use of drugs in paediatrics which do not have registered recommendations in a given disease or for a patient in a given age.

- **self-harm, suicidal attempts, suicides committed by children**

Still the issue of proper protection of minors with respect to psychological and psychiatric care is not regulated. A phenomenon of making suicidal attempts and intended self-harm by children suffering from behavioural disorders and depression and anxiety disorders. There is an urgent need to introduce a system of collecting and analysing data reflecting the real scale of the phenomenon. Still there is a need to create an all-Polish therapy programme in prevention of depression and suicidal attempts of youth.

- **the problem of supporting young parents (also minor parents)**

In Poland 3.5-5% of children are born by minor mothers. The pregnancies are usually not planned. This causes specific health consequences both for the mother and the child. The health care system does not take into consideration specific needs of minor parents. Young parents do not have proper support.

- **Access to a gynaecologist for minor persons**

A minor under 15 should be granted access to a gynaecologist without the company of the legal carer.

- **consuming alcohol by pregnant women**

Still very high percentage of women consuming alcohol when pregnant is alarming. This may lead to occurrence of neuro-behavioural disorders and body and internal malformations in children.

- **limited accessibility to therapies for children with disorders with autism spectre**

Therapy for children with diagnosed disorders with autism spectre is still conducted in medical and non-medical facilities. There is no standardization in that field, including e.g. the definition of therapeutic minimum for a child.

- **consuming alcohol and other psychoactive substances by children**

In Poland there are still no comprehensive studies concerning consumption of psychoactive substances and medicines for non-medical purposes. Lack of such data does not allow to assess the scale of the phenomenon nor to implement an effective programme of counteraction.

- **limited accessibility to court experts in many fields of medicine and necessary in adjudicating disability**

The period of time necessary to evaluate the correctness of medical procedure or adjudicating disability of children and youth is getting longer. In result, the proceedings last many years which, in case of children with disabilities, limits their options to benefit from financial support.

- **using medicines by youth for non-medical purposes**

Still there are no comprehensive research in Poland on the problem of using by children medicines for non-medical purposes so it is not possible to assess the

scale of this phenomenon. Lack of data makes construction of optimum prevention programmes difficult.

- **The problem of vaccination of children and the need to promote correct information in that matter**

The vaccination coverage levels are found to become lower in the population of developmental age which increases the risk of higher incidence of infectious diseases. It is extremely important to make the message about vaccinations clear and raising no doubts.

- **decreasing number of children and teenagers benefiting from spa treatment**

The reason for such state of affairs is the fact that children do not make it to the facilities and the number of referrals issued by physicians is low.

- **harmfulness of using sunbeds by children**

**The use of sunbeds by minors should be absolutely prohibited as it was already done in France, Germany or the Great Britain.**

The Report of the World Health Organisation and opinions of Polish specialists unambiguously confirm the increase of the number of skin cancer cases in connection with excessive use of artificial UV radiation.

- **the problem of overweight and obesity**

The study by the Institute of Food and Nutrition<sup>869</sup> show that more than 20% of students of primary and lower secondary schools in Poland are overweight. Overweight and obesity are important risk factors in development of many chronic diseases and conditions. Without determined action to prevent this problem from spreading, we must be expecting that the number of persons falling ill with diabetes, illnesses of the cardiovascular system and cancer will increase. The education units should be crucial in awareness raising in that field.

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<sup>869</sup> [http://www.zachowajrownowage.pl/pl/?page\\_id=760&post\\_id=2927&cat=32&sub-cat=32](http://www.zachowajrownowage.pl/pl/?page_id=760&post_id=2927&cat=32&sub-cat=32)

## THE RIGHT TO BE RAISED IN A FAMILY

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

(Article 18 of the Convention on the Rights of the Child)

The state of observance of children's rights in the area of the right to be raised in a family requires that special attention be put on:

- **support for biological families**

Still the problem of insufficient cooperation between institutions obliged to provide support to family can be observed. This hinders much identification of the needs of each child and making good choices with respect to the child's fate. Decisions on placing the child outside the natural family must be preceded with exhaustion of any and all means of support. In case a decision on separating the child from the parents is made, it is necessary to monitor further fate of the family and offer the family comprehensive assistance in eliminating the difficulties.

- **the need to upgrade parental competences**

The crucial factor that prevents placement of children in foster care is comprehensive support for families in upgrading their parental competences. Proper assistance by a family assistant, social service worker, educational facility, residential institutions, psychological and pedagogical consultation centre, NGO shall help the parents and carers correctly perform their educational role. Competence in upbringing workshops and family therapy are measures that are still underestimated. The courts too rarely oblige the parents to participate in such courses. They should constitute the basic means of support for families in problems they encounter when raising a child.

- **the child's right to be raised by both parents**

Isolating the child from the other parent who does not exercise parental authority directly over the minor is still a big problem. It must be observed whether the changes in law regarding the procedure of regulating parental authority over the child bring the expected results also in the so called practice in issuing rulings.

- **the necessity to regulate the problem of parental abduction**

The so called parental abduction is still a method of fight for parental authority over a child. If the phenomenon was criminalized, its prevalence would decrease. The fact of parental abduction should be taken into account on courts' decision adjudicating on parental authority entrusted to a parent, which is not always the case.

- **low parental awareness on the consequences of international child abduction**

Considering the increase of the number of relations between persons of different nationality, still valid is the problem of low awareness of legal consequences connected with taking a child abroad without consent of the other parent.

- **functioning of the family law system**

Lack of regular interdisciplinary trainings for judges and too much burden of family cases influences the quality of adjudicating and – thus – decrease of trust of the citizens for courts and lack of respect for issued adjudications. Family courts should be composed of two instances.

- **lengthiness of judicial proceedings**

The problem of lengthy judicial proceedings in family and guardianship cases remains unsolved which does not allow for efficient realisation of rights and protection of minors' interests.

- **stability of the upbringing environment of children placed in foster care**

The child's right to stable upbringing environment is much too often violated against children placed in foster care. Improper organisation of foster care results in multiple transfers of children from one institution or foster family to another. Such practice is a sign of lack of understanding that each child needs to feel safe and needs stability to develop correctly and those factors are particularly important in case of minors who are brought up out of their biological family. The problem should be the subject of special concern of the voivodes obliged to control organizations and the quality of provided foster care.

- **little children placed in institutional foster care**

Pursuant to the Act on family support and foster care system, no children under 10 years of age may be placed in an institution unless it is an exception as provided by law.

There is still a problem of courts adjudicating against the law on placing children under 10.

The study conducted by the Ombudsman for Children shows that in facilities all across Poland 257 children from 0 to 10 were placed against the Act, including 13 children of 0-1, 40 children of 1-3, 93 of 3-7 and 11 children of 7-10 years of age were placed against the regulations of law.

- **Monitoring of the quality of performance of residential institutions**

There is a need to increase the supervision over the operation of residential institutions in the context of recommendations for children's stay in residential institutions, which is issued as document jointly issued by the Ombudsman for Children and the Minister of Labour and Social Policy. Bodies obliged to supervise the institutions very often do not realise this task sufficiently.

- **The operation of day care facilities**

The Ombudsman for Children still received complaints about liquidation of day support facilities, the number of which is too small all in all. Lack of such places deprives children from dysfunctional families the possibility to be provided with support they need and, in this way, may result in a situation in which some those children cannot stay with their biological families – it will be necessary to place them in foster care or youth education centres which in every case may mean another trauma in their lives. Bodies and institutions responsible for their operation should focus on eliminating barriers that hinder their establishment and their daily work.

- **court's monitoring of the child's and the child's biological family's fate**

Still courts, after placing a child in foster care, do not provide sufficient control over assistance offered to the family and its results. Few judges participate in sessions of teams that periodically review the situation of a child placed in foster care.

- **realisation of the obligation to send the decision to adoption agency**

Despite the statutory obligation to send to an adoption agency, within 7 days, the decision on deprivation of parental authority, the courts much too often do not fulfil this task and delay its performance for many weeks or even months. This is a serious procedural negligence which delays in turn the opening of the adoption procedure. In result children must wait much longer to be matched with a loving family.

- **The need to introduce uniform rules of realisation of tasks appointed to adoption agencies**

Uniform rules of operation of adoption agencies must be immediately introduced into the system of law, so that the child's subjectivity and the regulations of the Convention on the Rights of the Child are observed and followed. For this purpose the Ombudsman for Children has developed Performance standards in operation of adoption agencies which are a kind of guidelines and hints, helpful in administering an adoption procedure and the draft act amending the act on family support and foster care system.

- **limiting contact with relatives for children staying outside of a biological family.**

The problem of punishing in the form of limiting contact with biological family with respect to children who are brought up in an institutional form of foster care, residential institutions, social therapy and social rehabilitation centres remains unsolved. Such practice infringes the right of the child to personal contact and to maintain ties with biological family. This problem should be subject to special attention on the part of inspection institutions (e.g. voivode, starost or education officer). Maintaining bonds with relatives not only satisfies the basic emotional needs of each child but is a factor necessary to shape the child's correct personality and facilitates correct course of the educational process.

- **Adoption of children with disabilities and older children**

It is still noticeable that adoptions of disabled children are too rare. It is necessary to implement programmes resulting in greater demand for adoption of disabled and older children.

- **guaranteeing to minor mothers the possibility to raise their children**

The problems concerning provision to minor mothers placed in social rehabilitation centres of the possibility to raise their children. Such mothers should



receive specialist support so that they could perform their parental functions properly and the possibility to educate and obtain a profession (demand of the Ombudsman with respect to rights of minor parents placed in care and residential institutions was satisfied).

- **insufficient representation of the child**

Still the representation of child in court proceedings is too scarce. The Ombudsman expects that regulations be adopted that will regulate proper, professional representation of the child in a hearing.

- **ineffectiveness of executive proceedings**

Analysis of proceedings held in courts shows that it is often so that very long, several years' guardian's supervisions are administered, and there is no reaction by the family court. Lack of proper decisions issued by the court endangers the harmonious development of children in proper upbringing environment.

- **ineffectiveness of proceedings pertaining to execution of contact of the child with the parent**

The problem of enforcing the procedure of contact defined by court is still valid. It is necessary to conduct a detailed analysis with respect to administering proceedings pertaining to determined procedure of contact in order to diagnose the reasons of the ineffectiveness of currently applicable regulations with respect thereto.

- **the necessity to hear out the child with respect to issues that concern the child**

Despite the existing legal obligation to hear out the child, bodies that decide upon the child's fate much too rarely take their opinions in consideration. Learning the child's view, whose mental development, health condition and level of maturity allows for that and consideration of the child's reasonable requests should be a common standard in all issues that concern minors. Hearing a child does not always take place in friendly circumstances (e.g. before disciplinary committees for teachers).

- **lack of procedure of child hearing in civil proceedings**

The demand of the Ombudsman for Children to regulate the issue of child hearing in civil proceedings is still not satisfied. Lack of regulations in the matter causes undue protection of child's rights in court proceedings and may cause

demurrers. Additionally judges must be also offered trainings in the skill of hearing a child.

- **promotion of mediation in family cases**

Still courts too rarely refer the disputing persons to mediation or it happens only too late. Also the parties to the conflict themselves do not use alternative methods of dispute solving. One of possible solutions based on that institution could be organization of informative meetings dedicated to the benefits of conciliatory and comprehensive way of reaching a solution of the conflict as a result of mediation in family and custody cases.

- **lack of integrated system of data acquisition by courts**

Judges who adjudicate in family cases should have access to a database, updated on a current basis, of different institutions facilities, centres in which decisions/ judgements may be realized, e.g. concerning contacts, therapies, workshops of upbringing skills. The Ombudsman points also to too little number of entities which are not able to guarantee effective realization of court decisions.

- **the status of court-appointed guardian in family and custody cases**

Lack of unambiguous regulation of the status of guardians in cases pertaining to execution of family court's decisions and specification of their terms of competence under the undertaken operations still causes limitations with respect to effective execution of court decisions and partial only protection of the child's rights.

- **lack of action by residential institutions for return of children to biological families**

Very often residential institutions do not realize one of the fundamental aims which is to undertake effective measures to let the child return to his or her family home (e.g. in the form of close cooperation with the family, provide the child's parents with knowledge and educational skills, making attempts to recover the situation in a educationally incapable family, reinforce the ties between parents and children or cooperation with institutions that may operate to let children come back to their biological families). The above mentioned problem should be discussed with particular attention in course of inspections conducted by the competent voivode and starost.

- **regulation of legal status of children placed in foster care**

It can still be observed that many children who are in foster care for a long time have their legal status not regulated. The statutory term of 18 months within which the proceedings pertaining parental authority must be opened should be shortened and made more realistic.

- **organization of trainings for candidates to take the function of foster family or manage family children's home**

Safety of children who live in foster care requires solid and multi-faceted qualifications of the foster parents and those who manage a family-type children's home. The number of hours of training should be increased and the syllabus of the training should be complemented with obligatory specialist classes in the field of work with a harmed child. It is necessary to uniform the principles of organization of trainings runs by various agents.

- **insufficient representation of minor unaccompanied foreigners**

Still the problem of insufficient representation of unaccompanied foreigners is not solved. The Ombudsman demands legislative work to extend the mandate of a guardian ad litem, appointed to represent a minor foreigner in administrative proceedings. Also criteria must be defined that a person who is going to become such a guardian must meet.

- **monitoring of realisation of regulations arising from the Act on Family Support and Foster Care System**

It is necessary to continue the monitoring of how the system of family support and organisation of foster care is functioning. In this respect it is particularly important to assess whether the currently applicable procedures and requirements regarding qualification and re-qualification for the function of foster family sufficiently provide safety to children placed in foster care. The demand that opinions of organizers of foster care on the candidates for foster family include in-depth interview, verification of the obtained information and opinions of employers or associations the candidates belong to.

- **possibility to appeal in cassation against decisions in proceedings under the Hague Convention on Civil Aspects of International Child Abduction**

There is a need to introduce mechanisms of control for the Supreme Court of decisions issued under the Hague Convention on civil aspects of international

child abduction. An option to bring an appeal in cassation in such cases would eliminate wrong decisions on crucial aspects of child's life, such the place of residence and would provide for uniformity in interpretation and court practices.

- **On ratification of the 3rd Optional Protocol to the Convention on the Rights of the Child**

An initiative of the Ombudsman for Children aiming at reinforcement of the control over observance of the rights of the child was equipping the UN Committee on the Rights of the Child with the mandate to receive and consider complaints concerning infringement of children's rights. The initiative was reported by Polish Ombudsman for Children at the forum of Human Rights Council in March 2009 and resulted in adoption by the UN General Assembly the Optional Protocol to the Convention on the Rights of the Child. So far the Optional Protocol was undersigned by 25 altogether, of which 32 ratified the document. Sole signing of the 3rd Optional Protocol to the Convention on the Rights of the Child by Poland in 2013 did not mean that it became part of legal system. Effective measures must be taken in order to ratify this important international instrument.

- **The right of the child to have both his or her parents participate in the child's education path**

If parental authority is granted to both parents, each of them is obliged and entitled to exercise it. Execution of parental authority means that a parents participates in the child's life by performing all obligations owing to which a child is developing in correct way. The usually practised refusal to give information about a child and his or her school progress and different interpretation of court's decision in case one parent's parental authority is limited is incorrect and leads to disregard of the parent's right to participate in their children's lives.

- **The obligation to establish legal guardianship for a child deprived of parental care**

Cases pertaining to establishment of legal care of the child should be treated as priority from the point of view of the rule of immediacy in proceedings. The often are instituted with delay or last for many weeks or even months, which infringes the child's right to be taken care of, guaranteed under Article 72 item 2 of the Constitution of the Republic of Poland.

- **DNA tests in cases pertaining to child's biological origin**

Lack of statutory obligation to undergo such tests is a common reason why court proceedings pertaining to child's biological origin are hindered. There is a need to create a legal basis for DNA testing – where necessary and justified – without the required consent, if it follows the best interest of the child.

- **Abandoning the rule of immediate enforceability of decisions issued by courts of first instance in cases concerning civil aspect of international child abduction based on the Hague Convention**

The regulations of law regarding the immediate enforceability of decisions issued by courts of first instance under the Hague Convention must be amended by abandoning the rule of immediate enforceability. Exposing minors to negative experience connected with commencement of the procedure of mandatory removal of the child from a parent staying in Poland, in case the court proceedings have not yet been concluded, is against the guiding rule of child well-being. The Ombudsman is waiting for positive results of legislative works over the draft act developed by the Ministry of Justice regarding statutory changes in that matter.

- **The right to national identity**

A child removed from his or her parents outside the country and placed in foster care must be guaranteed with the possibility to keep his or her ethnic, religious, cultural and linguistic identity. For that purpose, first foster families must be sought among the closest relatives in the child's mother country, as well as among his countrymen living abroad. The bodies of governmental administration and diplomatic service units should each time undertake interim measures to secure the child's well-being. This refers to all children though the conclusion was made on the basis of analysed proceedings in which Polish children were involved.

- **Realisation of the regulations concerning provision of consent to a minor foreigner to his stay for humanitarian reasons**

Numerous irregularities are observed in the operation of bodies which assess the premises for granting minors foreigners and their families for humanitarian reasons. Operations undertaken by those bodies are too superficial and insufficiently secure the child's well-being.

- **Increasing legal awareness among Polish emigrants**

Measures must be taken to promote knowledge on child rights protection systems in countries to which Polish citizens emigrate most often, also to make them aware of cultural and social differences in acceptable conduct towards children.

## THE RIGHT TO DECENT SOCIAL CONDITIONS

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

(Article 26 of the Convention on the Rights of the Child)

The state of observance of children's rights in the area of the right to decent social conditions requires that special attention be put on:

- **Difficult situation of families who are out of the social service provided by the state**

The families who do not receive the 500+ benefit and the child maintenance benefit and who do not meet the statutory criteria to be granted those benefits. This group of children must be especially taken care of and provided with support.

- **unequal treatment of families with respect to accessibility to child-support benefit.**

Families were deprived of the child-support benefit for the first child as well as persons who raise only one child, whose income per capita exceeds 800 pln. The differentiation on access to support benefit for the first child occurs also in families who bring up a child who holds a decision on mild disability, in families who bring up a child with moderate or severe disability. The regulations of the Act on state support in child upbringing<sup>870</sup> should be amended so that there be no inequalities in access to this benefit.

- **homelessness of children**

According to national yearly survey in homelessness in Poland ordered by the Minister of Labour and Social Policy, 33,41 thousand homeless people were diagnosed, 1,201 of whom were children. The youngest constitute in general 3.5% of homeless people in Poland. Most of them were found in the following

<sup>870</sup> Dz.U. poz. 195, z późn. zm.

voivodeships: Mazowieckie, Śląskie and Kujawsko-Pomorskie and the least of them in the voivodeships: Podlaskie, Świętokrzyskie and Lubuskie.

- **very low efficiency of enforcement of alimony benefits**

Still the effectiveness of enforcement of alimony claims is too low and the time of proceedings is too long. More effective disciplinary means to be applied against the debtors should be implemented as well as measures to stimulate professional activity in debtors and increase their income options.

According to the data provided by the Minister of Justice, effectiveness of enforcement in cases pertaining to enforcement of alimony benefits amounted to 20%. Effectiveness of operations undertaken by local authorities against maintenance debtors in 2015 was in total 6,04%, that is lower than in 2014<sup>871</sup> by 2,27%.

- **difficulties in enforcement of alimony payments adjudicated by force of sentences by Polish court with respect to parents staying abroad**

Lack of effectiveness is observed in realization of the regulation of the international law instruments that is: The Convention on the Recovery Abroad of Maintenance, elaborated in New York on 20 June 1956 and the Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. Tardiness of foreign authorities causes considerable delays in procedures under enforcement of motions of Polish creditors.

- **limited access to benefits from Alimony Fund**

The income limit (PLN 725 per person in family) to be entitled to receive the alimony benefit remains unchanged since 2008.

- **Discrepancies in judicature of administrative bodies regarding determination of the right to family benefits and supplements to family benefits**

Despite settled judicial interpretation and doctrinal definition of a “single parent”, bodies responsible for settlement of individual cases pertaining to deter-

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<sup>871</sup> This resulted from the relation between the general number of undertaken actions and the number of actions that led to increase the level of maintenance debt enforcement, Information on implementation of the Act on support for persons entitled to child maintenance in 2015.

mination of the right to family benefit in the form of supplement to family allowance for single parents upbringing children often refuse to grant the benefit to patchwork families. This forces those families to fight for their right in court or administrative proceedings. Similarly, when those bodies determine the right to child-support benefit for a parent who already has the right to this benefit determined for another child, they ignore the uniform judicature of courts which clearly settles the problem of such coincidence.

- **social service system for families with children**

Support provided to families consists first of all of allowances and benefits. Families finding themselves in difficult situation in terms of social and economic conditions are still not provided with sufficient assistance to recover from a crisis and thus to take over the responsibility for provision of proper conditions for their children to develop correctly and to become independent of the social service, leaving the group of social service beneficiaries.

The inspection conducted by the Supreme Audit Office in the years 2012 – 2014 in selected social service centres revealed that the centres did not satisfactorily recognized the circles of potential citizens in need. This results partially from low activity of the centres in obtaining such information but also from insufficient cooperation with social organizations, NGOs and other relevant entities. The inspection proved also that the centres did not use the option of conducting inspections *ex officio*<sup>872</sup>.

- **lack of temporary shelters for families with children**

Still the insufficient number of apartments the local authorities can distribute to meet the accommodation needs of families with minor children has not been solved. One may also have doubts as to the technical condition and low standard of such apartments offered for rent. Such situation makes the time of waiting for allotment or change of flat even longer. The Ombudsman for Children hopes that the “National Housing Programme” adopted by the Council of Ministers will improve the situation of families with children.

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<sup>872</sup> Supreme Audit Office, The activity of social service centres in recognition and monitoring social condition. Inspection results. LRZ-4101-012-00/2014, Id. no. 197/2014/P/14/107/LRZ, May 2015, p. 7.



- **Lack of the system of support for persons who leave their foster families**

Young people who leave residential institutions and other forms of foster care receive no support that would make it easier for them to become independent in life. This refers particularly to their accommodation. The pupils is often forced to come back to the circles he had been taken from. Legal and systemic measures must be taken to guarantee “good start” for persons who need special care and assistance from the state.

- **the quality of the process of pupils’ becoming independent**

The system of becoming independent in case of children being raised out of their biological family requires urgent remedial measures. The support that is offered is not adequate to the real needs. Young people are neither adequately prepared for independent living in their adult life (i.a. in the field of planning and realization of determined goals, social skills, professional qualifications) nor have sufficient financial guarantees, especially when they continue education.

- **lack of temporary shelters for families with children**

Families with children endangered with homelessness often do not have any possibility to obtain help in the form of temporary shelter without separating family members.

- **lack of sufficient information on benefits for children**

Failure of social service centres to provide comprehensive information on possible benefits that may be granted is a frequent problem. It results in that carers do not file motions for assistance.

- **support for children with disabilities**

Benefits, allowances and supplements for a carer meant to be provided to disabled children and their families are still insufficient and do not consider special investment of time and measures necessary to satisfy the needs of those children. Moreover, allocated council flats, because of their low standard and bad technical condition, are not suitable to be resided by disabled and chronically ill children.

- **non-uniformity of decisions of poviats disability evaluation boards**

Very often the disability evaluation boards give different classes to one condition which causes different recommendations connected with the diagnosis with regard to permanent necessity of or long term care provided by another person and permanent participation of a child carer in the process of the child's rehabilitation, treatment and education which in turn results in unequal distribution of granted benefits for children with disabilities.

- **architectural barriers**

The demand to adjust public utility facilities and public means of transport to the needs of disabled children remains still valid. Children who move in wheelchairs and minors with other physical impairment still encounter many barriers. This problem concerns also maladjustment of residential buildings and public utility facilities to wheelchairs.

- **lack of houses for mothers and fathers with minor children and for pregnant women**

A home for mothers with minor children and pregnant women provides for all-day, periodical stay of mothers with minor children and pregnant women, and fathers with minor children and other persons exercising care of children. As the inspections of the Ombudsman for Children reveal, a parent with a child comes very often to shelters which do not meet the standards of basic services provided by homes for mothers with minors and pregnant women.

- **bad technical condition of and liquidation of playgrounds**

The problem of bad technical condition of playgrounds and liquidation thereof remains still valid. Playgrounds which have been devastated over time, should not be closed but renovated.

## THE RIGHT TO EDUCATION

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

(Article 28 of the Convention on the Rights of the Child)

The state of observance of children's rights in the area of the right to education requires that special attention be put on:

- **educating teachers in practical skills**

It is necessary to improve the quality of professional education of future teachers in the field of teaching children. The number of practical classes for future teachers must be increased which will allow them to develop their communicative skills with children and parents and potential direction of professional career. Their pedagogical skills in solving educational problems need to be developed. It is also necessary to guarantee relevant support to a teacher in the first years of his professional practice and conducting periodical review of his predispositions and motivation to perform his profession. Their professional competences in special needs of children with certificates issued by pedagogical and psychological centres must be developed. Still, there is a problem of applying harming instead of motivating practices and methods that stimulate the harmonious development of children.

- **The practice of assessing education achievements of students and informing them on the criteria of this assessment**

Despite the education law guarantees the necessity to determine the rules of assessing students and giving them access to their works, informing about the criteria of assessment and writing – upon parent's request – a statement of reasons for a particular note, teachers still do not perform those obligations in practice. The problem is particularly vivid with respect to assessing subjects in arts, sports and technical works, during which the basic criterion should be the effort put in by a student in his or her performance and resulting from the specific requirements of the given subject. An irregularity that occurs quite often is giving negative notes in subjects for improper conduct of a student. The problem should become of special interest of education officers responsible for proper realization of the education law at schools and other education facilities.

- **supervision by headmasters over activity of educational facilities**

Headmasters of educational facilities still do not always fulfil their tasks regarding pedagogical supervision over performance of tutors, teachers and specialists. An important – but often neglected – element of supervision provided by the school manager is evaluation of operations undertaken by school when realising the processes of education, upbringing and care. This results in deterioration of the students' situation i.a. In terms of their sense of security and psychological and pedagogical support and favours infringement of the rules of ethics by teachers. The above mentioned issues should be subjected to detailed analysis by the education officers.

- **punishment that infringes the child's rights**

The application of the system of penalties in educational facilities that infringe the rights of the child is still a problem like for example, ban on participation in excursions (during which the basic content of curriculum is taught), or public reproach. Such activity is unacceptable as they infringe the rights of the child.

It is necessary to increase the supervision by authorized institutions over the internal regulations of schools and facilities and implement such a system of trainings for teachers and tutors that would change their awareness in that matter.

- **availability of day care in crèches for children**

Although access to nursery care for children improves year after year, the number of vacancies in facilities providing such care is still insufficient. Only almost every third administrative unit there is a place that provides for care for children up to 3 years of age. The estimates of the Ministry of Labour and Social Policy show that at the end of 2016 there were 2,272 crèches and 514 children's clubs functioning within the whole country. Children in the age up to 3 were taken care of by 667 day carers. There were then altogether about 3,5 thousand institutions of care which offered 94 vacancies for children. Institutions of care operated in 723 administrative units (the number of units in which at least on place of care operated), whereas crèches operated in 607 units, children's clubs – in 266 and day carers – in 73. The number of children attending institutions as of the day of 31 December 2012 was about 39.2 thousand, at the end of 2013 – about 43.6 thousand, at the end of 2014 – about 80 thousand at the end of 2015 – about 82.5 thousand and in 2016 – 94 thousand. This means that the number of vacancies has grown 2,5 times as compared to 2012.

- **availability of pre-school education for children in the age of 3**

availability of pre-school education (kindergarten) for children in the age of 3 is still unsatisfactory. The data submitted by the Ministry of National Education show that in the school year of 2016/2017, the rate of participation in pre-school education of children in the age of 3 was ca. 67.24%. Unfortunately, disproportions in access to kindergartens for children are still observed, depending on the place where a child lives. In rural areas, 53.65% children at the age of 3 are included in pre-school / pre-primary education, and in urban areas – 77.01%.

At the same time, generally the number of children at the age of 3 included in pre-school / pre-primary education is smaller, as compared to the year 2015/2016, namely from 70.50% to 67.24%.

- **Providing equal chances in education for children from rural areas and from families of low economic status**

Barriers that occur in access to education for students in rural areas (especially in upper secondary schools) are the reason why children are subject to unfair treatment with respect to their right to education. This negative phenomenon is made even stronger by the tendency to liquidate schools in small towns and rural areas. The situation requires particularly insightful observance in the context of organisational changes in the education system, also a study whether it does not deepen the inequalities in educational chances for young inhabitants of rural areas.

- **Equal chances in learning for students with special educational needs**

There is still a need to increase the level of effectiveness of recognising and meeting the needs of students with special educational needs. Numerous complaints for improper organisation of education for children who need to be taught by means of special forms and work methods suggest that there are serious defects in that field. Psychological and pedagogical clinics should be equipped with modern tools for diagnosing and treating patients and improve their skills in diagnosing problems. It is also necessary to develop and disseminate standards of operation of those clinics to make them uniform and to offer equal chances to all children. It is equally important to upgrade the skills of teachers with respect to support for children with special educational needs. Particular emphasis should be put on cooperation between schools and clinics both for the purpose of supporting teachers and of earliest possible diagnosis of deficits and problems of a child. Also organisation of work with a talented

student should be an important challenge for the school, including developing an individual ratio and scope of his or her education. The school must be the place where children can develop their talents.

- **organization of psychological and pedagogical assistance in kindergartens, schools and other facilities**

Still the problem of organizing proper psychological and pedagogical assistance in kindergartens, schools and other facilities has not been solved. This concerns most of all children that have educational problems (with autism, Asperger's syndrome, ADHD and behavioural disorders). The most common cause of increased level of difficulty were insufficient skills of teachers connected with what procedure should be applied in case of dysfunctional students. The fact that teachers were reluctant to learn and later practice new working methods with children who needed special support from pedagogues. Changes in the teacher training and education system are very needed, as is an intra-school system of assistance, organised on the basis of conclusions drawn by the school manager from his observations.

- **Applying improper means of influence by teachers and managers of educational facilities**

It happened that a school manager or a teacher called the Police or ambulance to solve a difficult educational conflict. In this way, psychological and pedagogical reaction was substituted with external resources. A child must not bear the consequences of lack of professional skills of adults.

- **Monitoring of the operation of youth education centres and youth social therapy centres**

The catalogue of pupils' rights was extended and adjusted to the Ordinance of the Minister of National Education of 02 November 2015 on types and detailed principles of operation of public facilities, conditions of children's and youth's stay in those facilities and the sum and rules of payment of fees by parents for the stay of their children in those facilities. Conclusions of the study should be presented to the institution responsible for determination which facility best suits the needs of a child, that is the Education Development Centre.

- **lack of coherence in educational activity of facilities**

The activity of schools and other facilities should be targeted at provision of harmonious intellectual, emotional, physical and social development to every child.

Schools and other facilities find it difficult to create safe and friendly conditions adequate to children's needs. It appears that teachers do not collaborate with specialists employed by the school nor with students' parents. This means that the skill of team work in teachers are missing, as well as effective supervision over the school operation on the part of its manager.

- **care in educational facilities over disabled and chronically ill children**

The Ombudsman for Children still received notifications about difficulties of a kindergarten or school in realising the needs of a child with a disability or chronic disease. Teachers often refuse to help such a child (to give medicines, measure the blood glucose level etc). Parents happened to provide for continuous help to a child staying in those institutions.

- **nutrition in the units of the education system**

Still there is a great problem with effective educational tools that would change the improper dietary habits of children. The Ombudsman regularly points to the need to adjust the regulations of law to nutrition standards developed by the specialists of the Institute Of Food and Nutrition.

- **school's cooperation with parents and carer of the child**

The problem of improper communication between school employees and parents remains still valid. Neglect in this field resulted in exaggerated focussing on relations among adults (conflict with the teacher, headmaster, other parent)

whereas problems of the child were diminished. Lack of agreement in children's affairs disturbed the educational process. Parents do not feel they are co-hosts of educational facilities. Parents' scarce knowledge of law results in occurrence of irregularities in the way the parents' councils function (with respect to choosing the members of the council, the council's terms of reference and the application of the condition of freedom in contributions to the fund of the parents' council – which leads to unfair treatment of students). It is necessary to strive for improvement of cooperation in that matter.

- **Transporting children to schools and kindergartens**

Still there is a problem with organisation of transport for students from their homes to the school. In particular, interpretation of the supervising body is problematic. The issue of protection for transported children and the long time of waiting for a bus after or before the regular classes was also controversial.

So is the issue of costs of the transport. Parents complaint about too low or even unreal amounts offered. The currently binding regulations of law do not either settle the definition “the nearest school which can realize the recommendations included in the decision on required (the need for) special education programme”. Practice shows that the interpretations applied did not always took into consideration the well-being of the child.

- **low level of legal education**

Despite issues connected with legal education as introduced to the basic curriculum, still the demand of the Ombudsman for Children with respect to common, practical legal education has not been fulfilled. Living in a modern society requires the skill to apply regulations of law also in practice. The first step should be to involve students in building a system of inner-school law – its statute and the rules and regulations of school’s self- governance.

- **the right of disabled child to recreation**

The percentage of disabled children who participate in various types of leisure activities is too low. In summer holidays, such children constituted only 0.27% of all participant. The Ombudsman for Children has stated that there is a need to intensify measures aiming at improvement of access of disabled children to recreation with their peers.

- **Safety of children during after school activities organised by non-state actors**

Children must be provided with safety during extra classes organised by non-state actors operating on the basis of the basic curriculum, under the Act on freedom of economic activity. Lack of legal answer to the question of responsibility for a child exposes him or her to danger and allows, actors who organise the classes to avoid consequences in case a child dies being actually under their care.

- **Bilingual curriculum in primary schools after the education reform**

Pursuant to the assumptions made in the education reform, primary schools may create bilingual classes. Students living in the district of a school which would not undertake this task, their chances for bilingual education would be limited as children out of the district of a bilingual school who entered the recruitment procedure would be admitted only in the third stage of the procedure, if any vacancies are left. This obviously results in unequal access to education which bears the notion of discrimination.



- **operation of visual arts schools after the education reform**

As the lower secondary school (gymnasium) was liquidated, also visual arts schools in gymnasia would cease to exist. The education reform provides for support of development of artistic talents in children only at the stage of upper secondary school. The introduced changes do not foster development of passion, hobbies and talents of the youngest. Changes are necessary in that matter.

- **Disseminating sensitive personal data of students and their families**

School managers and teachers tend to disclose sensitive data of students and their children, which is illegal. Pedagogues who learned about the family status, health condition and economic condition of students should use that knowledge only for the purpose of developing effective means of assistance for the child and his or her family. It is absolutely unacceptable, harmful and illegal to disclose that knowledge in public, at the forum of the class or even whole school.

- **Rules of use of mobile phones at school**

In many schools the legal requirement of determining rules of using mobile phones within the territory of the school is interpreted as the necessity to introduce a ban on using or even having mobile phones. It is an unacceptable interpretation of law which infringes the child's right to maintain contact with close persons. Regulations in that matter should be formulated in the course of discussions and consultations with the representatives of all school community members – students, teachers and parents. The rules of using mobile phones will be respected by students if they have been accepted by them.

- **Reacting to signs of discrimination**

Manifesting views and belonging youth subcultures by a special outfit cannot be the reason for discrimination of young people at school. Neither can it be the reason of giving lower notes or grades in school classes and conduct. Building attitudes of acceptance of differences should be the mission of teachers. A student's outfit that deviates too much from the school dress code should be the subject of conversations with the student himself and his or her parents. Rules and regulations of the school cannot be set arbitrarily and solely by the adults.

- **Subjective treatment of children by institutions**

Subjective treatment of a child should be clearly visible in all operations undertaken by the school. Children have the right to speak out in all matters that concern them, and adults should respect and, if possible, take into account their

opinions, views and suggestions. Real participation of children and youth in school life builds democratic attitudes, teaches responsibility for the environment and builds self-esteem and, most importantly, does not put down the creative element that exists in every child.

- **Ignoring regulations concerning cupboards for students for their school equipment**

The problem of missing school cupboards in schools is still valid, which results in overloaded backpacks. Also the sanitary services and education officers will have to conduct relevant inspections in the context of the implementation of the education reform and the possible result of schools overloaded with too many students.

- **Inconsistency of internal school regulations with the binding regulations of law.**

Much too often the rules and regulations are inconsistent with the regulations of law, including the Convention on the Rights of the Child. Any irregularities in that matter should be immediately eliminated by the educational supervision body.

- **Overloading students with home assignment**

According to the studies conducted by the Institute of Educational Research<sup>873</sup>, the number of home assignments for students considerably limits their free time after school. This makes it impossible for the children and youth to develop their hobbies, physical activity and spoils their family and other relations. The problem requires in-depth reflection on the part of teachers and detailed supervision on the part of school managers.

- **access of blind and visually impaired children to student's books**

Blind and visually impaired children very often receive their student's books with delay (e.g. after the school year begins) which is contrary to the rule of striving after equality of chances in education and supporting educational development of disabled students. Measures must be taken to eliminate such situations.

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<sup>873</sup> Roman Dolata, Paweł Grygiel, Dorota M. Jankowska, Ewelina Jarnutowska, Aleksandra Jasińska-Maciążek, Maciej Karwowski, Michał Modzelewski, Jolanta Pisarek (2015). Szkolne pytania. Wyniki badań nad efektywnością nauczania w klasach IV-VI. Warsaw: Instytut Badań Edukacyjnych.

- **access to new educational technologies for children with disabilities**

Many programmes that use the newest technological achievements like e-schoolbooks are realised only for healthy children. Measures must be taken to develop and offer the newest solution adjusted to the needs of children with various types of disabilities

- **access to achievements of culture for children with disabilities**

Despite the noticeable improvement there is still no offer for children with various types of disabilities in public sphere of media and in many libraries, museums and other institutions of culture.

- **equal treatment of pupils who participate in subject competitions organized by education officers**

Still it is necessary to uniform the rules and regulations of subject competitions organized for students of primary and lower secondary schools within the whole country so that the prize winners and finalists – regardless of location of their school – do not feel discriminated. It is also necessary to adjust the competition tasks (in its form and content) to the needs of children with disabilities (e.g. blind children, children with partial or total hearing impairment).

- **realization of obligations regarding conveniences in television programmes for disabled persons**

Pursuant to Article 18 of the Act on broadcasting, television providers are obliged to provide services within a defined period of time for persons with eyesight and hearing impairment. Unfortunately, the time within which programmes for children are broadcast is too short and the catalogue of those programmes too scarce.

- **The problem of lice at schools and in kindergartens**

The problem of lice at schools and in kindergartens remains still unsolved.

## RIGHT TO BE PROTECTED AGAINST VIOLENCE, CRUELTY, EXPLOITATION, DEMORALISATION, NEGLECT AND OTHER FORMS OF MALTREATMENT

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

(Article 19 of the Convention on the Rights of the Child)

The general addresses of the Ombudsman for Children with respect to the right to be protected against violence, cruelty, exploitation, demoralisation, neglect and other forms of maltreatment concerned:

- **corporal punishment applied against children**

Still the percentage of persons who approve of corporal punishment is too high. Though, when compared to the year 2008 when approval for application of corporal punishment was declared by 78% of our society, this figure dropped considerably by 32%, this state of affairs is still unacceptable. The newest research conducted by the Ombudsman for Children in 2016 reveals that approval for such upbringing is declared by 46% of Polish citizens and almost 17% believes that beating is an efficient educational method. The research shows also that only one third of Poles knows that application of corporal punishment in education is forbidden in Poland. Effective activity to raise awareness on negative effects of physical punishment of children should be continued and people should be encouraged to use positive methods of upbringing and education.

- **The need to increase the legal and penal protection of minors**

The regulations of penal law must be amended to reinforce the legal and penal protection of children against the most serious crimes. The Ombudsman is waiting to introduce his proposals presented to the President of the Republic of Poland as soon as possible.

- **the need to undertake measures to effectively counteract the hate speech**

Educational and legal measures must be taken to limit the occurrence of hate speech.

- **necessity to react to violence against children**

It is noticeable that society is not quite ready to react against violence against children whereas notifying prosecuting authorities and court on cases of harming minors is the right and social obligation of every citizen.

- **prevention and counteraction against sexual exploitation of children**

According to the Ombudsman's demands, Poland introduced a number of changes in the regulations of criminal law connected with ratification of the Council of Europe Lanzarote Convention on protection of children against sexual exploitation and sexual abuse by Poland. Functioning and effectiveness of these changes must be monitored with respect to elimination of sexual criminality committed to the detriment of minors. It is necessary to organize trainings with respect to increasing the effectiveness of recognizing the symptoms of harmed child and social campaign raising the level of knowledge on the possibility to get help for those harmed with a crime.

- **representing the child in criminal proceedings**

It is necessary to urgently complete the work over legal changes that implement the recommendations of the Constitutional Tribunal on the necessity to introduce regulations that would determine the competences and requirements for persons who may take the role of the child's guardian during court proceedings when – because of conflict of interests between the child and his or her statutory representatives or legal guardians – the child cannot be represented by them. Currently applicable regulations included in the Family and Guardianship Code do not guarantee relevant level of representation of a minor in the course of court proceedings.

- **referring to the so called extra-statutory counter type of scolding minors**

It is frequently the case that criminal proceedings are dismissed when referred to extra-statutory counter type of scolding minors. Such practice must be eliminated as it infringes the right of the child to be raised without violence.

- **adjudication on criminal and probation measures in order to counter-act domestic violence**

Institutions that are in charge of criminal proceedings due to suspected application of domestic violence too rarely apply measures that aim at isolating the perpetrator from the harmed family. Convictions very rarely obliged the perpetrator to participate in correction and education programmes which would aim at permanent changes in the attitudes and provide security to victims.

- **violence against children applied by carers and teachers**

Still acts connected with use of physical and mental violence against children by carers (e.g. employees of foster care facilities, crèche employees) and teachers.

Violent behaviour displayed by adults is most often the consequence of missing pedagogical qualifications. They cannot react adequately to difficult conduct of children and youth, diagnose in time problems that appear and work with the child with special educational needs. Teachers and carers participate in trainings in vocational education much too rarely. They do not always receive proper support from the facility's headmaster. Still too much tolerance is observed with respect to improper behaviour of adults among supervision bodies, representatives of teacher disciplinary proceedings and prosecuting authorities.

- **conditions of questioning minor witnesses and the aggrieved in criminal cases**

Although many process guarantees for minor witnesses and the aggrieved were introduced into the system of law, the necessity to further amend the regulations of law in that field still persists. The obligation to conduct the questioning of minor witness and the aggrieved under special procedure must be introduced in case of all kinds of crimes and the limit of the age of 15 must be cancelled for application of special conditions of the questioning procedure and make the questioning procedure uniform for all persons under 18.

- **participation of medical service in recognizing violence among children**

It is necessary to increase the commitment of medical services in recognizing violence among the youngest. Though they have medical knowledge that allows to diagnose occurrence of violence, still not many physicians initiates the

“Blue Cards” procedure. The syllabus of the medical studies should be complemented with classes in the field of counteracting domestic violence.

- **extending the catalogue of cases that exclude the institution of record expungement**

Currently the sentence of deprivation of liberty without conditional suspension of its execution for crime against sexual freedom and morality is not subject to expungement if the victim was a minor under 15 years of age. Exception of expungement should refer also to sentences of penalties with conditional suspension of its execution. The purpose of tightening of the conditions for record expungement is to exclude persons who do not give guarantee of correctness of their duties from working with children.

- **prohibition of work with children applied to convicted for violence against minors**

The courts adjudicate temporary or life ban of taking posts connected with educating or treating children against persons who had committed sexual crimes or crimes against health and life much to rarely. In result, persons convicted for felonies have the possibility to return to work with children. Application of the above mentioned penal measure will allow to more effectively verify the background of persons applying for work with children in terms of their predispositions and premises against commencement of such work.

- **treating a child like an object in public space**

The problem of treating the child like an object is becoming more and more frequent (beauty competitions, reality shows, advertisements etc). There are no legal instruments in Polish legal system to effectively protect the child against irresponsible activity by adult persons.

- **detention of children of foreigners in Poland**

The Ombudsman for Children still believes that the prohibition to place minor foreigners in closed centres should be applicable to all minors.

- **protection of children against inappropriate content disseminated in cinemas**

There are no standards defining the procedure of labelling movies displayed in cinemas with age category Labels are given by movie distributors solely at their own discretion. Very often movies were given too low age category which

exposed minors to contents not appropriate to their stage of psycho-physical development. Analogical regulation should be applied to movies distributed by means of data carriers (e.g. DD), accessible for purchase.

- **monitoring of the functioning of the Act on domestic violence prevention**

Too little activity is observed of persons who perform their professional duties or services connected with provision of care of children and family in case of suspicion of violence against minors. They do not always notify the prosecuting authorities on possible act of harming a child. Moreover, municipalities and poviats perform their tasks insufficiently with respect to prevention in families endangered with violence by offering education to reinforce nursing competences of parents and be realizing programmes targeted at promotion and implementation of correct educational attitudes. The system of immediate reaction to violence against children requires verification, including coordination of relevant authorities and their duties in the evening and the night-time and on holidays.

- **Specification of the person and sex of the child in crime statistics**

In most records the person and sex of the child as crime victim are not specified.

- **Protection of rights of minors placed in police emergency chambers**

The Supreme Audit Office (NIK) indicated a number of irregularities in the operation of the police emergency centres for minors. It revealed for example cases in which minors had limited contact with parents, defence counsel or carer; their right to free and confident communication was infringed, as well as their right to intimacy and free communication of requests, complaints and applications as well as cases in which the time of detention was prolonged beyond the limits of time defined in the Act on juvenile delinquency.

It is necessary to undertake work to amend the regulations of law to create optimum conditions that will provide for safe and legally correct stay of minors in those centres. It is also necessary to develop and implement uniform standards of operation for those centres, including the way minors are taken care of there.



- **Lack of questionnaires for estimation of violence risk and algorithms of conduct in case of diagnosed violence**

For Police officers, school employees, educational facilities and health care service tools were developed to estimate the risk against life and health connected with family violence and algorithms indicating the procedure in case violence is suspected. Similar tools should be developed also for organisational units of social service which would allow to increase the number of effective interventions undertaken in case of family violence.

- **Designating the place where the medical measure against a minor should be applied**

The Committee for Referring, Moving and Stay of Minors in State Health Care Facilities is not performing its statutory tasks, as its operation is suspended. The type of medical facilities adequate for application of a medical and educational measure and the principles of referring minors should be determined.

- **protection of juveniles in court proceedings.**

It happens that courts, under the procedure of interim measure, place a minor in a mental hospital without having heard the evidence of two expert psychiatrists or on the basis of opinion developed by only one expert psychiatrist or a team of court specialists. This practice should be eliminated, and absolute observance of the regulations of law should be guaranteed.

- **Securing the harmed minor's well-being in the investigative proceedings**

Fast and efficient process of collecting evidence is crucial in relation to the procedure of hearing the minor. Hearing of a child should be conducted only once and when the minor's testimony may already have a meaning for the settlement of the case, that is after all other evidence is collected. It is necessary to upgrade the qualifications of persons who run criminal proceedings involving children and to develop standards of efficient collection of evidence so that any procedures with minors could be carried out quickly and successfully.

- **Provision of protection to children suffering from domestic violence**

It very often happens that a harmed person leaves home, not being aware of rights he or she has. It is necessary to run large-scale informative campaigns to promote knowledge on possible legal means of protection of persons suffering from violence.

- **Developing and implementing the National Strategy of Fighting Violence Against Children**

At the conference of the Council of Europe (4-6 April 2016) in Sofia, the Special Representative of the Secretary General on Violence against Children called all member states to develop national strategies of counteracting violence against children. The strategy should clearly appoint the state as the primary actor in eliminating violence against children. Fight against all forms of violence against children requires elaboration of a comprehensive approach oriented towards key issues like prevention, protection, victim support, exchange of information and practices and prosecution of criminals.

- **Provision of full right to defence for juveniles**

The juvenile's right to defence should be fully guaranteed. Finally a decision made by the President of the Court with respect to appointing a representative is discretionary which may result in that the juvenile's rights be not fully realised.

- **Provision of relevant number of vacancies in medical facilities for persons referred to detoxification by court decision**

The Ombudsman for Children analysed the issue and it occurred that the effectiveness of the current system in terms of providing a sufficient number of vacancies in detoxification facilities for persons obliged to start a treatment by court decision was low. It happens that the waiting time is longer than the time the court decision is valid.

- **Bullying at school and other facilities**

The problem of bullying at school and other educational facilities is still valid. In many cases, acts of bullying take place under silent consent of adults, that is teachers or educators. It is necessary to watch the conduct of children and diagnose the occurring problems as soon as possible. Teachers and educators should be supported by the school or other facility manager in that matter. Under no circumstances, bullying cannot be accepted as a means to make children obedient. Each case of bullying should be analysed in detailed, and persons who are guilty – punished.

- **Cyber-violence at school and other facilities**

Bullying more and more often takes the form of vulgar text messages sent by phone (SMS, MMS), or e-mails, through social media and internet communicators, publishing and disseminating humiliating information etc. Specific nature

of modern means of communication makes it difficult for the victim to tackle such act of violence. In extreme situations, it may become the reason of suicide. Educational activity should be addressed to persons who work with children and youth and they should be encouraged to cooperate with parents and guardians in that matter.

- **Uniform requirements for teachers**

It is necessary to introduce regulations that would oblige the candidate for a teacher in a non-public kindergarten or school to present information from the National Criminal Record certifying that he or she was not punished for crime committed intentionally.

- **Making the regulations that define the disciplinary proceedings against teachers more realistic**

The three-month period of time within which the disciplinary proceedings must be instituted should be prolonged. In this time, the representative of teacher disciplinary proceedings and the Ombudsman for Children must conduct their own investigations. As it may be seen in practice, investigations very often end too late for the Ombudsman for Children or the disciplinary committee to use their mandate to secure the well-being of the child.

It is also necessary to amend the regulations so that punishing a teacher under the Labour Code do not automatically dismiss the disciplinary proceedings.

- **introduction of proper procedural securities for minor foreigners**

Relevant procedural securities must be introduced to Polish law for minor foreigners against whom proceedings are opened pertaining to provision of international protection or mandatory return. It is recommended to have the operations that involve a minor foreigner performed only by an officer or worker with relevant professional education i pedagogical competences. A psychologist should take part in the procedure of hearing the child.

- **Children used in begging**

Still the problem of using minors in begging is valid. This phenomenon may be observed especially in big cities and its intensification – in summertime. This should be perceived as a special form of violence which causes degradation of the child's personality and had negative influence on the child's development. Activity of institutions responsible for realisation of children's rights in that matter should be reinforced.

# APPENDICES

## APPENDIX 1. LIST OF GENERAL ADDRESSES

| No  | Address date and number             | Addressee   | Topic   | Date of response   |
|-----|-------------------------------------|---|---|--|
| 1.  | 07 January 2016, ZSM.422.2.2016.EK  | The Minister of Health  | On bad condition of oral cavity in children                                     | 21/01/2016   |
| 2.  | 07 January 2016 ZSS.422.1.2016.MW   | The Minister of Health  | On tanning beds   | 29/02/2016   |
| 3.  | 07 January 2016 ZSS.422.4.2016.EK   | The Minister of Health  | On health care in gynaecology and obstetrics                                    | 18/01/2016   |
| 4.  | 08 January 2016 ZSS.422.3.2016.KT   | The Minister of Family, Labour and Social Policy                                  | On homeless children  | 03/02/2016   |
| 5.  | 12 January 2016 ZSS.421.2.2016.KK   | The Minister of the Interior and Administration                                   | On the operation of help lines run by self-government organisations             | 17/02/2016   |
| 6.  | 13 January 2016 ZSS.422.5.2016.JW   | The Minister of Family, Labour and Social Policy                                  | On child-support benefit  |  |
| 7.  | 18 January 2016, ZEW.422.1.2016.ES  | The Minister of Culture and National Heritage; the Minister of National Education | On unfair treatment of students of art schools following the general curriculum | 17/02/2016<br>04/04/2016   |
| 8.  | 21 January 2016, ZSS.422.40.2015.MW | The Minister of Culture and National Heritage                                     | On protection of minors against harmful content in cinemas                      |  |
| 9.  | 22 January 2016 ZEW.422.3.2016.MP   | The Minister of National Education  | On child's access to kindergarten   | 17/02/2016   |
| 10. | 27 January 2016 ZEW.422.4.2016.EB   | The Chief Sanitary Inspector  | On the evaluation of effectiveness of regulations on healthy diet               | 26/08/2016   |
| 11. | 28 January 2016 ZEW.422.5.2016.ZA   | Voivodeship Marshals  | On specialists centres of care  | 17/02/2016<br>12/02/2016<br>17/02/2016<br>19/02/2016<br>29/02/2016<br>26/02/2016<br>01/03/2016<br>01/03/2016<br>03/03/2016<br>18/03/2016<br>30/03/2016 |
| 12. | 4 February 2016 ZSR.422.5.2016.MK   | The Minister of Justice   | On more severe penalties for violence against minors                            | 19/02/2016   |

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|-----|--|--|---|------------|
| 13. | 04 February 2016<br>ZSR.422.6.2016.MK  | The Speaker of the Sejm of the Republic of Poland          | On the governmental draft act on counteracting sex criminality  |            |
| 14. | 9 February 2016<br>ZSS.422.7.2016.JW   | The Speaker of the Sejm of the Republic of Poland          | On child-support benefit  |            |
| 15. | 10 February 2016,<br>ZSM.422.1.2016.AJ | The Minister of the Interior and Administration            | On customs clearance of families with children  | 09/03/2016 |
| 16. | 12 February 2016<br>ZSS.422.8.2016.JW  | The Speaker of the Sejm of the Republic of Poland          | On child-support benefit  |            |
| 17. | 18 February 2016,<br>ZSR.422.9.2016.MK | The Minister of Justice                                    | On extending the role of court appointed guardian in enforcement proceedings in guardianship and family cases | 30/03/2016 |
| 18. | 19 February 2016<br>ZSR.422.4.2016.MK  | The Minister of Justice                                    | On the rights of parents to participate in the child's educational path                                       | 30/03/2016 |
| 19. | 22 February 2016<br>ZEW.422.6.2016.AS  | The Minister of Family, Labour and Social Policy           | On visual monitoring inside the premises of residential institutions  | 04/04/2016 |
| 20. | 23 February 2016<br>ZSS.422.10.2016.KT | The Speaker of the Sejm of the Republic of Poland          | On child-support benefit  |            |
| 21. | 24 February 2016<br>ZEW.422.8.2016.ZA  | The Minister of Justice                                    | On minor mothers in youth education centres, juvenile detention centres and youth shelters                    | 30/03/2016 |
| 22. | 24 February 2016<br>ZEW.422.7.2016.AR  | The Minister of National Education                         | On the possibility of juvenile mothers to bring up their children in social therapy centres                   | 08/04/2016 |
| 23. | 25 February 2016<br>ZSM.422.2.2016.JW  | The Prime Minister   | On international protection of minor foreigners   | 11/03/2016 |
| 24. | 26 February 2016<br>ZSS.422.11.2016.GR | The Minister of Infrastructure and Civil Engineering       | On concessions for children in transport  | 07/11/2016 |
| 25. | 26 February 2016<br>ZEW.422.2.2014.AS  | The Minister of National Education                         | On the operation of social rehabilitation facilities for youth from other countries                           | 04/04/2016 |
| 26. | 03 March 2016<br>ZEW.422.9.2016.ES     | The Minister of National Education                         | On student's books for children with sight impairment   | 01/04/2016 |
| 27. | 08 March 2016<br>ZEW.422.11.2016.JF    | The President of Committee of Education, Science and Youth | On disciplinary liability of teachers   |            |
| 28. | 10 March 2016<br>ZEW.422.12.2016.JBR   | The Minister of the Interior and Administration            | On schools being prepared in case of a terrorist attack   | 11/04/2016 |

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|-----|--------------------------------------|--|---|--------------------------|
| 29. | 14 March 2016<br>ZSS.422.14.2016.KT  | The Minister of Justice, Prosecutor General  | On protection of health and life of children  | 13/04/2016               |
| 30. | 14 March 2016<br>ZSS.422.15.2016.EK  | The Minister of Health   | On protection of health and life of children  | 19/04/2016               |
| 31. | 17 March 2016<br>ZEW.422.15.2016.JF  | The Minister of National Education   | On operation of youth education centres and youth social therapy centres  | 13/04/2016               |
| 32. | 17 March 2016<br>ZEW.422.13.2016.JBR | The Minister of National Education   | On subject competitions   | 13/04/2016               |
| 33. | 23 March 2016<br>ZSR.422.11.2016.MK  | The Minister of Health   | On enforcement of court decisions that oblige persons addicted to alcohol to undergo an in-patient treatment                              | 26/04/2016               |
| 34. | 23 March 2016<br>ZEW.422.14.2016.ES  | The Minister of Foreign Affairs  | On disproportions in the allocation of funds for the education of Polish children abroad  | 23/05/2016               |
| 35. | 24 March 2016<br>ZSS.422.16.2016.GR  | The Minister of Health   | On selling hormone contraceptives to minors   | 10/06/2016               |
| 36. | 29 March 2016<br>ZEW.422.17.2016.JBR | The Speaker of the Sejm; the Minister of National Education  | On disciplinary proceedings for teachers  | 01/04/2016               |
| 37. | 30 March 2016<br>ZEW.422.16.2016.JBR | The Minister of National Education   | On the definition of "child" and "family" in the context of the Act on education system   | 05/05/2016               |
| 38. | 31 March 2016<br>ZSS.422.12.2016.EK  | The Minister of Health   | On accessibility and quality of health care in paediatrics  | 29/04/2016               |
| 39. | 31 March 2016<br>ZSR.422.2.2016.MK   | The Minister of Justice  | On securing the child in proceedings  | 06/06/2016               |
| 40. | 31 March 2016<br>ZSR.422.1.2016.MK   | The Minister of Family, Labour and Social Policy   | On the system of identifying families in parental crisis  | 16/06/2016               |
| 41. | 31 March 2016<br>GAB.422.1.2016.MH   | The Speaker of the Sejm of the Republic of Poland, The Speaker of the Senate of the Republic of Poland | Submission of the information on the activity of the Ombudsman for Children and the comments on the observance of the rights of the child |                          |
| 42. | 1 April 2016<br>GAB.422.2.2016.BS    | The President of Poland, the Prime Minister, the President of the Supreme Audit Office                 | Submission of the information on the activity of the Ombudsman for Children and the comments on the observance of the rights of the child |                          |
| 43. | 1 April 2016<br>ZSS.422.17.2016.EK   | The Ombudsman for Patient's Rights   | On protection of health and life of children  | 11/04/2016<br>16/06/2016 |
| 44. | 07 April 2016<br>ZSS.422.20.2016.KT  | The Minister of Justice<br>The Prosecutor General  | On the home detention system for prisoners under Article 209 of the PC  | 30/05/2016               |

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|-----|---|--|--|--------------------------|
| 45. | 08 April 2016<br>ZSS.422.18.2016.AJ       | President of the Supreme Audit Office            | On homeless children   | 27/04/2016               |
| 46. | 08 April 2016<br>ZSR.422.12.2016.ER       | The Minister of Justice                          | In the right of the juvenile to defend   | 19/05/2016               |
| 47. | 12 April 2016<br>ZSR.422.14.2016.<br>AMIK | President of the Supreme Audit Office            | On the regulation of legal status of children placed in foster care  | 28/04/2016               |
| 48. | 18 April 2016<br>ZSS.422.21.2016.JW       | The Minister of Family, Labour and Social Policy | On protection of personal data of adopted children   | 11/05/2016               |
| 49. | 19 April 2016<br>ZSR.422.16.2016.MK       | The Minister of Justice                          | On legal and penal protection of the child against family violence   | 09/05/2016               |
| 50. | 20 April 2016<br>ZEW.422.18.2016.JR       | The Minister of Sports and Tourism               | On organisation of school competition under the programme "Sports of all children"   | 04/05/2016               |
| 51. | 23 April 2016<br>ZEW.422.13.2016.JBR      | The Minister of National Education               | On subject competitions  | 25/05/2016               |
| 52. | 26 April 2016<br>ZSS.422.23.2016.EK       | The Minister of Health                           | On accessibility and quality of modern care for children.  | 01/07/2016               |
| 53. | 27 April 2016<br>ZSS.422.22.2016.KK       | The Minister of Justice                          | On lack of experts at the stage of court proceedings initiated by appeals against the rulings of Voivodship Disability Evaluation Boards,          | 06/06/2016               |
| 54. | 27 April 2016<br>ZSS.422.25.2016.KT       | The Chief Labour Inspector                       | On hiding real income of employees obliged to pay child maintenance by their employers   | 29/07/2016               |
| 55. | 29 April 2016<br>ZSM.422.3.2016.AJ        | The Minister of the Interior and Administration  | On ratification of the Convention relating to the Status of Stateless Persons of 1954 and the Convention on the Reduction of Statelessness of 1961 | 30/05/2016               |
| 56. | 29 April 2016<br>ZSR.422.17.2016.MK       | The Prime Minister                               | On developing and implementing the National Strategy of Fighting Violence Against Children   | 09/05/2016<br>19/05/2016 |
| 57. | 04 May 2016<br>ZSS.422.9.2016.JW          | The Minister of Health                           | On poisoning with smarties   | 06/06/2016               |
| 58. | 7 maja 2016<br>GAB.422.3.2016.BS          | The President of the Republic of Poland          | On legal and penal protection of minors  |                          |
| 59. | 11 May 2016<br>ZSS.422.24.2016.KT         | The Minister of Family, Labour and Social Policy | On encouraging the maintenance debtors to settle their dues against children   | 28/06/2016               |
| 60. | 13 May 2016<br>ZSS.422.26.2016.GR         | The Minister of Family, Labour and Social Policy | On exemption from work with retained right to remuneration for an employee who is upbringing a child under 14                                      | 23/06/2016               |

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|-----|------------------------------------|---|--|--------------------------|
| 61. | 13 May 2016<br>ZEW.422.21.2016.ES  | The President of the Capital City of Warsaw; The Minister of National Education   | On recruitment to first grades of out-of district lower secondary schools  | 09/06/2016               |
| 62. | 13 May 2016<br>ZEW.422.20.2016.JBR | The Minister of National Education  | On the report on the study Monitoring of student's rights in schools of the Vistula region   | 17/06/2016               |
| 63. | 17 May 2016<br>ZSR.422.19.2016.MK  | The Minister of Family, Labour and Social Policy  | On promoting the information on forms of care and support for victims of family violence   | 25/05/2016               |
| 64. | 23 May 2016<br>ZSM.422.5.2016.JW   | The Minister of Justice   | On appeal in cassation against decisions in proceedings under the Hague Convention on Civil Aspects of International Child Abduction | 23/06/2016<br>12/10/2016 |
| 65. | 23 May 2016<br>ZSS.422.27.2016.KT  | The Minister of Family, Labour and Social Policy  | On professional mobilization of maintenance debtors  | 28/06/2016               |
| 66. | 24 May 2016<br>ZSS.422.28.2016.KT  | The Minister of Health  | On the situation in the Child's Health Memorial Institute  | 24/05/2016               |
| 67. | 30 May 2016<br>ZEW.422.24.2016.ES  | The Minister of National Education  | On calculating subsidies dedicated to be realised by children in education out of the school/ kindergarten.                          | 20/06/2016               |
| 68. | 30 May 2016<br>ZEW.422.26.2016.JF  | Chief Education Officers  | On suicides and suicide attempts of minor students   | 10/06/2016<br>16/09/2016 |
| 69. | 03 June 2016<br>ZEW.422.22.2016.ES | The Chief Sanitary Inspector  | On sanitary inspection in facilities and institutions  | 01/07/2016               |
| 70. | 6 June 2016<br>ZEW.422.25.2016.ZA  | The Minister of Family, Labour and Social Policy  | On day care facilities   | 28/07/2016               |
| 71. | 7 June 2016<br>ZEW.422.27.2016.MP  | The Minister of National Education  | On irregularities in the recruitment procedure in kindergartens and availability of vacancies in kindergartens                       | 07/07/2016               |
| 72. | 10 June 2016<br>ZSM.422.7.2016.JW  | The Minister of the Interior and Administration   | On protecting children against being used for begging  | 25/07/2016               |
| 73. | 13 June 2016<br>ZSS.422.29.2016.KT | The president of "Lewiatan" Association, the President of Employers of the Republic of Poland; the President of the Employees and Employers Association | On eliminating barriers which make it difficult to enforce child maintenance   | 28/07/2016<br>30/06/2016 |



|     |                                    |   |   |                          |
|-----|------------------------------------|---|---|--------------------------|
| 74. | 20 June 2016<br>ZSR.422.4.2016.MK  | The Presidents of the Courts of Appeal  | Submission of the copy of the Ombudsman for Children's report and the Minister of Justice's response with respect to the right of the parents to participate in the child's educational development |                          |
| 75. | 20 June 2016<br>ZSR.422.4.2016.MK  | Chief Education Officers  | Submission of the copy of the Ombudsman for Children's report and the Minister of Justice's response with respect to the right of the parents to participate in the child's educational development |                          |
| 76. | 22 June 2016<br>ZSS.422.29.2016.KT | Presidents, Mayors and Voivodes   | On safety in playgrounds  |                          |
| 77. | 22 June 2016<br>ZSM.422.8.2016.AD  | The Minister of Justice   | On trainings for judges of family courts responsible deciding upon cases concerning civil aspect of international child abduction based on the Hague Convention                                     | 28/10/2016               |
| 78. | 27 June 2016<br>ZSR.422.23.2016.MD | The Minister of Justice<br>The Prosecutor General   | On protecting the child's rights in a court trial   | 20/09/2016               |
| 79. | 1 lipca 2016<br>ZSS.422.35.2016.EK | The Minister of Health  | On protecting unborn children against HIV,  | 19/07/2016               |
| 80. | 4 July 2016<br>ZSR.422.21.2016.MK  | The Minister of Justice   | On placing minors in mental hospital  |                          |
| 81. | 05 July 2016<br>ZSR.422.21.2016.MK | The Minister of Family, Labour and Social Policy, the Minister of Justice, Prosecutor General | On developing a questionnaire to estimate violence risks and algorithms of procedure for employees of social service units  | 13/07/2016<br>20/07/2016 |
| 82. | 06 July 2016<br>ZSR.422.28.2015.MK | The Minister of Justice   | On removing children from families because of their difficult economic condition  |                          |
| 83. | 6 July 2016<br>ZSM.422.4.2016.JW   | The Minister of Foreign Affairs   | On ratification of the Convention on Contact Concerning Children.   | 30/08/2016               |
| 84. | 15 July 2016<br>ZEW.422.30.2016.ZA | The President of the Sejm Commission of Social Policy and Family                              | On draft Act amending the act on family support and foster care system, Act on social support and Act amending the act on commune self-government and some acts                                     |                          |
| 85. | 19 July 2016<br>ZEW.422.29.2016.ZA | The Minister of Family, Labour and Social Policy  | On the amount of the so called pocket money for pupils of residential institutions  | 23/08/2016               |
| 86. | 20 July 2016<br>ZSR.422.28.2016.MS | The Minister of Family, Labour and Social Policy  | On financing adoption agencies  | 28/10/2016               |

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|------|--|---|--|--|
| 87.  | 22 July 2016<br>ZSS.422.39.2016.AT     | The Ombudsman for Children in Italy   | On execution of alimonies abroad, pursuant to decisions of Polish courts   | 10/10/2016<br>12/12/2016               |
| 88.  | 22 July 2016<br>ZSM.422.9.2016.AD      | The Minister of Justice   | On protecting the child in trans-border proceedings  |  |
| 89.  | 3 August 2016<br>ZSS.422.30.2016.SK    | The Minister of Justice<br>The Prosecutor General   | On enforcement of maintenance benefit abroad   |  |
| 90.  | 3 August 2016<br>ZSS.422.36.2016.JW    | The Minister of Family, Labour and Social Policy  | On working off the debt due to maintenance fund by maintenance debtors   | 07/09/2016                             |
| 91.  | 3 August<br>ZSR.422.24.2016.MK         | The Minister of Justice   | On placing minors in state health care facilities  | 20/09/2016                             |
| 92.  | 4 August 2016<br>ZEW.422.23.2016.JBR   | The Minister of National Education  | On consequences of provision of wrong test sheets during examinations after lower secondary school,  | 13/09/2016                             |
| 93.  | 4 August 2016<br>ZSS.422.40.2016.MW    | The Sejm of the Republic of Poland,<br>Parliamentary Team for Oncology                            | On using tanning beds by minors  |  |
| 94.  | 10 sierpnia 2016<br>ZEW.422.31.2016.ES | The Minister of National Education  | On disproportions in the allocation of funds for the education of Polish children abroad   | 09/09/2016                             |
| 95.  | 10 August 2016<br>ZSS.422.20.2016.KT   | The Minister of Justice, Prosecutor General   | On the home detention system for prisoners under Article 209 of the PC   | 16/11/2016                             |
| 96.  | 12 sierpnia 2016<br>ZSM.422.10.2016.AJ | The Minister of Family, Labour and Social Policy  | On access of minor foreigners to child-support benefit   | 06/09/2016                             |
| 97.  | 17 sierpnia 2016<br>ZSS.422.41.2016.JW | The Minister of Family, Labour and Social Policy  | On child-support benefit for children with mild disability.  | 05/09/2016                             |
| 98.  | 19 sierpnia 2016<br>ZSM.422.11.2016.AC | The Minister of Justice   | On protection of minor foreigners against sexual abuse   |  |
| 99.  | 24 sierpnia 2016<br>GAB.422.4.2016.BS  | The President of the Republic of Poland   | On amending the Act on juvenile delinquency  |  |
| 100. | 24 sierpnia 2016<br>ZSR.422.23.2015.MK | The Minister of Justice, the Minister of Family, Labour and Social Policy, the Minister of Health | On protection of children exposed to the risk of life or health loss because of consuming alcohol or other psychoactive substances in the pregnancy period | 16/09/2016<br>04/10/2016<br>09/12/2016 |
| 101. | 30 sierpnia 2016<br>ZSS.422.38.2016.KT | Deputy Prime Minister<br>The Minister of Development  | W sprawie utworzenia centralnego rejestru dłużników alimentacyjnych  | 19/10/2016                             |
| 102. | 30 August 2016<br>ZSS.422.24.2016.KT   | The Minister of Family, Labour and Social Policy  | On encouraging the maintenance debtors to settle their dues against children   |  |

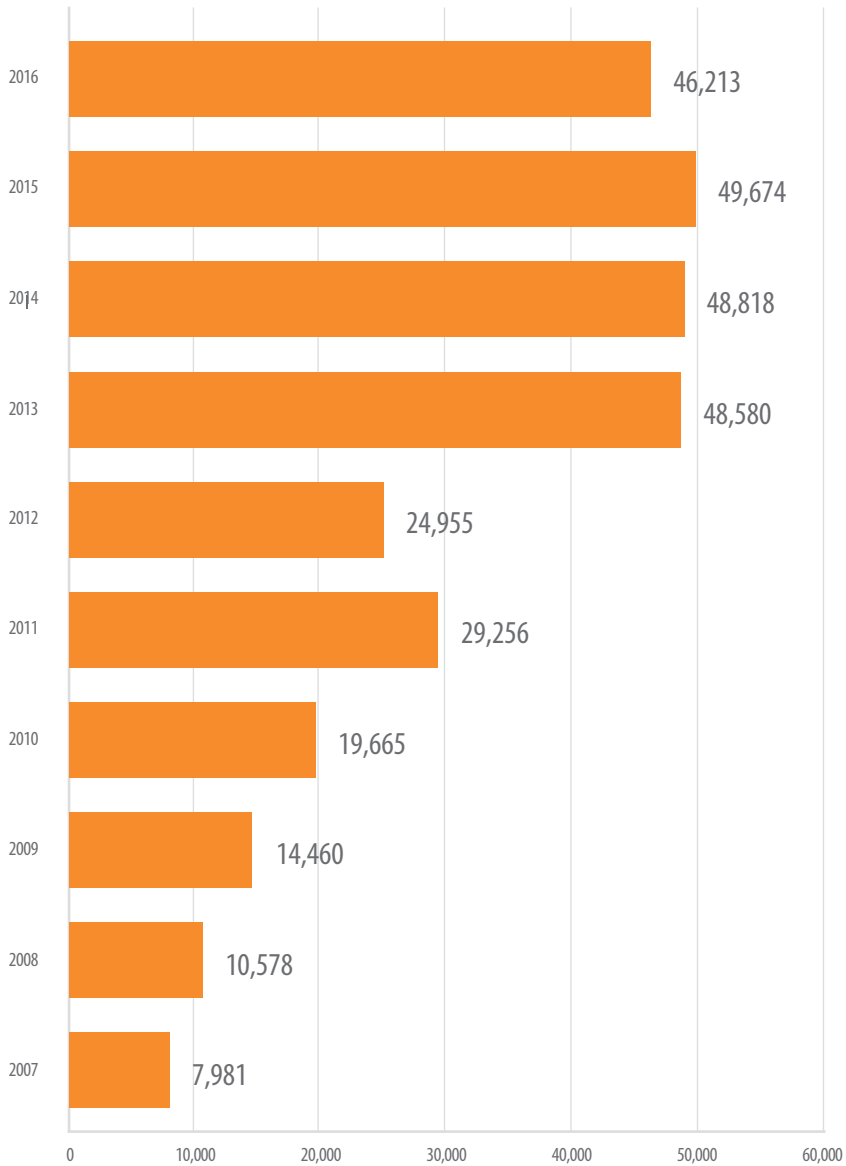
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|------|---|--|--|--|
| 103. | 12 September 2016<br>ZSS.422.24.2016.KT | The Minister of Family, Labour and Social Policy         | On encouraging the maintenance debtors to settle their dues against children                                     |  |
| 104. | 13 września 2016<br>ZEW.422.34.2016.JF  | The Deputy Prime Minister<br>The Minister of Development | On equal treatment of children with respect to awarding grants for excellent achievements at school              | 11/10/2016   |
| 105. | 13 września 2016<br>ZSS.422.35.2016.EK  | The Minister of Health                                   | On protecting unborn children against HIV,   | 18/10/2016   |
| 106. | 15 września 2016<br>ZEW.422.33.2016.AS  | The Voivodes   | On little children in institutional foster care against the regulations of law                                   | 29/09/2016<br>29/09/2016<br>29/09/2016<br>29/09/2016<br>30/09/2016<br>30/09/2016<br>30/09/2016<br>30/09/2016<br>30/09/2016<br>30/09/2016<br>30/09/2016<br>30/09/2016<br>03/10/2016<br>03/10/2016<br>04/10/2016<br>05/10/2016 |
| 107. | 26 września 2016<br>ZEW.422.4.2016.AS   | The Chief Sanitary Inspector                             | On the evaluation of effectiveness of regulations on healthy diet  | 10/11/2016   |
| 108. | 26 września 2016<br>ZSM.422.12.2016.AC  | The Minister of the Interior and Administration          | On protection of rights of minor foreigners  | 09/12/2016   |
| 109. | 26 September 2016<br>ZSS.422.11.2016.GR | The Minister of Infrastructure and Civil Engineering     | On concessions for children in transport   | 07/11/2016   |
| 110. | 27 September 2016<br>ZSR.422.28.2016.MS | The Minister of Family, Labour and Social Policy         | On financing adoption agencies   | 28/10/2016   |
| 111. | 27 września 2016<br>ZEW.422.35.2016.KD  | The Minister of National Education                       | On unequal access to education of children from rural areas  | 08/11/2016   |
| 112. | 28 September 2016<br>ZSS.422.23.2016.EK | The Minister of Health                                   | On accessibility and quality of modern care for children.  | 09/11/2016<br>05/01/2017   |
| 113. | 30 września 2016<br>ZEW.422.35.2015.JR  | The Speaker of the Sejm of the Republic of Poland        | On the operation of Polish schools in Lithuania  | 16/11/2016   |
| 114. | 1 October 2016<br>ZEW.422.2.2014.JR     | The Minister of National Education                       | On the operation of social rehabilitation facilities for youth from other countries                              | 03/11/2016   |
| 115. | 3 October 2016<br>ZEW.422.36.2016.KD    | The Prime Minister                                       | On the position of the European Network of the Ombudspersons for Children (ENOC) regarding education of children | 04/10/2016<br>17.11 2016   |

|      |  |   |   |            |
|------|--|---|---|------------|
| 116. | 5 October 2016<br>ZEW.422.37.2016.JF   | The Minister of National Education                | On amending the regulations of education law  | 17/11/2016 |
| 117. | 7 October 2016<br>GAB.422.5.2016.BS    | The Minister of the Interior and Administration   | On continuing activity to promote peer prevention in the context of youth taking psychoactive agents  | 02/11/2016 |
| 118. | 10 October 2016<br>ZSS.422.44.2016.EK  | The Minister of Health                            | On postnatal depression   | 09/11/2016 |
| 119. | 17 October 2016<br>ZSR.422.11.2016.MK  | The Minister of Health                            | On enforcement of court decisions that oblige persons addicted to alcohol to undergo an in-patient treatment  | 14/11/2016 |
| 120. | 17 October 2016<br>ZSM.422. 8.2016.AD  | The Minister of Justice                           | On trainings for judges of family courts responsible deciding upon cases concerning civil aspect of international child abduction based on the Hague Convention | 28/10/2016 |
| 121. | 28 October 2016<br>ZSR.422.19.2015.MK  | The Minister of Justice                           | On hearing the child in civil proceedings   | 09/12/2016 |
| 122. | 28 October 2016<br>ZSR.422.32.2016.MK  | The Minister of the Interior and Administration   | On protection of rights and well-being in police emergency child centres  | 29/11/2016 |
| 123. | 28 October 2016<br>ZSR.422.33.2016.MK  | The Minister of the Interior and Administration   | On amending the regulations on police emergency child centres   |            |
| 124. | 28 October 2016<br>ZSM.422.14.2016.MC  | The Ombudsman for Children in the Netherlands     | On supporting minor citizens of Poland in the Netherlands   | 21/12/2016 |
| 125. | 31 October 2016<br>ZEW.422.38.2016.WR  | The Minister of National Education                | On parents' councils in youth education centres   | 01/12/2016 |
| 126. | 31 October 2016<br>ZSS.422.42.2016.MW  | The Minister of Family, Labour and Social Policy  | On the lower limit entitling to receive benefits from the Child Maintenance Fund  | 29/11/2016 |
| 127. | 2 November 2016<br>ZSR.422.31.2016.MS  | The Minister of Family, Labour and Social Policy  | On performance standards in operation of adoption agencies  | 19/12/2016 |
| 128. | 5 November 2016<br>ZSS.422.30.2016.SK  | The Minister of Justice<br>The Prosecutor General | On enforcement of maintenance benefit abroad  |            |
| 129. | 05 November 2016<br>ZSR.422.34.2016.MK | The Minister of Justice                           | On assessment of the draft act amending the act – Code of Civil Procedure and some other acts   |            |
| 130. | 15 November 2016<br>ZSM.422.16.2016.AD | The Prime Minister                                | On ratification of the 3rd Optional Protocol to the Convention on the Rights of the Child.  | 02/12/2016 |
| 131. | 22 November 2016<br>ZEW.422.39.2016.MP | The Minister of National Education                | On disciplinary liability of teachers specialising other forms of pre-school education  | 15/12/2016 |

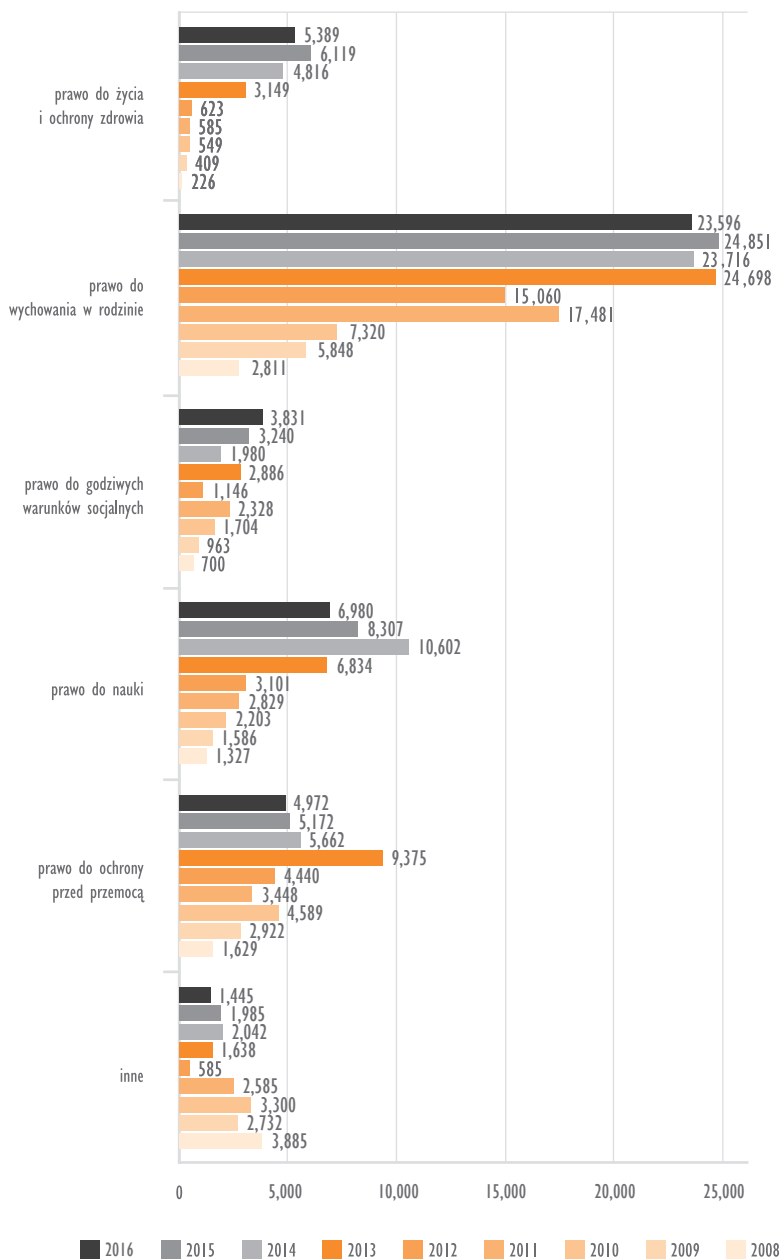
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|------|---|---|--|------------|
| 132. | 23 November 2016<br>ZSR.422.21.2016.MK  | The Minister of Justice   | On placing minors in mental hospitals  |            |
| 133. | 23 November 2016<br>ZSS.422.46.2016.KT  | The President of the National Broadcasting Council                        | On disseminating dangerous information about preventive vaccination  | 05/12/2016 |
| 134. | 23 November 2016<br>ZSS.422.47.2016.EK  | The Minister of Health  | On preventive vaccinations for children  | 19/12/2016 |
| 135. | 24 November 2016<br>ZEW.422.45.2016.JF  | The Minister of National Education  | On safe conditions of stay and proper care of children with chronic diseases in kindergartens  | 22/12/2016 |
| 136. | 24 November 2016<br>ZEW.422.41.2016.JK  | The Minister of National Education  | On financing of education system units   | 14/12/2016 |
| 137. | 24 November 2016<br>ZSM.422.17.2016.JW  | The Minister of Justice   | On abandoning the rule of immediate enforceability of decisions issued by courts of first instance in cases concerning civil aspect of international child abduction based on the Hague Convention | 28/12/2016 |
| 138. | 25 November 2016<br>ZSR.422.31.2016.MS  | The President of the Republic of Poland                                   | On suggested remarks to the Act on family support and foster care system   | 19/12/2016 |
| 139. | 24 November 2016<br>DTZ.422.1.2016.RR   | The Minister of Family, Labour and Social Policy                          | On missing regulations on the profession of psychologist   | 22/12/2016 |
| 140. | 25 November 2016<br>ZSS.422.49.2016.JW  | The Minister of Culture and National Heritage                             | W sprawie ograniczenia reklam z udziałem małoletnich oraz reklam do nich kierowanych   |            |
| 141. | 28 November 2016<br>ZSS.422.48.2016.JW  | The Minister of Health  | On missing paediatric standards  | 12/01/2017 |
| 142. | 28 November 2016<br>ZEW.422.46.2016.ZA  | Starosts  | On foster care children becoming independent   |            |
| 143. | 28 November 2016<br>ZEW.422.47.2016.ZA  | The Minister of Family, Labour and Social Policy                          | On foster care children becoming independent   | 15/12/2016 |
| 144. | 28 November 2016<br>ZEW.422.40.2016.JBR | The Minister of National Education  | On amending the regulations of education law   |            |
| 145. | 6 December 2016<br>ZSR.422.35.2016.MK   | The Presidents of the Courts of Appeal                                    | On lengthy adoption proceedings  | 13/12/2016 |
| 146. | 8 December 2016<br>ZSS.422.19.2016.KK   | The Minister of Infrastructure and Civil Engineering                      | On the rights of tenants   | 12/01/2017 |
| 147. | 8 December 2016<br>ZEW.422.49.2016.ES   | I Wiceprezes Rady Ministrów;<br>Minister Kultury i Dziedzictwa Narodowego | On transformation of music schools   |            |

|      |  |   |   |            |
|------|--|---|---|------------|
| 148. | 14 December 2016<br>ZSR.422.20.2016.MK | The Minister of Justice, Prosecutor General   | On prosecuting perpetrators of crimes committed to the detriment of minors                      | 08/03/2017 |
| 149. | 21 December 2016<br>ZSS.422.50.2016.KT | The Minister of Health  | On standards of medical procedures and monitoring of the child's fate                           | 13/01/2017 |
| 150. | 22 December 2016<br>ZEW.422.35.2015.JK | Secretary of State for Parliamentary, Polish Community abroad, consular Affairs and diplomatic service at the Ministry of Foreign Affairs<br>The Chairman Of the Interministerial Team for the Affairs of Polish Community and Poles abroad | W sprawie funkcjonowania polskich szkół na Litwie   |            |
| 151. | 22 December 2016<br>ZEW.422.37.2016.JF | The President of the Republic of Poland   | On amending the regulations of education law  |            |
| 152. | 23 December 2016<br>ZSS.422.24.2016.KT | The Minister of Family, Labour and Social Policy  | On encouraging the maintenance debtors to settle their dues against children                    |            |
| 153. | 27 December 2016<br>ZSR.422.32.2016.MK | The General Commandant of the Police  | On developing and implementing uniform standards of operation of police emergency child centres | 17/01/2017 |
| 154. | 28 December 2016<br>ZEW.422.2.2014.JK  | The Minister of Foreign Affairs   | On the operation of social rehabilitation facilities for youth from other countries             | 17/01/2017 |

## APPENDIX 2. LIST OF CASES IN THE YEARS 2007–2016



### APPENDIX 3. LIST OF CASES INVESTIGATED IN THE YEARS 2008-2016, DIVIDED INTO CATEGORIES





## APPENDIX 4. LIST OF CATEGORIES OF CASES INVESTIGATED IN 2016

| Types of cases                                  | Cases reported in writing or of one's own initiative | Cases reported on the phone | Cases reported personally at the office | Total         |
|---|--|-----------------------------|---|---------------|
| <b>The right to life and health protection</b>  | 619  | 4,763                       | 7                                       | 5,389         |
| <b>The right to be raised in a family</b>       | 3,418  | 19,780                      | 398                                     | 23,596        |
| <b>The right to decent social conditions</b>    | 1,226  | 2,557                       | 48                                      | 3,831         |
| <b>The right to education</b>                   | 1,496  | 5,447                       | 37                                      | 6,980         |
| <b>The right to protection against violence</b> | 977  | 3,604                       | 391                                     | 4,972         |
| <b>Other</b>                                    | 842  | 603                         |   | 1,445         |
| <b>Total</b>                                    | <b>8,578</b>   | <b>36,754</b>               | <b>881</b>                              | <b>46,213</b> |

## APPENDIX 5. COURT AND ADMINISTRATIVE CASES WITH THE PARTICIPATION OF THE OMBUDSMAN FOR CHILDREN

**Table 1.** Cases from 2010 continued in 2016

| No | Date and case reference No  | Location                 | Case subject/Results of the Ombudsman's participation  |
|----|---|--------------------------|--|
| 1  | 26/10/2010<br>VIII R Nsm 2168/09<br>ZSR/410/666/2010/MS<br>ZSR/410/76/2011/MS<br>ZSR/410/16/2012/MS<br>ZSR/410/383/2013/MS<br>ZSR/410/1081/2014/MS<br>ZSR.441.9.2014.MS | The Regional Court in S. | Case pertaining to contacts.<br>The Ombudsman's motions were admitted.<br>The case is in progress. |

**Table 2.** Cases from 2011 continued in 2016

| No | Date and case reference No  | Location                 | Case subject/Results of the Ombudsman's participation   |
|----|---|--------------------------|---|
| 1  | 28.02.2011<br>I C 803/10<br>ZSR/410/68/2011/TT<br>ZSR/410/617/2013/AZ<br>ZSR/410/738/2014/AZ<br>ZSR.440.5.2015.AZ                       | The District Court in K. | Case pertaining to divorce.<br>The Ombudsman's motions were admitted.<br>The case is in progress.                       |
| 2  | 07/09/2011<br>VI Nsm 509/11<br>ZSM/471/8/2011/AJ<br>ZSM/471/2/2012/AJ<br>ZSM/471/23/2013/AJ<br>ZSM.471/3/2014/AJ<br>ZSM.441.15.2015.AJ  | The District Court in W. | Case pertaining to changing the decision on returning the child under the Hague Convention.<br>The case is in progress. |
| 3  | 12.09.2011<br>III Nsm 134/10<br>III Nsm 62/14<br>ZSR/440/52/2011/MN<br>ZSR/410/196/2013/MG<br>ZSR/410/55/2014/MG<br>ZSR.441.592.2015.MG | The Regional Court in B. | Case pertaining to parental authority.<br>The Ombudsman's motions were partially admitted.<br>The case is closed.       |

|   |  |                             |  |
|---|--|-----------------------------|--|
| 4 | 29/11/2011<br>IC 405/10, XVIII 7/15<br>ZSR/410/937/2011/GH<br>ZSR/410/66/2012/GH<br>ZSR/410/66/2012/KW<br>ZSR/410/645/2013/KW<br>ZSR/410/887/2014/KW<br>ZSR.441.1280.2015.KT | The District Court<br>in P. | Case pertaining to divorce.<br>The Ombudsman's motions were<br>not admitted.<br>The case is in progress. |
|---|--|-----------------------------|--|

**Table 3.** Cases from 2012 continued in 2016

| No | Date and case reference No   | Location                    | Case subject/Results of the Ombudsman's participation   |
|----|--|-----------------------------|---|
| 1  | 10/02/2012<br>IC 491/12<br>ZSR/410/96/2012/UZ<br>ZSR/410/216/2014/ER<br>ZSR.441.1543.2015.ER                         | The District Court in W.    | Case pertaining to divorce.<br>The Ombudsman's motions were<br>partially admitted.<br>The case is in progress.            |
| 2  | 20/05/2012<br>IV C 1104/08<br>ZSR/410/627/2013/ER<br>ZSR/410/509/2014/ER<br>ZSR.441.762.2015.ER                      | The District Court<br>in W. | Case pertaining to divorce.<br>The Ombudsman's motions were<br>partially admitted.<br>The case is in progress.            |
| 3  | 06/06/2012<br>IV Nsm 144/12<br>ZSR/410/331/2012/AT<br>ZSR.441.288.2015.MK  | The Regional Court<br>in W. | Case pertaining to parental au-<br>thority.<br>The Ombudsman's motions were<br>partially admitted.<br>The case is closed. |
| 4  | 19/06/2012<br>III RNsm 117/11<br>III RNsm 236/14<br>DTZ/410/170/2012/RR<br>DTZ/410/64/2013/RR<br>DTZ.441.95.2015.RR  | The Regional Court<br>in O. | Case pertaining to contacts.<br>The Ombudsman's motions were<br>partially admitted.<br>The case is in progress.           |
| 5  | 24/07/2012<br>IC 1088/11<br>ZSR/410/997/2012/AM<br>ZSR/410/315/2013/PP<br>ZSR/410/697/2014/PP<br>ZSR.441.900.2015.PP | The District Court<br>in W. | Case pertaining to divorce.<br>The Ombudsman's motions were<br>admitted.<br>The case is in progress.                      |
| 6  | 25/07/2012<br>IC 501/11<br>ZSR/410/102/2012/MS<br>ZSR/410/387/2013/MS<br>ZSR/410/1085/2014/MS<br>ZSR.441.832.2015.MS | The District Court in W.    | Case pertaining to divorce.<br>The Ombudsman's motions were<br>partially admitted.<br>The case is in progress.            |

|    |   |                             |   |
|----|---|-----------------------------|---|
| 7  | 17/09/2012<br>III Nsm 114/11<br>ZSR/410/1008/2012/AT<br>ZSR.441.165.2015.MK   | The Regional Court<br>in Ś. | Case pertaining to contacts.<br>The Ombudsman's motions were<br>partially admitted.<br>The case is in progress. |
| 8  | 13/11/2012<br>X RC 1511/12<br>ZSR/410/1160/2012/MS<br>ZSR/410/220/2013/MS<br>ZSR/410/515/2014/MS<br>ZSR.441.1613.2015.MS                      | The District Court<br>in S. | Case pertaining to divorce.<br>The Ombudsman's motions were<br>not admitted.<br>The case is closed.             |
| 9  | 12/12/2012<br>IV Nsm 449/12<br>ZSR/410/1065/2012/DF<br>ZSR/410/163/2013/DF<br>ZSR/410/855/2014/KW<br>ZSR.440.11.2015.KT<br>ZSR.440.11.2015.JM | The Regional Court<br>in B. | Case pertaining to contacts.<br>The Ombudsman's motions were<br>admitted.<br>The case is in progress.           |
| 10 | 12/12/2012<br>VI RC 609/12<br>ZSR/410/746/2012/KW<br>ZSR/410/725/2013/KW<br>ZSR/410/863/2014/KW<br>ZSR.440.1.2015.KT<br>ZSR.440.1.2015.JM     | The District Court<br>in O. | Case pertaining to divorce.<br>The Ombudsman's motions were<br>partially admitted.<br>The case is closed.       |

**Table 4.** Cases from 2013 continued in 2016

| No | Date and case reference No  | Location                    | Case subject/Results of the Ombudsman's participation   |
|----|---|-----------------------------|---|
| 1  | 05/02/2013<br>III RC 484/11<br>ZSR/342/2013/DF<br>ZSR/627/2014/JP<br>ZSR.441.721.2015.JP            | The Regional Court<br>in K. | Case pertaining to denial of pa-<br>ternity.<br>The case is in progress.  |
| 2  | 05/02/2013<br>III Nsm 222/12<br>ZSR/410/328/2013/DF<br>ZSR/410/530/2014/ER<br>ZSR.441.1573.2015.ER  | The Regional Court<br>in S. | Case pertaining to parental au-<br>thority.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed. |
| 3  | 08/04/2013<br>III Nsm 164/15<br>ZSR/410/480/2013/AP<br>ZSR/410/683/2014/AMIK<br>ZSR.441.831.2015.MD | The Regional Court<br>in Z. | Case pertaining to contacts.<br>The case is closed.   |

|    |  |                             |  |
|----|--|-----------------------------|--|
| 4  | 23/04/2013<br>II C 731/10<br>ZSR/410/153/2013/MS<br>ZSR/410/1026/2014/MS<br>ZSR.441.1022.2015.MS                 | The District Court<br>in K. | Case pertaining to divorce.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed.                      |
| 5  | 06/05/2013<br>I C 23/11<br>ZSR/410/1070/2013/DF<br>ZSR/410/984/2014/KW<br>ZSR.440.9.2015.KT<br>ZSR.440.9.2015.JM | The District Court in W.    | Case pertaining to divorce.<br>The Ombudsman's motions were<br>partially admitted.<br>The case is closed.            |
| 6  | 13/05/2013<br>III Nsm 335/12<br>ZEW/414/67/2013/MK<br>ZEW/414/24/2014/JR<br>ZSR.441.2565.2015.MS                 | The Regional Court<br>in G. | Case pertaining to issuance of<br>decisions in important affairs of<br>the minors.<br>The case is in progress.       |
| 7  | 21/05/2013<br>XIII RC 2069/12<br>ZSR/410/532/2013/DF<br>ZSR/410/677/2014/PP<br>ZSR.441.902.2015.PP               | The District Court<br>in W. | Case pertaining to divorce.<br>The Ombudsman's motions were<br>partially admitted.<br>The case is in progress.       |
| 8  | 09/07/2013<br>I C 2268/12<br>ZSR.410/580/2013/DF<br>ZSR/419/2014/KCH<br>ZSR.441.811.2015.PP                      | The Regional Court<br>in Ž. | Case pertaining to divorce.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed.                      |
| 9  | 29/08/2013<br>IC 493/12<br>ZSR/410/400/2013/MS<br>ZSR/410/1149/2014/AKK<br>ZSR.441.269.2015.AO                   | The Regional Court<br>in W. | Case pertaining to divorce.<br>The Ombudsman's motions were<br>partially admitted.<br>The case is in progress.       |
| 10 | 10/09/2013<br>XIV C 276/12<br>ZSR/440/448/2013/MG<br>ZSR/440/14/2014/MG<br>ZSR.441.634.2015.MG                   | The District Court<br>in P. | Case pertaining to divorce.<br>The Ombudsman's motions were<br>not admitted.<br>The case is in progress.             |
| 11 | 21/10/2013<br>III Nsm 276/15<br>ZSM/471/45/2013/AJ<br>ZSM/471/12/2014/AJ<br>ZSM.441.4.2015.AJ                    | The Regional Court<br>in W. | Case pertaining to mandatory<br>removal of a child.<br>The case is in progress.                                      |
| 12 | 24/10/2013<br>III Nsm 1013/12<br>ZSR/410/1511/2013/DF<br>ZSR/410/808/2014/PP<br>ZSR.441.799.2015.PP              | The Regional Court<br>in R. | Case pertaining to parental au-<br>thority.<br>The Ombudsman's motions were<br>admitted.<br>The case is in progress. |

|    |   |  |  |
|----|---|--|--|
| 13 | 29/10/2013<br>III RNsm 91/14; XIII Ca 437/16<br>ZSR/410/238/2012/UP<br>ZSR/410/1427/2013/UP<br>ZSR/410/242/2014/AA<br>ZSR.441.111.2015.MD | The Regional Court<br>in W.<br>The District Court<br>in W. | Case pertaining to contacts.<br>The case is in progress.           |
| 14 | 27/11/2013<br>III Nsm 336/12;<br>ZSR/410/834/2013/PP<br>ZSR/410/661/2014/PP<br>ZSR.441.895.2015.PP  | The Regional Court<br>in P.                                | Case pertaining to parental au-<br>thority.<br>The case is closed. |

**Table 5.** Cases from 2014 continued in 2016

| No | Date and case reference No   | Location   | Case subject/Results of the Ombudsman's participation   |
|----|--|--|---|
| 1  | 26/02/2014<br>VII C 122/14<br>ZSS.441.94.2014.KS<br>ZSS.441.45.2015.AT                     | The Regional Court<br>in K.<br>The District Court<br>in K. | Case pertaining to payment.<br>The Ombudsman's motions were<br>partially admitted.<br>The case is closed.       |
| 2  | 04/03/2014<br>III Nsm 1320/12<br>ZSR/410/62/2014/MG<br>ZSR.441.607.2015.MG                 | The Regional Court<br>in W.                                | Case pertaining to parental au-<br>thority.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed. |
| 3  | 24/03/2014<br>VI Nsm 160/13<br>ZSR/410/900/2014/AMIK<br>ZSR.441.773.2015.AMIK              | The Regional Court<br>in P.                                | Case pertaining to parental au-<br>thority.<br>The case is in progress.   |
| 4  | 17/04/2014<br>I C 1479/12<br>ZSR.410/1347/2014/SU<br>ZSR.441.119.2015.SU                   | The District Court in R.                                   | Case pertaining to divorce.<br>The case is in progress.   |
| 5  | 14/05/2014<br>III Nsm 444/10; III Nsm 236/14<br>DTZ/410/222/2014/RR<br>DTZ.441.240.2015.RR | The Regional Court<br>in O.                                | Case pertaining to parental au-<br>thority.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed. |
| 6  | 27/05/2014<br>III C 1228/13<br>ZSR/410/1292/2014/AMIK<br>ZSR.441.1047.2015.AMIK            | The District Court in W.                                   | Case pertaining to divorce.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed.                 |

|    |   |                             |  |
|----|---|-----------------------------|--|
| 7  | 29/05/2014<br>V Nsm 70/10<br>ZSR/410/202/2014/AA<br>ZSR.441.57.2015.MD                            | The Regional Court<br>in W. | Case pertaining to settlement of<br>important affairs of the child.<br>The case is closed.                           |
| 8  | 27/06/2014<br>IV Nsm 578/13<br>ZSR/410/1519/2014/UP<br>ZSR.441.1526.2015.UP                       | The Regional Court<br>in P. | Case pertaining to contacts.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed.                     |
| 9  | 17/07/2014<br>VIII Nsm 219/13<br>ZSR/410/432/2014/AZ<br>ZSR.440.2.2015.AZ                         | The Regional Court<br>in S. | Case pertaining to parental au-<br>thority.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed.      |
| 10 | 12/08/2014<br>IV Nsm 537/10<br>ZSR/410/889/2014/KW<br>ZSR.41.4.2015.KT<br>ZSR.41.4.2015.JM        | The Regional Court<br>in G. | Case pertaining to parental au-<br>thority.<br>The Ombudsman's motions were<br>admitted.<br>The case is in progress. |
| 11 | 12/08/2014<br>IC 1047/13<br>ZSR/410/1456/2013/AMIK<br>ZSR/410/475/2014/AMIK<br>ZSR.41.2.2014.AMIK | The District Court<br>in S. | Case pertaining to divorce.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed.                      |
| 12 | 14/08/2014<br>IC 972/13<br>ZSR/410/165/2014/MG<br>ZSR.441.595.2015.MG                             | The District Court<br>in O. | Case pertaining to divorce.<br>The case is closed.   |
| 13 | 19/08/2014<br>III Nkd 276/14<br>ZSR/413/181/2014/UP<br>ZSR.441.565.2015.UP                        | The Regional Court<br>in W. | Case pertaining to criminal act.<br>The case is closed.  |
| 14 | 20/08/2014<br>IC 1172/12<br>ZSR/410/1025/2014/MS<br>ZSR.440.1.2014.MS                             | The District Court in S.    | Case pertaining to divorce.<br>The case is closed.   |
| 15 | 17/09/2014<br>ZSR/410/2044/2014/AKK<br>ZSR.442.30.2015.AO   | The Regional Court<br>in Z. | Case pertaining to parental au-<br>thority.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed.      |
| 16 | 29/09/2014<br>IC 607/12<br>ZSR/410/1090/2014/PP<br>ZSR.441.266.2015.MA                            | The District Court<br>in W. | Case pertaining to divorce.<br>The Ombudsman's motions were<br>admitted.<br>The case is in progress.                 |

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| 17 | 29/09/2014<br>I C 905/14<br>ZSR/410/1509/2014/AT<br>ZSR.441.4.2015.MK          | The District Court<br>in K. | Case pertaining to divorce.<br>The Ombudsman's motions were partially admitted.<br>The case is closed.            |
| 18 | 22/10/2014<br>III Nsm 15/14<br>ZSR/410/941/2014/AT<br>ZSR.441.94.2015.MK       | The Regional Court<br>in B. | Case pertaining to parental authority.<br>The Ombudsman's motions were partially admitted.<br>The case is closed. |
| 19 | 12/11/2014<br>III Nsm 865/14<br>ZSR/410/1833/2014/AMIK<br>ZSR.442.63.2015.AO   | The Regional Court<br>in J. | Case pertaining to parental authority.<br>The Ombudsman's motions were admitted.<br>The case is closed.           |
| 20 | 12/11/2014<br>III Nsm 437/14<br>ZSR/410/1831/2014/AMIK<br>ZSR.442.88.2015.AMIK | The Regional Court<br>in J. | Case pertaining to parental authority.<br>The Ombudsman's motions were admitted.<br>Case closed                   |
| 21 | 15/12/2014<br>XXV C 1477/12<br>DTZ/410/86/2014/RR<br>DTZ.441.2.2014.RR         | The District Court<br>in W. | Case pertaining to annulment of marriage.<br>The Ombudsman's motions were admitted.<br>The case is in progress.   |
| 22 | 18/12/2014<br>ZSR/440/21/2014/AT<br>ZSR.441.346.2015.MK                        | The District Court<br>in O. | Case pertaining to divorce.<br>The Ombudsman's motions were partially admitted.<br>The case is in progress.       |

**Table 6.** Cases from 2015 continued in 2016

| No | Date and case reference No                         | Location                    | Case subject/Results of the Ombudsman's participation   |
|----|--|-----------------------------|---|
| 1  | 05/02/2015<br>III Nsm 315/14<br>ZSS.441.80.2014.AT | The Regional Court<br>in T. | Case pertaining to parental authority.<br>The Ombudsman's motions were admitted.<br>The case is closed.                     |
| 2  | 09/02/2015<br>VII U 2211/14<br>ZSS.441.243.2015.JZ | The District Court<br>in W. | Case pertaining to being subject to social insurance.<br>The Ombudsman's motions were admitted.<br>The case is in progress. |



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| 3  | 17/02/2015<br>IV SA/GI 1020/14<br>ZSS.441.110.2014.JZ                   | The Province Administrative Court in G. | Case pertaining to determination of the unduly collected alimony fund benefits.<br>The Ombudsman's motions are soon to be considered.<br>The case is in progress. |
| 4  | 17/02/2015<br>IV Nsm 470/14<br>ZSR.442.348.2015.MD                      | The Regional Court in L.                | Case pertaining to deprivation of parental authority.<br>The case is closed.  |
| 5  | 05/03/2015<br>IV Nsm 58/13<br>ZSR.442.437.2015.UP                       | The Regional Court in W.                | Case pertaining to parental authority.<br>The case is in progress.  |
| 6  | 06/03/2015<br>III Nsm 75/15<br>ZSR.441.961.2015.MS                      | The Regional Court in P.                | Adoption case.<br>The case is closed.   |
| 7  | 27/03/2015<br>III Nsm 437/15<br>ZSR.442.89.2015.MG                      | The Regional Court in L.                | Case pertaining to parental authority.<br>The case is in progress.  |
| 8  | 07/04/2015<br>IV SA/GI 1040/14<br>ZSS.441.110.2014.JZ                   | The Province Administrative Court in G. | Case pertaining to determination of the unduly collected alimony fund benefits.<br>The Ombudsman's motions were admitted.<br>The case is in progress.             |
| 9  | 10/04/2015<br>IV Nsm 1086/14<br>ZSR.441.1578.2015.UP                    | The Regional Court in L.                | Case pertaining to parental authority.<br>The Ombudsman's motions were admitted.<br>The case is closed.   |
| 10 | 14/04/2015<br>IV Nsm 360/15<br>ZSR.442.182.2015.JP                      | The Regional Court in W.                | Case pertaining to parental authority.<br>The case is closed.   |
| 11 | 14/04/2015<br>IV Nsm 360/15<br>ZSR.442.183.2015.JP                      | The Regional Court in W.                | Case pertaining to parental authority.<br>The case is closed.   |
| 12 | 14/04/2015<br>IV Nsm 395/15<br>ZSR.442.400.2015.JP                      | The Regional Court in W.                | Case pertaining to parental authority.<br>The case is closed.   |
| 13 | 14/04/2015<br>III Nsm 72/15<br>ZSM.441.28.2015.AJ<br>ZSM.441.28.2015.AD | The District Court in O.                | Case pertaining to changing the decision on returning the child under the Hague Convention.<br>The case is in progress.   |

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| 14 | 22/04/2015<br>IV Nsm 337/13<br>ZSR.441.212.2015.AO                                  | The Regional Court<br>in G.                                | Case pertaining to contacts.<br>The Ombudsman's motions were<br>partially admitted.<br>The case is in progress.      |
| 15 | 22/04/2015<br>III Nsm 440/14<br>ZSR.441.837.2015.ER                                 | The Regional Court<br>in P.                                | Case pertaining to contacts.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed.                     |
| 16 | 28/04/2015<br>I C 1280/14<br>ZSR.441.1779.2015.AMIK<br>ZSR.441.1779.2015.AZ         | The District Court<br>in N.                                | Case pertaining to divorce.<br>The Ombudsman's motions were<br>admitted.<br>The case is in progress.                 |
| 17 | 05/05/2015<br>VI Nsm 469/15<br>ZSR.441.120.2014.MG                                  | The Regional Court<br>in W.                                | Case pertaining to parental au-<br>thority.<br>The case is in progress.  |
| 18 | 07/05/2015<br>III Nsm 202/15<br>ZSR.441.1817.2015.MG                                | The Regional Court<br>in L.                                | Case pertaining to contacts.<br>The case is in progress.   |
| 19 | 12/05/2015<br>III Nsm 755/14<br>DTZ.441.14.2015.RR                                  | The Regional Court<br>in Ch.                               | Case pertaining to parental au-<br>thority.<br>The Ombudsman's motions were<br>admitted.<br>The case is in progress. |
| 20 | 14/05/2015<br>I C 494/12<br>ZSR.441.1913.2015.KT<br>ZSR.441.1913.2015.JM            | The District Court<br>in Ł.                                | Case pertaining to divorce.<br>The Ombudsman's motions were<br>admitted.<br>The case is in progress.                 |
| 21 | 19/05/2015<br>V Nsm 1222/14; IV Ca 992/15;<br>V Nsm 1310/15<br>ZSR.441.1766.2015.MD | The Regional Court<br>in W.<br>The District Court<br>in W. | Case pertaining to parental au-<br>thority.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed.      |
| 22 | 28/05/2015<br>III Nsm 111/15<br>ZSS.441.639.2015.AT                                 | The Regional Court<br>in Ł.                                | Case pertaining to parental au-<br>thority.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed.      |
| 23 | 28/05/2015<br>III Nsm 125/15<br>ZSR.441.961.2015.MS                                 | The Regional Court<br>in P.                                | Adoption case.<br>The case is closed.  |

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| 24 | 01/06/2015<br>II SA/Op 282/15<br>ZSS.441.19.2015.JZ                             | The Province Administrative Court in O. | Case pertaining to determination of the right to family allowance and supplement to it for child upbringing in a big family. The Ombudsman's motions were admitted. The case is in progress. |
| 25 | 23/06/2015<br>V Ua 20/15<br>ZSS.441.173.2015.AT                                 | The District Court in B.                | Case pertaining to appeal against the decision of the Voivodeship Disability Evaluation Board. The Ombudsman's motions were admitted. The case is closed.                                    |
| 26 | 25/06/2015<br>XCa 1088/15<br>ZSM.441.52.2015.AJ<br>ZSM.441.52.2015.JW           | The District Court in P.                | Case pertaining to returning the children pursuant to the Hague Convention. The case is closed.  |
| 27 | 30/06/2015<br>III C 1158/14<br>ZSR.441.1945.2015.UP                             | The District Court in L.                | Case pertaining to divorce. The case is in progress.   |
| 28 | 03/07/2015<br>III Nsm 31/15<br>ZSR.441.110.2014.ER                              | The Regional Court in J.                | Case pertaining to parental authority. The Ombudsman's motions were admitted. The case is closed.  |
| 29 | 28/07/2015<br>III Nsm 196/15<br>ZSR.441.1451.2015.KT<br>ZSR.441.1451.2015.JM    | The Regional Court in O.                | Case pertaining to parental authority. The case is in progress.  |
| 30 | 28/07/2015<br>III Nsm 436/13<br>ZSR.441.790.2015.ER                             | The Regional Court in S.                | Case pertaining to parental authority. The Ombudsman's motions were admitted. The case is in progress.   |
| 31 | 28/07/2015<br>VIII Nsm 643/15<br>ZSR.410.1578.2014.JP<br>ZSR.441.1367.2015.AMIK | The Regional Court in Ł.                | Case pertaining to parental authority. The case is in progress.  |
| 32 | 04/08/2015<br>VI C 477/11<br>ZSR.441.873.2015.MG                                | The District Court in W.                | Case pertaining to parental authority. The case is in progress.  |

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| 33 | 17/08/2015<br>Complaint not submitted/<br>missing reference number<br>ZSS.420.27.2015.JZ | The Province Ad-<br>ministrative Court<br>in W. | Case pertaining to amount of the<br>part of the general education sub-<br>sidy for the commune (gmina).<br>The Ombudsman's motions were<br>not admitted.<br>The proceeding is in progress. |
| 34 | 27/08/2015<br>III Nsm 80/15<br>ZSR.441.1660.2015.MS                                      | The Regional Court<br>in K.                     | Case pertaining to parental au-<br>thority.<br>The case is closed.   |
| 35 | 28/08/2015<br>V Nsm 1593/15<br>ZSR.441.2442.2015.MK                                      | The Regional Court<br>in W.                     | Case regarding the choice of<br>school.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed.  |
| 36 | 31/08/2015<br>VI RC 974/14<br>ZSR.441.1786.2015.KT<br>ZSR.441.1786.2015.JM               | The District Court<br>in O.                     | Case pertaining to divorce.<br>The case is in progress.  |
| 37 | 31/08/2015<br>III Nsm 201/15<br>ZSR.441.2279.2015.SU.                                    | The Regional Court<br>in G.                     | Case pertaining to contacts.<br>The Ombudsman's motions were<br>admitted.<br>The case is in progress.  |
| 38 | 31/08/2015<br>III Nsm 1677/14<br>ZSR.441.1767.2015.UP                                    | The Regional Court<br>in R.                     | Case pertaining to parental au-<br>thority.<br>The Ombudsman's motions were<br>admitted.<br>The case is in progress.   |
| 39 | 08/09/2015<br>III R Nsm 49/15<br>ZSR.441.520.2015.AZ                                     | The Regional Court<br>in Ś.                     | Case pertaining to establishment<br>of a foster family.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed.  |
| 40 | 25/09/2015<br>III Nkd 64/15<br>ZSR.441.2539.2015.SU.                                     | The Regional Court<br>in G.                     | Case pertaining to demoralisation.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed.   |
| 41 | 28/09/2015<br>III RC 485/15<br>ZSR.441.2145.2015.MK                                      | The Regional Court<br>in P.                     | Case pertaining to denial of pa-<br>ternity.<br>The Ombudsman's motions were<br>partially admitted.<br>The case is in progress.  |
| 42 | 29/09/2015<br>I C 826/14<br>ZSR.441.447.2015.MK  | The District Court<br>in Z.                     | Case pertaining to divorce.<br>The Ombudsman's motions were<br>partially admitted.<br>The case is in progress.   |

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| 43 | 01/10/2015<br>III Nsm 256/15<br>ZSS.441.5.2014.AT                               | The Regional Court<br>in L.               | Case pertaining to parental authority.<br>The Ombudsman's motions were not admitted.<br>The case is in progress.  |
| 44 | 02/10/2015<br>III Nsm 214/15<br>ZSR.441.2341.2015.MS                            | The Regional Court<br>in B.               | Adoption case.<br>The case is closed.   |
| 45 | 05/10/2015<br>III Nsm 156/15<br>ZSR.441.2244.2015.KT<br>ZSR.441.2244.2015.AMIK. | The Regional Court<br>in S.               | Case pertaining to contacts.<br>The Ombudsman's motions were not admitted.<br>The case is in progress.  |
| 46 | 16/10/2015<br>V Nsm 416/14<br>ZSR.441.1278.2015.KT<br>ZSR.441.1278.2015.JM      | The Regional Court<br>in W.               | Case pertaining to contacts.<br>The Ombudsman's motions were not admitted.<br>The case is closed.   |
| 47 | 27/10/2015<br>III Nsm 504/15<br>ZSR.442.618.2015.SU.                            | The Regional Court<br>in T.               | Case pertaining to restriction of the parental authority over the minor.<br>The case is closed.   |
| 48 | 27/10/2015<br>VI Ca 709/15<br>ZSR.441.2398.2015.KT<br>ZSR.441.2398.2015.AP      | The District Court<br>in W.               | Case pertaining to determining the place of stay.<br>The Ombudsman's motions were admitted.<br>The case is in progress.   |
| 49 | 27/10/2015<br>VIII Nsm 628/14<br>ZSR.441.1808.2015.UP                           | The Regional Court<br>in L.               | Case pertaining to parental authority.<br>The Ombudsman's motions were admitted.<br>The case is in progress.  |
| 50 | 28/10/2015<br>I SA/Rz 699/15<br>ZSS.441.1262.2015.KT                            | The Supreme Administrative Court<br>in W. | Case of complaint of Commune (gmina) O.<br>Against the regulation of the RIO Council in Rz.<br>The Ombudsman's motions were admitted.<br>The case is closed.                  |
| 51 | 05/11/2015<br>IV U 1316/14/N<br>ZSS.441.699.2015.KK                             | The Regional Court<br>in K.               | Case pertaining to appeal against the decision of the Voivodeship Disability Evaluation Board<br>The Ombudsman's motions were partially admitted.<br>The case is in progress. |

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| 52 | 13/11/2015<br>I C 252/14<br>ZSR.441.1993.2015.JP                             | The District Court<br>in O.  | Case pertaining to divorce.<br>The Ombudsman's motions were<br>admitted.<br>The case is in progress.   |
| 53 | 19/11/2015<br>IV Nsm 1401/15<br>ZSS.441.1321.2015.AT                         | The Regional Court<br>in P.  | Case pertaining to parental au-<br>thority.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed.  |
| 54 | 24/11/2015<br>XVIII C 517/15<br>ZSR.441.2245.2015.UP                         | The District Court<br>in P.  | Case pertaining to divorce.<br>The case is in progress.  |
| 55 | 01/12/2015<br>VI Nkd 308/15<br>ZSR.441.2556.2015.SU.                         | The Regional Court<br>in L.  | Case pertaining to demoralisation.<br>The case is in progress.   |
| 56 | 01/12/2015<br>III Nkd 167/15<br>ZEW.441.808.2015.ZA                          | The Regional Court<br>in Ch. | Case pertaining to criminal act.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed.   |
| 57 | 07/12/2015<br>III Ca 1229/15<br>ZSR.441.2532.2015.KT<br>ZSR.441.2532.2015.JM | The District Court<br>in G.  | Case pertaining to contacts.<br>The Ombudsman's motions were<br>admitted.<br>The case is in progress.  |
| 58 | 07/12/2015<br>III Ca 1229/15<br>ZSR.441.1801.2015.KT<br>ZSR.441.1801.2015.JM | The District Court<br>in W.  | Case pertaining to divorce.<br>The case is in progress.  |
| 59 | 07/12/2015<br>III Nsm 225/15<br>ZSR.441.573.2015.MK                          | The District Court<br>in S.  | Case pertaining to restoration of<br>parental authority.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed.   |
| 60 | 08/12/2015<br>V Nsm 96/15<br>ZSR.441.2592.2015.MD                            | The Regional Court<br>in W.  | Case pertaining to contacts.<br>The case is in progress.   |
| 61 | 15/12/2015<br>IV Nsm 757/15<br>ZSM.441.137.2015.AJ                           | The Regional Court<br>in P.  | Case pertaining to returning the<br>children pursuant to the Hague<br>Convention.<br>The Ombudsman's motions were<br>partially admitted.<br>The case is in progress. |
| 62 | 17/12/2015<br>III Nsm 399/15<br>ZSR.441.2415.2015.MG                         | The Regional Court<br>in Z.  | Case pertaining to parental au-<br>thority.<br>The case is closed.   |

**Table 7.** Cases of 2016

| No | Date and case reference No                               | Location                 | Case subject/Results of the Ombudsman's participation  |
|----|--|--------------------------|--|
| 1  | 18/01/2016<br>II Ca 842/16<br>ZSM.441.121.2015.AJ        | The District Court in B. | Case pertaining to returning the children pursuant to the Hague Convention.<br>The Ombudsman's motions were not admitted.<br>The case is closed. |
| 2  | 21/01/2016<br>I C 315/13<br>ZSR.441.625.2015.SU          | The District Court in K. | Case pertaining to divorce.<br>The Ombudsman's motions were admitted.<br>The case is in progress.  |
| 3  | 22/01/2016<br>II Ca 1007/15<br>ZSS.441.1215.2015.AT      | The District Court in Ś. | Case pertaining to permission for rejection of the inheritance<br>The Ombudsman's motions were partially admitted.<br>The case is closed.        |
| 4  | 29/01/2016<br>III Nsm 47/16<br>ZSR.442.4.2016.SU         | The Regional Court in W. | Case pertaining to parental authority.<br>The Ombudsman's motions were admitted.<br>The case is in progress.                                     |
| 5  | 01/02/2016<br>IC 571/14<br>ZSR.441.2375.2015.AO          | The District Court in Ś. | Case pertaining to contacts.<br>The Ombudsman's motions were admitted.<br>The case is in progress.   |
| 6  | 02/02/2016<br>VIII Nsm 1343/15<br>ZSR.441.2064.2015.AMIK | The Regional Court in Ł. | Case pertaining to issuing guardianship decisions.<br>The case is closed.  |
| 7  | 03/02/2016<br>XI C 1908/13<br>ZSR.441.2935.2015.KT       | The District Court in K. | Case pertaining to divorce.<br>The Ombudsman's motions were admitted.<br>The case is in progress.  |
| 8  | 04/02/2016<br>VII U 1303/15<br>ZSS.441.788.2015.KT       | The Regional Court in B. | Case pertaining to appeal against the decision on disability degree.<br>The case is closed.  |
| 9  | 16/02/2016<br>III Nsm 238/15<br>ZSR.441.2790.2015.MS     | The Regional Court in W. | Case pertaining to issuing guardianship decisions.<br>The Ombudsman's motions were admitted.<br>The case is in progress.                         |

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| 10 | 16/02/2016<br>III Nsm 672/15<br>ZSR.441.180.2015.MG    | The Regional Court<br>in Ś.                | Case pertaining to issuing guardianship decisions.<br>The case is in progress.   |
| 11 | 17/02/2016<br>I C 1554/15<br>ZSS.441.1126.2015.KK      | The Regional Court<br>in T.                | Case pertaining to establishment of the right to conclude a rental agreement with local authorities.<br>The Ombudsman's motions were not admitted.<br>The case is in progress. |
| 12 | 23/02/2016<br>VI Ca 135/16<br>ZSM.441.155.2015.AJ      | The District Court in W.                   | Case pertaining to returning the children pursuant to the Hague Convention.<br>The Ombudsman's motions were not admitted.<br>The case is closed.                               |
| 13 | 29/02/2016<br>VI Nsm 741/12<br>ZSR.441.46.2015.SU      | The Regional Court<br>for W.               | Case pertaining to parental authority.<br>The Ombudsman's motions were admitted.<br>The case is in progress.   |
| 14 | 02/03/2016<br>III SA/Gd 633/16<br>ZSS.441.1161.2015.JW | The Province Administrative Court<br>in G. | Case pertaining to establishment of the right to receive a single parent supplement.<br>The Ombudsman's motions were admitted.<br>The case is in progress.                     |
| 15 | 03/03/2016<br>V Nsm 2395/15<br>ZSR.441.84.2016.MS      | The Regional Court<br>in W.                | Case pertaining to parental authority.<br>The Ombudsman's motions were admitted.<br>The case is closed.  |
| 16 | 07/03/2016<br>I ACa 1830/15<br>ZSS.441.69.2016.KK      | The Court of Appeal<br>in W.               | Case pertaining to establishment of the content of birth certificate<br>The Ombudsman's motions were admitted.<br>The case is closed.  |
| 17 | 08/03/2016<br>I C 1223/14<br>ZSR.442.579.2015.MG       | The Court of Appeal<br>in W.               | Case pertaining to divorce.<br>The case is closed.   |
| 18 | 16/03/2016<br>IV Nsm 987/15<br>ZSR.442.593.2015.SU     | The Regional Court<br>in P.                | Case pertaining to parental authority.<br>The Ombudsman's motions were admitted.<br>The case is in progress.   |



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| 19 | 16/03/2016<br>VI Nsm 666/15<br>ZSR.441.2556.2015.SU                        | The Regional Court<br>in Ł.                | Case pertaining to establishment of a foster family.<br>The Ombudsman's motions were admitted.<br>The case is in progress.                    |
| 20 | 17/03/2016<br>XIII C 418/13<br>ZSR.441.504.2015.JP<br>ZSR.441.504.2015.MK  | The District Court<br>in P.                | Case pertaining to divorce.<br>The Ombudsman's motions were partially admitted.<br>The case is in progress.                                   |
| 21 | 17/03/2016<br>III Nsm 2/15<br>ZSR.441.2472.2015.AA<br>ZSR.441.2472.2015.LJ | The Regional Court<br>in S.                | Case pertaining to parental authority.<br>The Ombudsman's motions were admitted.<br>The case is in progress.                                  |
| 22 | 22/03/2016<br>III Nsm 122/16<br>ZSR.442.25.2016.SU                         | The Regional Court<br>in D.                | Case pertaining to parental authority.<br>The Ombudsman's motions were admitted.<br>The case is closed.                                       |
| 23 | 24/03/2016<br>II Ca 217/16<br>ZSM.441.148.2015.JW                          | The District Court<br>in B.                | Case pertaining to returning the child pursuant to the Hague Convention.<br>The Ombudsman's motions were not admitted.<br>The case is closed. |
| 24 | 29/03/2016<br>IV Nsm 338/16<br>ZSR.442.22.2016.SU                          | The Regional Court<br>in S.                | Case pertaining to parental authority.<br>The case is in progress.  |
| 25 | 29/03/2016<br>II SAB/Wa 155/16<br>ZSS.441.107.2016.KK                      | The Province Administrative Court<br>in W. | Case pertaining to complaint about idleness.<br>The Ombudsman's motions are soon to be considered.<br>The case is in progress.                |
| 26 | 31/03/2016<br>VI ACa 1397/15<br>ZSR.441.1304.2015.JP                       | The Court of Appeal<br>in W.               | Case pertaining to divorce.<br>The Ombudsman's motions were admitted.<br>The case is in progress.   |
| 27 | 07/04/2016<br>IC 847/15<br>ZSR.441.2265.2015.SU                            | The District Court in J.                   | Case pertaining to divorce.<br>The case is closed.  |
| 28 | 07/04/2016<br>III Nsm 109/13<br>ZSR.441.1363.2015.JP                       | The Regional Court<br>in G.                | Case pertaining to prohibition of contacts.<br>The Ombudsman's motions were admitted.<br>The case is in progress.                             |

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| 29 | 18/04/2016<br>KOA/1406/Sr/16<br>ZSS.441.496.2016.AJ                       | Local Government<br>Appeal Council in W. | Case pertaining to determination of the right to parent's benefits. The Ombudsman's motions were admitted.<br>The case is closed.                            |
| 30 | 19/04/2016<br>III Nsm 175/16<br>ZSR.442.32.2016.MA                        | The Regional Court<br>in M.              | Case pertaining to parental authority. The Ombudsman's motions were admitted.<br>The case is in progress.  |
| 31 | 21/04/2016<br>XI C 342/16<br>ZSR.441.2469.2015.AA<br>ZSR.441.2469.2015.LJ | The District Court<br>in K.              | Case pertaining to divorce. The case is in progress.   |
| 32 | 21/04/2016<br>V Nkd 15/16<br>ZSS.441.147.2016.AT                          | The Regional Court<br>in Ł.              | Case pertaining to criminal act. The Ombudsman's motions were partially admitted.<br>The case is in progress.  |
| 33 | 26/04/2016<br>III Nsm 131/14<br>ZSR.441.2540.2015.SU                      | The Regional Court<br>in W.              | Case pertaining to contacts. The Ombudsman's motions were admitted.<br>The case is closed.   |
| 34 | 06/05/2016<br>III Nsm 473/15<br>ZSR.441.419.2016.SU                       | The Regional Court<br>in P.              | Case pertaining to parental authority. The Ombudsman's motions were admitted.<br>The case is in progress.  |
| 35 | 06/05/2016<br>III Nsm 293/16<br>ZSR.442.30.2016.MA                        | The Regional Court<br>in W.              | Case pertaining to parental authority. The case is closed.   |
| 36 | 11/05/2016<br>VII Ua 24/16<br>ZSS.441.380.2016.KK                         | The District Court<br>in K.              | Case pertaining to appeal against the decision of the Voivodeship Disability Evaluation Board. The Ombudsman's motions were admitted.<br>The case is closed. |
| 37 | 11/05/2016<br>IIISA/Lu 492/16<br>ZSS.441.217.2016.JW                      | The Province Administrative Court in L.  | Case pertaining to parent's benefits for foreigners. The Ombudsman's motions were admitted.<br>The case is in progress.                                      |

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| 38 | 12/05/2016<br>Ref. No SKO-<br>PS-424/1856/8244/2016/PS<br>ZSS.441.382.2016.JW | Local Government<br>Appeal Council in K.              | Case pertaining to determination of the right to parent's benefits. The Ombudsman's motions were admitted.<br>The case is closed.                                 |
| 39 | 13/05/2016<br>406.210/E-21/III/16<br>ZSM.441.62.2016.AC                       | Local Government<br>Appeal Council in B.              | Case pertaining to granting child-support benefit to a foreigner. The Ombudsman's motions were admitted.<br>The case is closed.                                   |
| 40 | 13/05/2016<br>III Nsm 656/15<br>ZSR.442.194.2015.MA                           | The Regional Court<br>in P.                           | Case pertaining to parental authority. The Ombudsman's motions were admitted.<br>The case is closed.  |
| 41 | 23/05/2016<br>III Nsm 292/16<br>ZSR.442.48.2016.MA                            | The Regional Court<br>in N.                           | Case pertaining to parental authority. The case is in progress.   |
| 42 | 05/06/2016<br>III Nsm 608/14<br>ZSR.441.2465.2015.AO                          | The Regional Court<br>in W.                           | Case pertaining to contacts. The case is in progress.   |
| 43 | 07/06/2016<br>III Nsm 413/16<br>ZSR.442.54.2016.MA                            | The Regional Court<br>in O.                           | Case pertaining to parental authority. The case is in progress.   |
| 44 | 09/06/2016<br>NW-BY/2/D-ZPH/16<br>ZSM.441.2.2016.AC                           | Chief of the De-<br>partment of Border<br>Guard in B. | Case pertaining to granting a foreigner permission to stay for humanitarian reasons. The Ombudsman's motions were partially admitted.<br>The case is in progress. |
| 45 | 09/06/2016<br>III Nsm 822/14<br>ZSR 441.2745.2015.MD                          | The Regional Court<br>in P.                           | Case pertaining to contacts. The Ombudsman's motions were admitted.<br>The case is closed.  |
| 46 | 14/06/2016<br>KOC/3030/Sw/16<br>ZSM.441.69.2016.AC                            | Local Government<br>Appeal Council in W.              | Case pertaining to granting child-support benefit to a foreigner. The Ombudsman's motions were not admitted.<br>The case is closed.                               |
| 47 | 14/06/2016<br>VI C 284/16<br>ZSR.441.2661.2015.MD                             | The District Court in W.                              | Case pertaining to divorce. The Ombudsman's motions were admitted.<br>The case is in progress.  |

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| 48 | 16/06/2016<br>IV Nsm 544/15<br>ZSR.442.56.2016.SU        | The Regional Court<br>in P.                   | Case pertaining to parental authority.<br>The case is in progress.   |
| 49 | 20/06/2016<br>IV SA/Wa 2029/15<br>ZSM.441.135.2015.AC    | Naczelny Sąd Administracyjny                  | Case pertaining to appeal in cassation of the OfC against the judgement of SAC in W. on upholding the decision on refusal to grant a foreigner a refugee status, refusal to provide supplementary protection and refusal to give consent for a tolerated stay.<br>The case is in progress. |
| 50 | 20/06/2016<br>NO-JG/001/D-ZPH/2016<br>ZSM.441.82.2016.AC | Chief of the Department of Border Guard in J. | Case pertaining to obliging a foreigner to return.<br>The Ombudsman's motions were admitted.<br>The case is closed.  |
| 51 | 20/06/2016<br>VI Nsm 463/16<br>ZSM.441.50.2016.AD        | The Regional Court<br>in W.                   | Case pertaining to returning the child pursuant to the Hague Convention.<br>The Ombudsman's motions were admitted.<br>The case is in progress.   |
| 52 | 20/06/2016<br>NO-JG/002/D-ZPH/2016<br>ZSM.441.82.2016.AC | Chief of the Department of Border Guard in J. | Case pertaining to obliging a foreigner to return.<br>The Ombudsman's motions were admitted.<br>The case is closed.  |
| 53 | 27/06/2016<br>ZSR.441.2886.2015.AO<br>III Nsm 332/15     | The Regional Court<br>in O.                   | Case pertaining to parental authority.<br>The Ombudsman's motion was admitted.<br>The case is closed.  |
| 54 | 28/06/2016<br>I RC 1319/15<br>ZSR.441.2404.2015.PP       | The District Court<br>in L.                   | Case pertaining to divorce.<br>The Ombudsman's motions were admitted.<br>The case is in progress.  |
| 55 | 28/06/2016<br>III Nsm 267/16<br>ZSR.441.482.2016.MG      | The Regional Court<br>in Z.                   | Case pertaining to parental authority.<br>The Ombudsman's motions were admitted.<br>The case is in progress.   |

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| 56 | 28/06/2016<br>SKO-405/R/838/2016<br>ZSS.441.712.2016.JW | Local Government<br>Appeal Council in T. | Case pertaining to determination of the right to parent's benefits. The Ombudsman's motions were admitted. The case is closed. |
| 57 | 30/06/2016<br>III Nsm 129/16<br>ZSR.441.757.2016.MA     | The Regional Court in G.                 | Case pertaining to parental authority. The Ombudsman's motions were partially admitted. The case is in progress.               |
| 58 | 01/07/2016<br>I C 534/14<br>ZSR.441.2043.2015.MG        | The District Court in N.                 | Case pertaining to divorce. The case is in progress.   |
| 59 | 01/07/2016<br>V Nsm 904/15<br>ZSR.441.787.2015.MA       | The Regional Court in W.                 | Case pertaining to contacts. The case is in progress.  |
| 60 | 01/07/2016<br>III Nsm 864/15<br>ZSS.441.588.2016.AT     | The Regional Court in P.                 | Case pertaining to parental authority. The Ombudsman's motions were partially admitted. The case is in progress.               |
| 61 | 06/07/2016<br>III Nsm 526/15<br>ZSR.441.298.2016.MS     | The Regional Court in K.                 | Case pertaining to parental authority. The case is in progress.  |
| 62 | 06/07/2016<br>XXV C 194/15<br>ZSR.441.294.2015.MK       | The District Court in W.                 | Case pertaining to divorce. The case is in progress.   |
| 63 | 06/07/2016<br>V Nsm 338/16<br>ZSR.441.2879.2015.AMIK    | The Regional Court in G.                 | Case pertaining to parental authority. The Ombudsman's motions were admitted. The case is closed.                              |
| 64 | 06/07/2016<br>III Nsm 604/15/S<br>ZSR.441.2055.2015.JM  | The Regional Court in K.                 | Case pertaining to execution of contacts. The Ombudsman's motions were admitted. The case is in progress.                      |
| 65 | 06/07/2016<br>I C 165/15<br>ZSR.441.603.2016.MA         | The District Court in S.                 | Case pertaining to divorce. The case is in progress.   |
| 66 | 07/07/2016<br>IV Nsm 19/16<br>ZSR.441.2155.2015.MD      | The Regional Court in P.                 | Case pertaining to parental authority. The case is in progress.  |

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| 67 | 07/07/2016<br>III Nkd 8/16<br>ZEW.441.517.2016.JK                           | The Regional Court<br>in K.              | Case pertaining to demoralisation.<br>The case is in progress.  |
| 68 | 11/07/2016<br>I C 330/16<br>ZSR.441.656.2016.SU                             | The District Court<br>in Ł.              | Case pertaining to divorce.<br>The Ombudsman's motions were<br>admitted.<br>The case is in progress.  |
| 69 | 12/07/2016<br>III Nsm 223/16<br>ZSR.442.76.2016.MA                          | The Regional Court<br>in K.              | Case pertaining to parental au-<br>thority.<br>The case is in progress.   |
| 70 | 12/07/2016<br>III Nsm 835/15<br>ZSR.441.719.2016.MA                         | The Regional Court<br>in S.              | Case pertaining to parental au-<br>thority.<br>The case is in progress.   |
| 71 | 13/07/2016<br>SKO.ŚR/4111/300/2016<br>ZSM.441.85.2016.AC                    | Local Government<br>Appeal Council in K. | Case pertaining to granting<br>child-support benefit to a for-<br>eigner.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed.                           |
| 72 | 13/07/2016<br>VI C 30/16<br>ZSR.441.1990.2015.PP                            | The District Court in W.                 | Case pertaining to divorce.<br>The Ombudsman's motions were<br>admitted.<br>The case is in progress.  |
| 73 | 13/07/2016<br>III Nsm 659/14<br>ZSR.441.283.2015.MK                         | The Regional Court<br>in P.              | Case pertaining to contacts.<br>The Ombudsman's motions were<br>admitted.<br>The case is in progress.   |
| 74 | 14/07/2016<br>III Ca 1080/16<br>ZSM.441.158.2015.AD                         | The District Court<br>in G.              | Case pertaining to returning the<br>child pursuant to the Hague Con-<br>vention.<br>The case is in progress.  |
| 75 | 14/07/2016<br>III C 2077/14<br>ZSR.441.2009.2015.AA<br>ZSR.441.2009.2015.LJ | The District Court<br>in L.              | Case pertaining to divorce.<br>The Ombudsman's motions were<br>admitted.<br>The case is in progress.  |
| 76 | 14/07/2016<br>VII U 1265/15<br>ZSS.441.38.2016.JW                           | The Regional Court<br>in L.              | Case pertaining to appeal against<br>the decision of the Voivodeship<br>Disability Evaluation Board<br>The Ombudsman's motions were<br>admitted.<br>The case is closed. |

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| 77 | 19/07/2016<br>II Ca 747/16<br>ZSM.441.63.2016.JW        | The District Court in P.                | Case pertaining to returning the children pursuant to the Hague Convention.<br>The Ombudsman's motions were not admitted.<br>The case is closed.   |
| 78 | 21/07/2016<br>III Nsm 296/15<br>ZSR.442.69.2016.SU.     | The Regional Court in Z.                | Case pertaining to parental authority.<br>The Ombudsman's motions were admitted.<br>The case is in progress.   |
| 79 | 21/07/2016<br>V Nsm 328/16<br>ZSR.441.626.2016.MD       | The Regional Court in W.                | Case pertaining to parental authority.<br>The case is closed.  |
| 80 | 22/07/2016<br>I SA/Wa 1197/16<br>ZSM.441.69.2016.AC     | The Province Administrative Court in W. | Case instigated by the Ombudsman for Children by means of appeal against a decision refusing granting educational benefit to a foreigner.<br>The Ombudsman's motions were admitted.<br>The case is closed. |
| 81 | 22/07/2016<br>III Nsm 130/16<br>ZSR.441.70.2016.AMIK    | The Regional Court in B.                | Case pertaining to parental authority.<br>The Ombudsman's motions were admitted.<br>The case is closed.  |
| 82 | 26/07/2016<br>II C 537/14<br>ZSR.441.840.2016.MS        | The District Court in W.                | Case pertaining to divorce.<br>The case is in progress.  |
| 83 | 01/08/2016<br>VI Nsm 899/15<br>ZSR.441.70.2015.SU       | The Regional Court in B.                | Case pertaining to contacts.<br>The case is in progress.   |
| 84 | 03/08/2016<br>4000.ŠW/639/16<br>ZSM.441.98.2016.AC      | Local Government Appeal Council in B.   | Case pertaining to granting child-support benefit to a foreigner.<br>The case is in progress.  |
| 85 | 03/08/2016<br>SKO.4000.ŠW/658/16<br>ZSM.441.106.2016.AC | Local Government Appeal Council in B.   | Case pertaining to granting child-support benefit to a foreigner.<br>The case is in progress.  |
| 86 | 03/08/2016<br>I C 3267/12<br>ZSR.441.1996.2015.MG       | The District Court in P.                | Case pertaining to divorce.<br>The case is in progress.  |

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| 87 | 03/08/2016<br>III Nsm 1434/15<br>ZSS.441.752.2016.KK                  | The Regional Court<br>in K.                | Case pertaining to evading the effects of acknowledging inheritance<br>The case is in progress.   |
| 88 | 04/08/2016<br>III Nsm 471/16<br>ZSR.441.727.2016.UP                   | The Regional Court<br>in S.                | Case pertaining to parental authority.<br>The Ombudsman's motions were admitted.<br>The case is in progress.  |
| 89 | 04/08/2016<br>III Nsm 112/15<br>ZSR.441.841.2015.MA                   | The Regional Court<br>in S.                | Case pertaining to contacts.<br>The Ombudsman's motions were admitted.<br>The case is in progress.  |
| 90 | 08/08/2016<br>III Nsm 68/16<br>ZSR.442.84.2016.SU                     | The Regional Court<br>in R.                | Case pertaining to parental authority.<br>The case is in progress.  |
| 91 | 10/08/2016<br>XVIII RCa 161/16<br>ZSM.441.79.2016.AD                  | The District Court<br>in K.                | Case pertaining to returning the children pursuant to the Hague Convention.<br>The Ombudsman's motions were partially admitted.<br>The case is closed.                |
| 92 | 16/08/2016<br>V Nsm 918/15<br>ZSR.441.873.2016.UP                     | The Regional Court<br>in G.                | Case pertaining to parental authority.<br>The Ombudsman's motions were admitted.<br>The case is in progress.  |
| 93 | 16/08/2016<br>III Nsm 158/14<br>ZSR.441.578.2015.MS                   | The Regional Court<br>in Ž.                | Case pertaining to parental authority.<br>The Ombudsman's motions were admitted.<br>The case is in progress.  |
| 94 | 17/08/2016<br>III Nsm 200/16<br>ZSR.442.83.2016.MA                    | The Regional Court<br>in L.                | Case pertaining to parental authority.<br>The case is in progress.  |
| 95 | 19/08/2016<br>II KK 250/16<br>ZSR.441.568.2016.MK                     | The Highest Court                          | Cassation.<br>The case is closed.   |
| 96 | 24/08/2016<br>SKO-82-233/16<br>II SA/Bd 1191/16<br>ZSM.441.72.2016.AC | The Province Administrative Court<br>in B. | Case instigated by the Ombudsman for Children by means of appeal against a decision refusing granting educational benefit to a foreigner.<br>The case is in progress. |
| 97 | 24/08/2016<br>III Nsm 696/16<br>ZSR.442.150.2016.MA                   | The Regional Court<br>in B.                | Case pertaining to parental authority.<br>The case is in progress.  |



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| 98  | 24/08/2016<br>III RCo 24/16<br>III Nsm 478/16<br>ZSR.442.149.2016.MA | The Regional Court<br>in O.             | Case pertaining to parental authority.<br>The case is in progress.   |
| 99  | 24/08/2016<br>XVII RC 482/16<br>ZSR.441.1986.2015.PP                 | The District Court<br>in K.             | Case pertaining to divorce.<br>The Ombudsman's motions were admitted.<br>The case is in progress.            |
| 100 | 24/08/2016<br>III Nsm 640/16<br>ZSR.441.1817.2015.AMIK               | The Regional Court<br>in L.             | Case pertaining to divorce.<br>The Ombudsman's motions were not admitted.<br>The case is closed.             |
| 101 | 24/08/2016<br>I RC 224/15<br>ZSR.441.1806.2015.UP                    | The District Court in L.                | Case pertaining to divorce.<br>The case is in progress.  |
| 102 | 25/08/2016<br>III Nsm 784/16<br>ZSR.442.153.2016.SU                  | The Regional Court<br>in S.             | Case pertaining to parental authority.<br>The case is in progress.   |
| 103 | 30/08/2016<br>III Nsm 420/16<br>ZSR.442.74.2016.MA                   | The Regional Court<br>in B.             | Case pertaining to parental authority.<br>The case is in progress.   |
| 104 | 30/08/2016<br>III Nsm 420/16<br>ZSR.442.74.2016.MA                   | The Regional Court<br>in B.             | Case pertaining to parental authority.<br>The case is in progress.   |
| 105 | 05/09/2016<br>III Nsm 195/16<br>ZSR.442.156.2016.MA                  | The Regional Court<br>in Ł.             | Case pertaining to parental authority.<br>The Ombudsman's motions were admitted.<br>The case is in progress. |
| 106 | 05/09/2016<br>VIII Nsm 370/16<br>ZSR.442.41.2016.SU                  | The Regional Court<br>in Ł.             | Case pertaining to parental authority.<br>The case is in progress.   |
| 107 | 05/09/2016<br>IV SA/GI 898/16<br>ZSS.441.640.2016.JW                 | The Province Administrative Court in G. | Case pertaining to determination of the right to parent's benefits.<br>The case is in progress.              |
| 108 | 07/09/2016<br>V Nsm 532/16<br>ZSR.442.88.2016.MA                     | The Regional Court<br>in Ł.             | Case pertaining to parental authority.<br>The case is in progress.   |
| 109 | 07/09/2016<br>II C 2240/15<br>ZSR.441.2491.2015.AZ                   | The District Court<br>in G.             | Case pertaining to divorce.<br>The Ombudsman's motions were admitted.<br>The case is in progress.            |

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| 110 | 09/09/2016<br>III Nkd 149/16<br>ZEW.441.576.2016.JK   | The Regional Court<br>in E. | Case pertaining to demoralisation.<br>The case is in progress.   |
| 111 | 12/09/2016<br>III Nsm 607.16<br>ZSR.442.159.2016.MA   | The Regional Court<br>in Z. | Case pertaining to parental authority.<br>The Ombudsman's motions were partially admitted.<br>The case is in progress. |
| 112 | 12/09/2016<br>VI Nsm 966/15<br>ZSR.442.125.2016.AMIK  | The Regional Court<br>in Ł. | Case pertaining to parental authority.<br>The case is in progress.   |
| 113 | 12/09/2016<br>XVIII RC 2158/13<br>ZSR.441.616.2016.MA | The District Court<br>in K. | Case pertaining to divorce.<br>The case is in progress.  |
| 114 | 12/09/2016<br>IX Nsm 550/16<br>ZSR.442.133.2016.UP    | The Regional Court<br>in Ł. | Case pertaining to parental authority.<br>The case is in progress.   |
| 115 | 13/09/2016<br>VIII Nsm 82/16<br>ZSR.442.132.2016.UP   | The Regional Court<br>in Ł. | Case pertaining to parental authority.<br>The case is in progress.   |
| 116 | 15/09/2016<br>VII Nsm 403/16<br>ZSR.442.116.2016.MD   | The Regional Court<br>in Ł. | Case pertaining to parental authority.<br>The case is in progress.   |
| 117 | 15/09/2016<br>IX Nsm 307/16<br>ZSR.442.117.2016.MD    | The Regional Court<br>in Ł. | Case pertaining to parental authority.<br>The case is in progress.   |
| 118 | 15/09/2016<br>VI Nsm 527/16<br>ZSR.442.117.2016.MD    | The Regional Court<br>in Ł. | Case pertaining to parental authority.<br>The case is in progress.   |
| 119 | 19/09/2016<br>IX Nsm 807/15<br>ZSR.442.96.2016.AMIK   | The Regional Court<br>in Ł. | Case pertaining to parental authority.<br>The case is in progress.   |
| 120 | 19/09/2016<br>X C 447/13<br>ZSR.441.2726.2015.AMIK    | The Regional Court<br>in B. | Case pertaining to divorce.<br>The case is in progress.  |
| 121 | 19/09/2016<br>III Nsm 3715<br>ZSR.441.56.2016.UP      | The Regional Court<br>in R. | Case pertaining to contacts.<br>The case is in progress.   |
| 122 | 22/09/2016<br>VIII Nsm 120/16<br>ZSR.442.167.2016.SU  | The Regional Court<br>in Ł. | Case pertaining to parental authority.<br>The case is in progress.   |

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| 123 | 26/09/2016<br>SKO.ŚR/4111/753/2016<br>ZSM.441.143.2016.AC                | Local Government<br>Appeal Council in K.  | Case pertaining to granting child-support benefit to a foreigner.<br>The Ombudsman's motions were admitted.<br>The case is closed.               |
| 124 | 26/09/2016<br>IV Nsm 1105/14<br>ZSR.442.152.2016.MA                      | The Regional Court<br>in Ł.               | Case pertaining to parental authority.<br>The case is in progress.   |
| 125 | 26/09/2016<br>IX Nsm 323/15<br>ZSR.442.100.2016.AMIK                     | The Regional Court<br>in Ł.               | Case pertaining to parental authority.<br>The case is in progress.   |
| 126 | 05/10/2016<br>II Ca 1007/16<br>ZSR.441.683.2016.JP                       | The District Court<br>in K.               | Case pertaining to parental authority.<br>The Ombudsman's motions were admitted.<br>The case is in progress.                                     |
| 127 | 05/10/2016<br>III Nsm 524/16<br>ZSR.442.107.2016.AMIK                    | The Regional Court<br>in Ł.               | Case pertaining to parental authority.<br>The case is in progress.   |
| 128 | 05/10/2016<br>Ds. 987/15<br>ZEW.441.970.215.JK                           | The Regional Prosecutor's Office<br>in M. | Criminal case.<br>Support of a complaint.<br>The case is in progress.  |
| 129 | 05/10/2016<br>WA XIII Ns Rej KRS<br>32203/16/587<br>ZEW.441.1699.2015.KD | The Regional Court<br>in W.               | Case pertaining to application supervision measures.<br>The case is in progress.   |
| 130 | 07/10/2016<br>VI Ua 98/16<br>ZSS.441.1138.2016.KK                        | Local Government<br>Appeal Council in K.  | Case pertaining to determination of the right to parent's benefits.<br>The Ombudsman's motions were admitted.<br>The case is closed.             |
| 131 | 11/10/2016<br>II Ca 380/16<br>ZSM.441.15.2016.JW                         | The District Court<br>in G.               | Case pertaining to returning the children pursuant to the Hague Convention.<br>The Ombudsman's motions were not admitted.<br>The case is closed. |
| 132 | 11/10/2016<br>V Nsm 196/16<br>ZSR.442.115.2016.MD                        | The Regional Court<br>in Ł.               | Case pertaining to parental authority.<br>The case is in progress.   |
| 133 | 11/10/2016<br>VI Nsm 229/16<br>ZSR.442.111.2016.AMIK                     | The Regional Court<br>in Ł.               | Case pertaining to parental authority.<br>The case is in progress.   |

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| 134 | 17/10/2016<br>I ACa 594/16<br>ZSR.441.1154.2016.UP        | The Court of Appeal<br>in S.                    | Case pertaining to divorce.<br>The case is in progress.   |
| 135 | 20/10/2016<br>IV U 109/16<br>ZSS.441.277.2016.KK          | The Regional Court<br>in T.                     | Case pertaining to appeal against<br>the decision of the Voivodeship<br>Disability Evaluation Board<br>The Ombudsman's motions were<br>admitted.<br>The case is closed. |
| 136 | 25/10/2016<br>III Nsm 334/16<br>ZSM.441.100.2016.AD       | The Regional Court<br>in B.                     | Case pertaining to returning the<br>minor girl pursuant to the Hague<br>Convention.<br>The case is in progress.   |
| 137 | 26/10/2016<br>SKO 4103/266/2016<br>ZSM.441.175.2016.AC    | Local Government<br>Appeal Council in W.        | Case pertaining to granting<br>child-support benefit to a for-<br>eigner.<br>The Ombudsman's motions were<br>not admitted.<br>The case is closed.                       |
| 138 | 28/10/2016<br>SKO.KA.431.2910/2016<br>ZSM.441.184.2016.AC | Local Government<br>Appeal Council in S.        | Case pertaining to granting<br>child-support benefit to a for-<br>eigner.<br>The Ombudsman's motions were<br>not admitted.<br>The case is closed.                       |
| 139 | 28/10/2016<br>SKO.PA/431/2913/2016<br>ZSM.441.185.2016.AC | Local Government<br>Appeal Council in S.        | Case pertaining to granting<br>child-support benefit to a for-<br>eigner.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed.                           |
| 140 | 28/10/2016<br>I SA/Wa 1388/16<br>ZSM.441.120.2016.AC      | The Province Ad-<br>ministrative Court<br>in W. | Case of appeal against a decision<br>refusing granting child-support<br>benefit to a foreigner.<br>The Ombudsman's motions were<br>admitted.<br>The case is closed.     |
| 141 | 28/10/2016<br>III Nsm 906/16<br>ZSR.442.172.2016.MA       | The Regional Court<br>in W.                     | Case pertaining to parental au-<br>thority.<br>The case is in progress.   |
| 142 | 28/10/2016<br>II SAB/Sz 27/16<br>ZSS.441.1171.2016.KK     | Naczelny Sąd Adminis-<br>tracyjny               | Case pertaining to complaint<br>about idleness.<br>The case is in progress.   |

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| 143 | 31/10/2016<br>SKO.4111/279/2016<br>ZSS.441.851.2016.JW | Local Government<br>Appeal Council in R. | Case pertaining to determination of the right to parent's benefits. The Ombudsman's motions were admitted. The case is closed.                                      |
| 144 | 03/11/2016<br>V Nsm 1004/16<br>ZSR.442.176.2016.MA     | The Regional Court in B.                 | Case pertaining to parental authority. The case is in progress.   |
| 145 | 05/11/2016<br>VIII Nsm 425/16<br>ZSR.442.119.2016.MD   | The Regional Court in Ł.                 | Case pertaining to parental authority. The case is in progress.   |
| 146 | 14/11/2016<br>II Ca 1047/16<br>ZSM.441.156.2016.JW     | The District Court in O.                 | Case pertaining to returning the child pursuant to the Hague Convention. The Ombudsman's motions were admitted. The case is closed.                                 |
| 147 | 15/11/2016<br>II Ca 472/16<br>ZSM.441.94.2016.JW       | The District Court in G.                 | Case pertaining to returning the minor girl pursuant to the Hague Convention. The Ombudsman's motions were not admitted. The case is closed.                        |
| 148 | 15/11/2016<br>III Nsm 610/16<br>ZSR.442.177.2016.SU    | The Regional Court in Z.                 | Case pertaining to parental authority. The case is in progress.   |
| 149 | 15/11/2016<br>V Ua 76/16<br>ZSS.441.104.2016.KK        | The District Court in K.                 | Case pertaining to appeal against the decision of the Voivodeship Disability Evaluation Board. The Ombudsman's motions were partially admitted. The case is closed. |
| 150 | 22/11/2016<br>III C 1364/12<br>DTZ.441.242.2015.RR     | The District Court in W.                 | Case pertaining to divorce. The case is in progress.  |
| 151 | 23/11/2016<br>I SA/Wa 1492/16<br>ZSM.441.205.2016.AC   | The Province Administrative Court in W.  | Case of appeal against a decision refusing granting child-support benefit to a foreigner. The Ombudsman's motions were admitted. The case is closed.                |

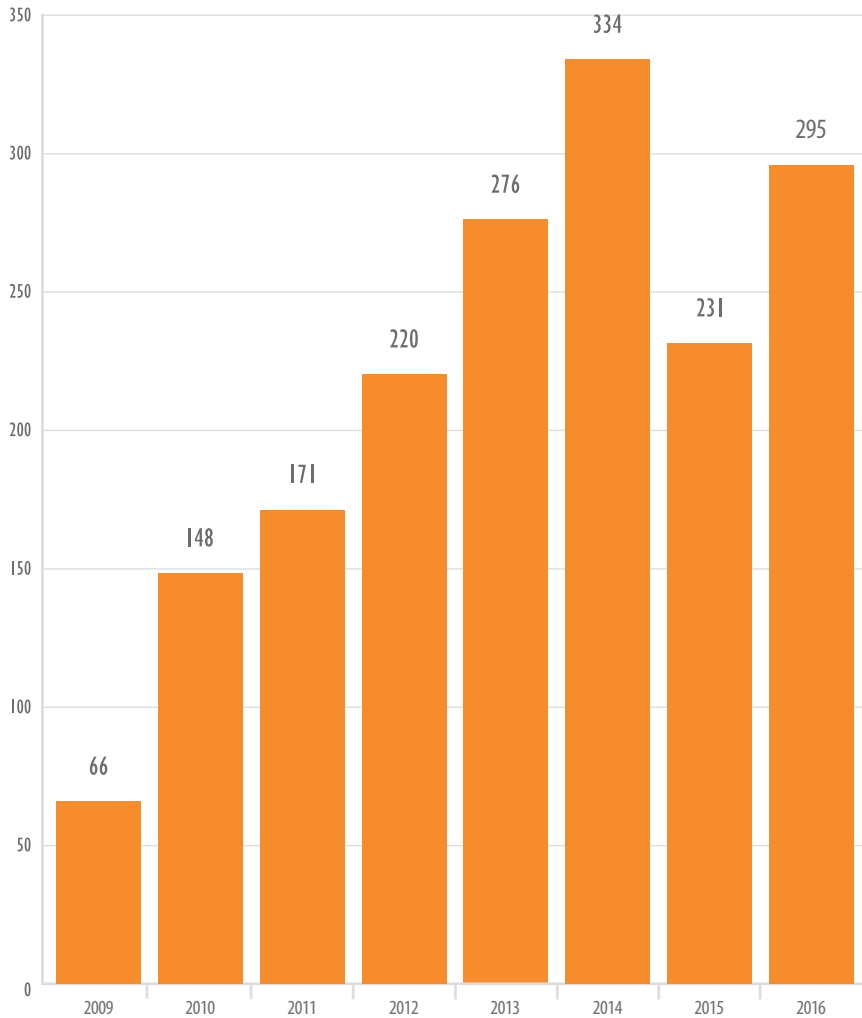
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| 152 | 23/11/2016<br>V U 78/16<br>ZSS.441.663.2015.AT              | Sąd Rejonowy w S.                       | Case pertaining to appeal against the decision of the Voivodeship Disability Evaluation Board<br>The Ombudsman's motions were admitted.<br>The case is in progress. |
| 153 | 23/11/2016<br>VI Ua 98/16<br>ZSS.441.1438.2015.KK           | The District Court in B.                | Case pertaining to appeal against the decision of the Voivodeship Disability Evaluation Board<br>The Ombudsman's motions were admitted.<br>The case is in progress. |
| 154 | 23/11/2016<br>IV SA/Wr 494/16<br>ZSS.441.1127.2016.JW       | The Province Administrative Court in W. | Case pertaining to determination of the right to parent's benefits.<br>The Ombudsman's motions are soon to be considered.<br>The case is in progress.               |
| 155 | 23/11/2016<br>SKO.II.41/395/PS/2016<br>ZSS.441.1100.2016.AT | The Province Administrative Court in L. | Case pertaining to granting a benefit for covering the costs of child expenses.<br>The Ombudsman's motions were admitted.<br>The case is closed.                    |
| 156 | 24/11/2016<br>IV Nsm 324/16<br>ZSR.442.155.2016.MA          | The Regional Court in L.                | Case pertaining to parental authority.<br>The case is in progress.  |
| 157 | 24/11/2016<br>VI Nsm 209/16<br>ZSR.442.28.2016.MA           | The Regional Court in Ł.                | Case pertaining to parental authority.<br>The case is in progress.  |
| 158 | 25/11/2016<br>IX Nsm 444/16<br>ZSR.442.126.2016.MA          | The Regional Court in Ł.                | Case pertaining to parental authority.<br>The case is in progress.  |
| 159 | 25/11/2016<br>Ds. 336.2016<br>ZEW.441.501.2016.KD           | The Regional Court in B.                | Criminal case.<br>The case is in progress.  |
| 160 | 28/11/2016<br>VIII Nsm 989/16<br>ZSR.442.90.2016.MA         | The Regional Court in Ł.                | Case pertaining to parental authority.<br>The case is in progress.  |
| 161 | 28/11/2016<br>III Nsm 895/16<br>ZSR.441.714.2016.AMIK       | The Regional Court in P.                | Case pertaining to parental authority.<br>The case is in progress.  |
| 162 | 05/12/2016<br>III Nsm 544/16<br>ZSR.442.179.2016.MA         | The Regional Court in S.                | Case pertaining to parental authority.<br>The case is in progress.  |

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| 163 | 05/12/2016<br>VIII Nsm 742/14<br>ZSR.442.425.2015.MA         | The Regional Court<br>in Ł.             | Case pertaining to parental authority.<br>The case is in progress.  |
| 164 | 05/12/2016<br>VI RC 355/15<br>ZSR.441.1356.2016.MK           | The Regional Court<br>in G.             | Case pertaining to establishment of paternity..<br>The case is in progress.   |
| 165 | 05/12/2016<br>III Nsm 207/15<br>ZSR.442.182.2016.SU          | The Regional Court<br>in K.             | Case pertaining to parental authority.<br>The case is in progress.  |
| 166 | 06/12/2016<br>V U 325/15<br>ZSS.441.862.2015.AT              | The Regional Court<br>in R.             | Case pertaining to appeal against the decision of the Voivodeship Disability Evaluation Board<br>The Ombudsman's motions were partially admitted.<br>The case is in progress. |
| 167 | 06/12/2016<br>IV U 326/15<br>ZSS.441.872.2015.JW             | The Regional Court<br>in R.             | Case pertaining to appeal against the decision of the Voivodeship Disability Evaluation Board<br>The Ombudsman's motions were admitted.<br>The case is in progress.           |
| 168 | 12/12/2016<br>III Nsm 958/15<br>ZSR.442.139.2016.SU          | The Regional Court<br>in Ł.             | Case pertaining to parental authority.<br>The case is in progress.  |
| 169 | 12/12/2016<br>III Nsm 94/16<br>DTZ.441.146.2015.RR           | The Regional Court<br>in T.             | Case pertaining to parental authority.<br>The case is in progress.  |
| 170 | 12/12/2016<br>III Nsm 5/15<br>ZSR.441.1216.2015.MA           | The Regional Court<br>in W.             | Case pertaining to contacts.<br>The case is in progress.  |
| 171 | 12/12/2016<br>IV U 34/16<br>ZSS.441.1305.2016.KK             | The Regional Court<br>in P.             | Case pertaining to appeal against the decision of the Voivodeship Disability Evaluation Board<br>The Ombudsman's motions were admitted.<br>The case is in progress.           |
| 172 | 13/12/2016<br>DL.WIPO.412.555.2016.AB<br>ZSM.441.136.2016.AC | The Province Administrative Court in W. | Case instigated by the Ombudsman for Children by means of appeal against a decision obliging a foreigner to return.<br>The case is in progress.                               |

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| 173 | 13/12/2016<br>26/09/2016<br>SKO.4106.593.2016<br>SKO.4106.839.2016<br>ZSS.441.1001.2016.JW. | Local Government<br>Appeal Council in C. | Case pertaining to determination of the right to parent's benefits. The Ombudsman's motions were admitted. The case is in progress.                                |
| 174 | 16/12/2016<br>DPU-420-133/SU/2016<br>ZSM.441.136.2016.AC                                    | The Head of the Office for Foreigners.   | Case pertaining to granting international protection for a foreigner. The case is in progress.   |
| 175 | 16/12/2016<br>case not registered at court<br>ZSS.442.25.2016.SK                            | The Province Administrative Court in K.  | Case pertaining to complaint about idleness of a Mayor. The Ombudsman's motions are soon to be considered. The case is in progress.                                |
| 176 | 20/12/2016<br>III Nsm 321/16<br>ZSR.441.607.2015.MG   | The Regional Court in T.                 | Case pertaining to contacts. The case is in progress.  |
| 177 | 21/12/2016<br>SKO.KA.431.2910/2016<br>ZSM.441.184.2016.AC                                   | The Province Administrative Court in S.  | Case instigated by the Ombudsman for Children by means of appeal against a decision refusing granting educational benefit to a foreigner. The case is in progress. |
| 178 | 22/12/2016<br>III Nsm 318/15<br>ZSR.442.332.2015.MK   | The Regional Court in Z.                 | Case pertaining to parental authority. The case is in progress.  |
| 179 | 23/12/2016<br>III Nsm 271/15<br>ZSR.441.1212.2015.UP  | The Regional Court in J.                 | Case pertaining to parental authority. The case is in progress.  |
| 180 | 29/12/2016<br>SOC-SC.6152.1385.2015.WM<br>ZSM.441.231.2016.AC                               | The Head of the Office for Foreigners.   | Case pertaining to granting a stay permit for a foreigner. The case is in progress.  |
| 181 | 29/12/2016<br>I C 1072/15<br>ZSR.441.1270.2016.MD   | The District Court in K.                 | Case pertaining to divorce. The case is in progress.   |
| 182 | 29/12/2016<br>VIII Nsm 288/16<br>ZSR.442.118.2016.MD  | The Regional Court in Ł.                 | Case pertaining to parental authority. The case is in progress.  |



## APPENDIX 6. COURT AND ADMINISTRATIVE CASES IN WHICH THE OMBUDSMAN FOR CHILDREN PARTICIPATED IN THE YEARS 2009-2016



## APPENDIX 7. LIST OF EVENTS UNDER THE HONORARY PATRONAGE OF THE OMBUDSMAN FOR CHILDREN

| No. | Event date            | Place or range of the event | Event name   | Event organiser   |
|-----|-----------------------|-----------------------------|--|---|
| 1.  | 01–31.05.2016         | Słupsk                      | 5th Interschool Competition „Świat na TAK! – Prawa dziecka” [„Say YES to the World! – The rights of the child”                                   | Tadeusz Kościuszko Primary School No. 2 in Słupsk   |
| 2.  | 2015                  | Polska                      | „VitaMenu”- Programm for 2016  | HelpFood Foundation in Szczecin   |
| 3.  | 01.12.2015–31.12.2018 | Warsaw                      | Programme „Cybernauts – comprehensive project of developing safe behaviours in network”  | Modern Poland Foundation in Warsaw  |
| 4.  | 17.03.2016            | Gliwice                     | Event “4th Scientific Conference for Children – Astrid Lindgren for Children”  | Elementary School and Nursery Unit No.6 in Gliwice  |
| 5.  | 21.03.2016            | Mikołów                     | Event – „XX Jubilee Transregional Sobriety Seminar in Mikołów”   | Powrót Association in Mikołów   |
| 6.  | 2016                  | Warsaw                      | Educational Programme „1000 pierwszych dni dla zdrowia” [“The first 1000 days for health”]   | NUTRICIA Foundation in Warsaw   |
| 7.  | 16.02.2016            | Cracow                      | Nationwide Scientific Conference „Prawo i Wychowanie” [“Law and Upbringing”]   | Department of Family Sciences Ignatianum Academy in Cracow                                  |
| 8.  | 27.02–10.04.2016      | Szczecin                    | Event „The largest exhibition of Lego bricks constructions in Poland held in Szczecin”   | Wystawa Klocków Sp. z o.o. S.K. in Bielsko-Biała  |
| 9.  | 08.04.2016            | Warsaw                      | 9th Nationwide Conference „Ostrożnie – dziecko! Profilaktyka krzywdzenia małych dzieci” [„Be carefull – child! Prevention of harm for children”] | Nobody’s Children Foundation in Warsaw  |
| 10. | 25–27.04.2016         | Warsaw                      | 13th edition of Competition for local television companies „To nas dotyczy” [“This concerns us”]   | Polish Chamber of Electronic Communication in Warsaw  |
| 11. | 09.02.2016            | Warsaw                      | Initiative „Dzień Bezpiecznego Internetu” [“Safe Internet Day”]  | Nobody’s Children Foundation in Warsaw and Research and Academic Computer Network In Warsaw |

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| 12. | 05.06–15.06.2016 | Polska    | Nationwide cycle of conferences “Integration for education. Support for teacher of disabled child in open educational facility”  | Moje Bambino Sp. z o.o. in Łódź  |
| 13. | 07–10.04.2016    | Warsaw    | Event „22nd Fairs of Catholic Publishers”  | Association of Catholic Publishers in Warsaw   |
| 14. | 17.03.2016       | Warsaw    | Conference „Refugees and migrants in Poland – societal, cultural, pedagogical and ethical challenges”  | UNESCO Janusz Korczak Chair in Interdisciplinary Studies on Child Development and Well-being in the Maria Grzegorzewska Academy of Special Education in Warsaw |
| 15. | 23.06.2016       | Grudziądz | IV Great Action of Blood Collection titled „Twoja Krew – Moje Życie” [„Your Blood – My Life”]  | Powiat Starosty in Grudziądz   |
| 16. | 17.09.2016       | Warsaw    | 3rd Festival of Children Ensembles „Piosenka, uśmiech i my” [„Song, smile and us”]   | Muzyczny Krąg Foundation in Marki  |
| 17. | 18.02–25.08.2016 | Warsaw    | Competition „Piórko 2016. Nagroda Biedronki za książkę dla dzieci” [„Feather 2016. Biedronka Award for a children’s book”]   | Jeronimo Martins Polska S.A. in Warsaw   |
| 18. | 01.02–31.06.2016 | Poznań    | 2nd edition of the Project „Przedszkolaki na Uniwersytecie” [„Kindergartners at the University”]   | Elementary Education and Pedagogical Therapy Institute of Educational Studies Department at Adam Mickiewicz University in Poznań                               |
| 19. | 01.02–27.11.2016 | Warsaw    | 4th edition of nationwide Action „Dzieci – Dzieciom” [„Children – For Children”] and the final of „Bajkowy Festiwal Teatralny Dzieci – Dzieciom” [“The Fairy Tale Theatre Festival Children for Children”] | Dzieci – Dzieciom Foundation In Kobylka  |
| 20. | 23.04.2016       | Warsaw    | Scientific Conference „Oswoić Autyzm – Oswoić Społeczeństwo” [„Familiarize with autism – Familiarize with Society”]  | Razem dla Białoleki Association in Warsaw  |
| 21. | 19.05.2016       | Tarnów    | Conference „Relacja uczeń – nauczyciel” [“Student – teacher relation”]   | Faculty of Social Sciences, Department of Educational Sciences and “Paidagogos” Pedagogical Scientific Circle–Małopolska School of Economics in Tarnów         |

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| 22. | 10.03.2016       | Tarnów    | 4th Pedagogical Symposium „We act, discover, activate – Upbringing and education nowadays”   | Faculty of Social Sciences, Department of Educational Sciences and “Paidagogos” Pedagogical Scientific Circle– Małopolska School of Economics in Tarnów |
| 23. | 24.03–31.12.2016 | Polska    | Nationwide educational action „STOP cukrzyca!” [“STOP diabetes!”]  | „Twój Junior” Quarterly Magazine – Wydawnictwo Lekarskie PZWL in Warsaw   |
| 24. | 11.02–31.08.2016 | Wrocław   | Information and promotion campaign „Lekki Tornister” [“Light schoolbag”]   | ROSA Foundation in Wrocław  |
| 25. | 09.02–09.06.2016 | Gdańsk    | Campaign „Internet pamięta. A Ty?” [„Internet remembers. And you?”]  | Ocaleni Foundation in Warsaw  |
| 26. | od 01.03.2016    | Poland    | Social campaign „Bądź kumplem, nie dokuczaj!” [„Be a buddy, don’t bully.”]   | dotPR Group in Poznań   |
| 27. | 11.03.2016       | Mysłowice | Celebration on the occasion of 10th anniversary of Kawalerów Orderu Uśmiechu Elementary School No. 13 in Mysłowice   | Kawalerów Orderu Uśmiechu Elementary School No. 3 in Mysłowice  |
| 28. | 21–22.03.2016    | Tarnów    | Social project – „Day nursery revival – New competences for day nursery staff in Tarnów.”  | Kropla Słońca Psychology, Education and Personal Development Association in Tarnów  |
| 29. | 27.02–30.10.2016 | Warsaw    | Project „Ripple effect: World’s wise fairy tales. Educational material for initial education teachers”.  | Kulczyk Foundation in Warsaw  |
| 30. | 19–20.03.2016    | Warsaw    | 4th Nationwide Educational and Scientific Conference for students and young medical doctors „Pediatria jakiej nie znacie 2016” [“Pediatrics you do not know 2016”] | Student Scientific Circle of Medical University of Warsaw   |
| 31. | 20.03.2016       | Zamość    | Celebration of World Oral Health Day „Zdrowe usta. Zdrowe ciało” [„Healthy mouth. Healthy body.”]  | Multimed Zamość Sp. z o.o.  |
| 32. | 12–13.03.2016    | Szczecin  | Event „Ogólnopolski Kongres ADHD” [“Nationwide ADHD Congress”]   | Support Group for Children with ADHD Children’s Friends Society in Szczecin   |
| 33. | 01.01–30.06.2016 | Warsaw    | Competition „Let’s do a favour for bears. Education for sustainable development in primary schools.”]  | SIGMA-NOT Publisher in Warsaw   |
| 34. | 13.04.2016       | Warsaw    | Conference „School mediation – prevention and learning responsibility”   | Conviventia Pedagogical Academy in Warsaw   |

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| 35. | 01.04–18.09.2016 | Pacanów  | X Nationwide Photo Competition „All children of the World – Pacanów 2016”  | European Fairytale Centre in Pacanów   |
| 36. | 01.04–30.09.2016 | Warsaw   | Programme „Szkoła Przyjazna Bezpieczeństwu” [“Safety friendly school”]   | PKP Group Foundation in Warsaw   |
| 37. | 2016             | Polska   | Campaign „Kolejowe ABC” [“The ABC of railway”]   | Office of Railway Transport in Warsaw  |
| 38. | 01.03–31.12.2016 | Polska   | Social and educational campaign „We say Vaccinate to pneumococci!”   | Aby żyć Foundation in Cracow   |
| 39. | 01.03–01.05.2016 | Warsaw   | Nationwide sociological survey „Youth and values 2016”   | Institute for Catholic Church Statistics SAC in Warsaw   |
| 40. | 21.05.2016       | Katowice | Charity concert „Wiosenna Giełda Humoru” [„Spring humour market”]  | Do startu gotowi! Foundation In Warsaw   |
| 41. | 01.03–01.05.2016 | Rybnik   | II edition of Nationwide Art Competition „Pozytywka – czyli wszystko, co sprawia, że jestem szczęśliwy” [„Positive box – all that makes me happy”] | Strefa WzW – wolnych z wyboru Association in Rybnik  |
| 42. | 20.03–31.12.2016 | Gdynia   | Educational programme for healthy eating „Jestem Ważny – Dbam o Siebie” [„I am important – I care for myself”]                                     | Jestem Ważny Association for Healthy Life Style Promotion in Gdynia  |
| 43. | 15.09–24.09.2016 | Warsaw   | 10th International Summer School „Contemporary problems of a child and childhood in multicultural society – theory, research, practice”            | UNESCO Janusz Korczak Chair in Interdisciplinary Studies on Child Development and Well-being in the Maria Grzegorzewska Academy of Special Education in Warsaw |
| 44. | 25.04.2016       | Warsaw   | XI Dance Contest „Tańczące Brzdące” [“Dancing tod”] titled „Wyprawa w lata 80-te” [„Expedition to 80s”]  | Zaczarowany Zakątek Nursery No. 16 in Warsaw   |
| 45. | 03–05.06.2016    | Pacanów  | 14th International Festival of Children’s Culture. Pacanów-Croatia 2016  | European Fairytale Centre in Pacanów   |
| 46. | 11.10.2016       | Legnica  | I Scientific Conference „Safety of children and youth in the context of contemporary challenges and practical actions of local system”             | Regional Office of Children’s Friends Society in Legnica   |
| 47. | 01.04–30.06.2016 | Cracow   | Action „Czysty Aniołek” [“Clean angel”]  | Piękne Anioły Association In Cracow  |
| 48. | 25.02–22.05.2016 | Łowicz   | Literary and art competition „Bazgroł” [“Scribble”]  | papierowypies.pl portal  |

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| 49. | 01.10.2016–<br>30.04.2017          | Warsaw              | Project „School film archive. New horizons of film education”  | Nowe Horyzonty Association In Warsaw   |
| 50. | 24.04–03.07.2016                   | Rzeszów             | Event “The largest exhibition of Lego bricks constructions in Poland held in Rzeszów”  | Wystawa Klocków Sp. z o.o. S.K. in Bielsko-Biała   |
| 51. | 02.04.2016                         | Góra Kalwaria       | Meeting „PaTosfera – 5. Anniversary of PaT Group” – gala summising action for prevention in Góra Kalwaria commune                | PaT Group Góra Kalwaria  |
| 52. | 01.04.2016–<br>30.04.2017          | Warsaw              | Project „Autism without fear”  | „Wiatr w żagle” Nursery facility In Warsaw   |
| 53. | 04–07.04<br>i 16–19.06.2016        | Gdynia              | Event „Gdynia Open – Festival of Children and Youth Songs 2016”  | Social Innovate Laboratory in Gdynia   |
| 54. | 05.06.2016                         | Warsaw              | Event „XIX Radio Kolor Great Family Picnic”  | Radio Kolor in Warsaw  |
| 55. | 27.06–03.07.2016                   | Gorzów Wielkopolski | Event „XXIII International Dance Festival „FOLK – PRZYSTAŃ” [„FOLK MUSIC – HARBOUR”] Gorzów 2016”                                | Youth Centre in Gorzów Wielkopolski  |
| 56. | 14.04.2016                         | Białystok           | Initiative „IV Competition on the knowledge about milk Milky Kids – Healthy Kindergarteners”                                     | Polish Milk Chamber in Białystok   |
| 57. | 10.05, 17.05,<br>24.05, 31.05.2016 | Kamionki            | Workshops for teenage parents „MamiJavani”   | Javani Foundation  |
| 58. | 10.07–10.09.2016                   | Warsaw              | Project „Medics on the Caribbean – Dominican Mission”  | Moja Dominikana Foundation in Warsaw   |
| 59. | 01.06.2016                         | Warsaw              | Conference: „Upholding the rights of children” and „Children as victims of Katyn Massacre”                                       | Katyn Museum in Warsaw   |
| 60. | 01.04–31.05.2016                   | Warsaw              | Competition „Children around the world”  | Kornelówka Private Elementary School in Warsaw   |
| 61. | kwiecień                           | Koszalin            | Conference „Rights of the child”   | Regional Office of Children’s Friends Society in Koszalin  |
| 62. | 05.04–15.06.2016                   | Warsaw              | 4th edition of competition „It is important for me”  | AVIVA Foundation   |
| 63. | 01.07–31.08.2016                   | Łódź                | Undertaking „Happy bus”  | HAPPY KIDS Foundation in Łódź  |
| 64. | 02.06.2016                         | Warsaw              | II edition of Nationwide Scientific Conference „How much goodness is inside a man? Orphanhood – reflection of goodness or evil?” | „Kontra” Doctoral Student Research Group of Creative Revalidation and Animation; Pedagogium Higher School of Social Sciences in Warsaw |

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| 65. | 02–08.09.2016    | Katowice | Event „Katowice ZHP Detachment Day”  | Polish Scouting Association Śląsk Regiment Detachment in Katowice |
| 66. | 20.09.2016       | Łódź     | Event „Nationwide Kindergarten Day” – 5th edition  | Municipal Nursery No. 54 in Łódź                                  |
| 67. | 28.05–03.06.2016 | Wrocław  | Initiative „4th New Kids’ Theatre Review”  | Wrocław Puppet Theatre  |
| 68. | 01.03–16.05.2016 | Nysa     | Programme „Nursery rescues”  | Powiat Police Headquarters in Nysa                                |
| 69. | 04.04–24.10.2016 | Polska   | Series of debates „Active School”  | Innovative Education Foundation In Warsaw                         |
| 70. | od 15.04.2016    | Warsaw   | I edition of Nationwide social campaign on hearing children in civil procedures  | Nobody’s Children Foundation in Warsaw                            |
| 71. | 28–29.05.2016    | Warsaw   | Musical concert „Musical FM – More than music”   | Warsztatowa Akademia Muzyczna in Warsaw                           |
| 72. | 23.03.2016       | Gdańsk   | Conference „Mediation as the form of conflict solving at school”   | Regional Court in Gdańsk  |
| 73. | 02.04.2016       | Radom    | Celebration „World Autism Awareness Day” in Radom  | Karuzela Association in Radom                                     |
| 74. | 11–12.04.2016    | Gdańsk   | International conference „Competences of a child in chronic disease”   | ODiTK Educational Foundation in Gdańsk                            |
| 75. | 25.04.2016       | Lublin   | I Kindergarteners Paralympic Games „You or me – everyone has a chance in sport”  | Inclusive Nursery No. 39 in Lublin                                |
| 76. | 17–21.05.2016    | Warsaw   | CEMS Project „Chance X” and CEMS Participants Congress Chance  | Student Council Association Warsaw School of Economics in Warsaw  |
| 77. | 16.05.2016       | Warsaw   | International Scientific Conference „Environmental education for sustainable development in teachers education”  | Maria Grzegorzewska Academy of Special Education in Warsaw        |
| 78. | 13–15.05.2016    | Wrocław  | „Polish Montessori Days” Initiative entitled „Active life – contemplative life . Vita activa–vitacontemplativa. Activity and silence in Maria Montessori pedagogy” | Polish Montessori Association in Łódź                             |
| 79. | 20.04.2016       | Warsaw   | VIII Review of Artistic Presentation “Flowers of integration”  | Janusz Korczak Inclusive Nursery No. 137 in Warsaw                |
| 80. | 08–10.06.2016    | Warsaw   | Initiative „III Sendler Schools International Meeting”   | School Complex with Inclusive Units No.65 in Warsaw               |
| 81. | 05.05.2016       | Toruń    | Initiative „II Voivodship Dignity Day of Intellectually Disabled People”   | School Complex No. 6 in Toruń                                     |

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| 82. | 01–12.06.2016    | Warsaw       | Event – 4th Children and Youth Festival „Kino w Trampkach” [“Cinema in sneakers”]                                | Cinemia Foundation in Warsaw  |
| 83. | 05–17.05.2016    | Świdnica     | Event – II Children Musical Festival „BARKA RADOŚCI” [“HOUSEBOAT OF JOY”]  | Jan Paweł II Elementary School No. 315 in Świdnica                                  |
| 84. | 04.06.2016       | Tuchola      | Initiatives: „Poviat Child Day” joined with „Foster Care Day” and „XIV Review of Disabled People Creative Power” | Poviat Family Support Centre in Tuchola   |
| 85. | 09.04.2016       | Warsaw       | I International Scientific Conference „Understanding the World of children with autism”                          | The European Association for Health Promotion PRO-SALUTEM in Warsaw                 |
| 86. | 11–14.05.2016    | Zielona Góra | Initiative „VI Foster Care Days at the Zielona Góra University”  | Childcare Education and Family Department of the Zielona Góra University            |
| 87. | 06–13.06.2016    | Tczew        | Event „International Review of Great Theatres”   | Association for Special Education in Tczew  |
| 88. | 31.05–01.06.2016 | Lublin       | Event „95th Anniversary of Special Elementary School No. 26 in Lublin”   | Janusz Korczak School Complex No. 4 in Lublin                                       |
| 89. | 15.04–31.12.2016 | Szczecin     | Performance „Wieża z klocków [„Brick Tower”]   | Contemporary Theatre in Szczecin  |
| 90. | 19–23.06.2016    | Cracow       | Event „International Children and Youth Film Festival KINOLUB”   | IKS Foundation in Cracow  |
| 91. | 25.04–31.05.2016 | Pruszków     | Project – ‘Better start’   | Kopla Słońca Psychology, Education and Personal Development Association in Pruszków |
| 92. | 15.05–30.09.2016 | Łódź         | Nationwide Photo Competition „Colours of the world”  | Razem Foundation  |
| 93. | 03–09.07.2016    | Warsaw       | Initiative „Camera Summer Nationwide Film Meetings”  | FILMFORUM Association in Warsaw   |
| 94. | 26–28.05.2016    | Suwałki      | XVI International Dance and Music Festival „Muszelki Wigier” [„Shells of Wigry”] 2016                            | Suwałki Culture Centre  |
| 95. | 22.06.2016       | Warsaw       | Initiative „Foster Care Congress”  | Coalition for Family Foster Care in Warsaw  |
| 96. | 23–29.05.2016    | Gdynia       | Campaign „One week without computer monitor”   | PEGAZ.1a Foundation   |
| 97. | 24.05.2016       | Świdnica     | Event „IV Voluntary Service Gala”  | Noblistów Polskich Junior High School No. 4 in Świdnica                             |
| 98. | 28.04.2016       | Koszalin     | Debate „Does observing student rights and obligations guarantee safety?”   | I Armii Wojska Polskiego Elementary School No. 7 in Koszalin                        |



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| 99.  | 16.04.2016       | Dąbrowa Górnicza | III edition of Dąbrowa Górnicza Clinical Meetings „Children’s health – interdisciplinary challenge of medical doctors”   | Organisational and Scientific Committee „III Dąbrowa Górnicza Clinical Meetings” in Dąbrowa Górnicza |
| 100. | 22.04.2016       | Łódź             | Publishion of Barbara Gawryluk’s book Teraz tu jest nasz dom [„Now it’s our home-here”]  | Literatura Publisher in Łódź   |
| 101. | 17.06.2016       | Warsaw           | Initiative „III Knowledge Olympics for disabled youth”   | Maria Grzegorzewska Academy of Special Education in Warsaw   |
| 102. | 22.06–31.12.2016 | Warsaw           | VIII edition of social campaign „Let’s be safe together”   | Tramwaje Warszawskie Sp. z o.o.  |
| 103. | 04.06.2016       | Słupsk           | Action „SUBJECT, not objet – Children’s Day 2016”  | Horyzont Association in Słupsk   |
| 104. | 20.05.2016       | Warsaw           | Project „Ripple effect: World’s wise fairy tales. Educational book”  | Kulczyk Foundation w Warszawie   |
| 105. | 03.06.2016       | Warsaw           | Conference „Sport at school”   | Wolters Kluwer S.A. Publisher  |
| 106. | 06–07.06.2016    | Płock            | III Płock Reading Festival „Experiment with book”  | GUCIO Non-public Nursery and COGITO Non-public Primary School in Płock                               |
| 107. | 01–05.06.2016    | Konin            | Event „37th edition of International Children Dance and Music Festival in Konin”   | Konin Culture Centre   |
| 108. | 01.05–08.06.2016 | Starachowice     | Art Competition „Small and Large ”entitled “Human rights in the children’s world”  | Henryk Sienkiewicz Junior High School No. 3 in Starachowice  |
| 109. | 01.05–30.06.2016 | Warsaw           | Art Competition “Moja Kolorowanka – Moje Prawa” [„My Colouring book – My Rights”]  | Committee for the Protection of Children’s Rights in Warsaw  |
| 110. | 22.11.2016       | Wrocław          | V Scientific Conferences in the series „Contemporary issues of penal sciences” entitled „Proceeding and criminal issue of the victim participation in criminal proceeding” | Helena Chodkowska Law University in Wrocław  |
| 111. | 02.06.2016       | Warsaw           | III National Scientific Conference „Cyberspace and virtual worlds. Grand opening? Open learning and education”   | Maria Grzegorzewska Academy of Special Education in Warsaw   |
| 112. | 18.06–14.07.2016 | Wrocław          | Project „Brave Kids”   | Pieśń Kozła Theatre Culture Association in Wrocław   |
| 113. | 02.06.2016       | Elbląg           | Workshops for self-reliant parents „Non-alimony is violence/ Know your rights”   | Poprawa Spraw Alimentacyjnych Dla Naszych Dzieci Association in Elbląg                               |

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| 114. | 08–11.06.2016                      | Warsaw               | 9. European Tourette Syndrom and Twitch Disorder  | KARPENO in Warsaw  |
| 115. | 29.04.2016                         | Warsaw               | Forum „Hejt – reaguj!” [„Hate – React!”]  | European Council Campaign „Without Hate” in Poland   |
| 116. | 02.06.2016                         | Sączów               | Action „Run for happy childhood”  | School and Nursery Complex in Sączów   |
| 117. | 01.07.2016–31.12.2017              | Warsaw               | Competition „Child friendly world”  | Committee for the Protection of Children’s Rights in Warsaw                                  |
| 118. | 03.06.2016                         | Ruda Śląska          | District Outdoor Fair „Grunt to rodzinka!” [„Family – that’s it!”]  | Municipal Nursery No. 34 in Ruda Śląska  |
| 119. | 18–19.05.2016                      | Kołobrzeg            | Art workshops for intellectually disabled children and youth from Zachodniopomorskie Voivodeship                        | Przyjaciele Okruszka Association for Disabled Children and Youth in Kołobrzeg                |
| 120. | 10–24.07.2016                      | Kielce               | 43rd International Scouting Festival of School Youth Culture – Kielce 2016  | Commander of ZHP Kielce Regiment   |
| 121. | 01.06.2016                         | Szczecin             | Event „Bądźmy razem – Brzdąc” [“Let’s be together – Tot”]   | SŁOWIANIN Culture Centre in Szczecin   |
| 122. | 27–28.05.2016                      | Laskowa-Dobra        | Conference „Integration of school and family environment for child development”   | Department of Social Psychology and Interpersonal Communication Ignatianum Academy in Cracow |
| 123. | 16.05.2016                         | Ostrów Wielkopolski  | Project „Infoholism – Drug of XXI century”  | Ludzie dla ludzi Association in Ostrów Wielkopolski  |
| 124. | 01.06.2016                         | Rabka – Zdrój        | Initiative „Entrepreneurs of Podhale, Spisz and Orawa for Children”   | Andrzej Gut-Mostowy  |
| 125. | 2016                               | Warsaw               | National project „Szpital Pluszowego Misia” [„Teddy Bear Hospital”]   | International Association of Medicine Students IFMSA-Poland in Warsaw                        |
| 126. | 28.06–03.07.2016;<br>25–29.08.2016 | Poznań               | Festival „Sztuka Szuka Malucha 2016” [“Art is looking for Little One 2016”]   | Art Fraction Foundation in Poznań  |
| 127. | 02–03.06.2016                      | Wałbrzych            | Conference and workshops on the occasion of Safe Internet Day „(NIE)BEZPIECZNA CYBERPRZESTRZEŃ” [„(UN)SAFE CYBERSPACE”] | Energetyk Technology School Complex in Wałbrzych   |
| 128. | 08.06.2016                         | Cracow               | Conference „Child and violence. When does aggression end and violence begin?”   | Regional Social Policy Centre in Cracow  |
| 129. | 19.10.2016                         | Piotrków Trybunalski | Conference „Risks of psychoactive substances and compulsive behaviours among children and youth”                        | Association for Common Abstainer Support PAŁACYK in Piotrków Trybunalski                     |

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| 130. | 15.06.2016                 | Lublin              | II Woivodeship Fair „Safe school – Safe Lubelskie Voivodeship”  | Local Education Authority in Lublin  |
| 131. | 15.10.2016                 | Warsaw              | I CODA Conference Poland. Hearing Children – Deaf Parents „CODA – Double potential”   | Association „CODA Poland. Hearing Children – deaf parents” in Warsaw                             |
| 132. | 01.10.2016                 | Warsaw              | Social campaign „Faces of depression. I do not judge. I accept”   | Aktywnie Przeciwko Depresji Association in Warsaw  |
| 133. | 04.06.2016                 | Opole               | Reading parts of book titled „Duże sprawy w małych głowach” [„Great issues in small heads”] for children in the framework of action “All of Poland reads to Kids” | Public Municipal Library in Opole  |
| 134. | 01.07–31.08.2016           | Strzelce Opolskie   | Initiative „Wakacyjna Akcja Redakcyjna” [“Summer Editing Action”]   | „Strzelec Opolski” Regional Weekly   |
| 135. | 26.06–30.07.2016           | Zielona Góra        | Youth Camp KORCZAKOWO   | ZHP Group of Korczakowo Friends  |
| 136. | 04.07–08.07.2016           | Jaworzyna Śląska    | Project „Przemysłowe Miasto Dzieci” [“Industrial Town of Children”]   | Museum of Industry and Railway in Śląsk  |
| 137. | 18–19.06.2016              | Słupsk              | Project „Process of becoming independent in the eyes of youth – educational and prevention workshops for youth in educational centres”                            | NEMESIS Group of Social Sciences Pedagogy and Social Work Institute Pomeranian Academy in Słupsk |
| 138. | od 01.08.2016              | Warsaw              | „FAIRStart” Educational programme   | Coalition for Family Foster Care in Warsaw   |
| 139. | 19–22.07,<br>25–28.07.2016 | Świdnica            | Project „Świdnica – Town of Children”   | Commune of Świdnica Town   |
| 140. | 19.06.2016                 | Karwiany–Komorowice | Family Picnic on the occasion of Children’s Day organised on the theme of „Safe children – calm parents”  | Village Council of Karwiany-Komorowice   |
| 141. | 17,19.06.2016              | Warsaw              | Performance „Na ulicy Dobrej Wróżki” [„At Good Fairy Street”]   | Kulturalnie.waw.pl   |
| 142. | 09.06.2016                 | Płock               | Charity concert „Płocka Giełda Humoru w rytmie disco” [„Płock Humour Market in disco rythm”]  | Do startu gotowi Foundation in Warsaw  |
| 143. | 11.06.2016                 | Warsaw              | Charity Tournament „Niezwyczajny Turniej WOW” [„WOW Amazing Tournament”]  | Czyny Niezwykłe „Rzeka Życia” Foundation in Warsaw   |

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| 144. | od 08.06.2016                           | Zielona Góra         | Initiative „Partnership for Voluntary service in Lubuskie Voivodeship”  | Marshal of Lubuskie Voivodeship   |
| 145. | 01.09.2016                              | Łódź                 | Publication of Renata Piątkowska’s book Hebanowe serce[“Ebony heart”]   | Literatura Publisher in Łódź  |
| 146. | 26.06.2017                              | Piotrków Trybunalski | II Powiat Civics Competiton on the theme „I am a child and I have rights”   | School Complex No 8 in Tomaszów Mazowiecki  |
| 147. | 13–14.08,<br>20–21.08,<br>27–28.08.2016 | Kielce               | II Vacation Art Festival for Children „Hurra! ART!”   | „Kubuś” Puppet and Actor Theatre in Kielce  |
| 148. | od 10.09.2016                           | Warsaw               | Children and youth suicide campaign „Look... I AM DIS-APPEARING”  | Zobacz... JESTEM Foundation in Warsaw   |
| 149. | 22.06.2016                              | Warsaw               | Prize giving ceremony „IV Mazovian Olympics for Linguists”  | Warsaw School of Applied Linguistics in Warsaw  |
| 150. | 10.09.2016                              | Cracow               | 5th Charity Run of Tesco Dzieciom Foundation  | Tesco Dzieciom Foundation in Cracow   |
| 151. | 01.08.2016–<br>30.05.2017               | Wrocław              | Project „KIDS DESIGN SPACE – children design space”   | OPEN MIND Foundation in Wrocław   |
| 152. | 07.07–16.10.2016                        | Cracow, Łódź         | Event “The largest exhibition of Lego bricks constructions”   | Wystawa Klocków Sp. z o.o. S.K. in Bielsko-Biała  |
| 153. | 26.06.2016                              | Złotów               | Celebration of Foster Care Day on the theme „Day for Family”  | Foster Care Association Office in Złotów  |
| 154. | 27.06–01.07.2016                        | Poznań               | Project „School and Peer Mediation Academy” – I summer edition  | Centre for Legal Education National Council of Legal Advisers in Warsaw with the seat in Poznań |
| 155. | 23–25.11.2016                           | Lublin               | III Polish National Educational and Scientific Conference „GENE-HUMAN-WORLD-DANGERS”  | Clinical Genetics Department of Medical University in Lublin                                    |
| 156. | 01.09–31.12.2016                        | Warsaw               | Educational workshops project „Financial manual”  | VERBA Foundation in Warsaw  |
| 157. | 19.07–10.08.2016                        | Cracow               | Project „Wakacje w cieniu kultury” [„Holidays in the shade of culture”]   | LEGE ARTIS Association of Social Initiatives in Cracow  |
| 158. | 27.06–31.08.2016                        | Żarów                | Action „Smile Holidays 2016”  | Social Welfare Centre in Żarów  |
| 159. | 01–30.08.2016                           | Warsaw               | Action „School bag filled with smile’   | Caritas Polska in Warsaw  |
| 160. | 20.08–01.09.2016                        | Cracow               | Action „Anioły idą do szkoły” [„Angels go to school”]   | Piękne Anioły Association in Cracow   |
| 161. | 09.09.2016                              | Łędziny              | Polish National Conference in the framework of XVI celebration of World Fas Day in Poland entitled „FAS in interdisciplinary prospective” | Fastryga Foundation in Łędziny  |

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| 162. | 01.09–31.12.2016      | Czeladź      | Social campaign in the area of Czeladź Town against harming children „What if children could choose?”                     | Moc Wsparcia Association in Czeladź   |
| 163. | 13.09.2016            | Toruń        | Conference „Kocham – nie upijam!” [“I love – I don’t make drunk”]   | Po-most Association in Toruń  |
| 164. | 01.09.2016–30.06.2017 | Łódź         | Project „University of Łódź for Children ”  | University of Łódź  |
| 165. | 29.10.2016            | Katowice     | Concert „Hope Festival – Katowice 2016”   | Polish Cultural Association in Katowice   |
| 166. | 01.10.2016–30.04.2017 | Wrocław      | Action „Przedszkolaki grają w znaki” [„Kindergarteners play signs”]   | Pro Biznes Idea in Wrocław  |
| 167. | 20.09.2016            | Łódź         | I Nationwide Scientific Conference „Multi-sided risks of post-modernity”  | Social Prevention Academy Science Academy in Łódź                                   |
| 168. | 26–27.11.2016         | Sławęcin     | II International Conference „Education-Innovation 2016”   | Sławęcin Association of Local Initiatives   |
| 169. | od 03.10.2016         | Zamość       | Action „SOS for damaged teeth”  | Multimed Zamość Sp. z o.o.  |
| 170. | 09.09.2016            | Gdańsk       | Celebration of World Fas Day in Gdańsk  | FASCYNACJE Foundation in Gdańsk   |
| 171. | 29.08–31.12.2016      | Warsaw       | Social campaign promoting action of Dyżurnet.pl team  | Research and Academic Computer Network NASK in Warsaw                               |
| 172. | 01–19.11.2016         | Warsaw       | Campaign „19 days against violence and harming of children and youth”   | po DRUGIE Foundation in Warsaw  |
| 173. | 19–22.09.2016         | Warsaw       | Initiative „Colourful days of Warsaw Kindergartener. Kindergartener Day at Praga Południe district”                       | Niezapominajka Nursery No. 89 in Warsaw   |
| 174. | 20.09.2016            | Warsaw       | International Conference „Education for sustainable development.Educational actions in Europe and Scandinavian countries” | Polish Committee of World Organisation for Early Childhood Education OMEP in Warsaw |
| 175. | 16.11.2016            | Częstochowa  | Initiative „II Forum FOR FAMILY”  | FOR FAMILY Association for support of child and family in Częstochowa               |
| 176. | 01.11.2016–31.01.2017 | Warsaw       | Undertaking „Town of senses”  | Edipresse Polska SA in Warsaw   |
| 177. | 14–15.10.2016         | Zduńska Wola | Conference „Empathic education – empathic Poland”   | Continuing Education Centre in Zduńska Wola   |
| 178. | od 01.09.2016         | Poznań       | Project „UAM students without borders. Third edition”   | Project team „UAM students without borders.Third edition” in Poznań                 |
| 179. | od 28.09.2016         | Warsaw       | Project „Ripple effect: Album”  | Kulczyk Foundation in Warsaw  |

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| 180. | 20–21.09.2016             | Warsaw   | 10th International Conference „Safety of children and youth in Internet”  | Research and Academic Computer Network NASK in Warsaw; Empowering Children Foundation in Warsaw |
| 181. | 03–05.11.2016             | Łódź     | Conference About Nations  | Impuls International Activity Centre in Łódź  |
| 182. | 03–13.09.2016             | Mikołów  | XIII Mikołów Poviát Social Campaign „Chain of clean hearts – we say No to drug addition, alkohol addiction, smart drugs, interpersonal violence, HIV/AIDS non-tolerance, we say Yes to Goodness”. | Powrót Association in Mikołów   |
| 183  | 17.10.2016                | Gdańsk   | Voivodeship debate „Rights and obligations: director, teacher, parent, student”   | District Court in Gdańsk  |
| 184. | 31.08.2016–<br>15.06.2017 | Szczecin | VII edition of International Photo Competition „Matematyka w obiektywie” [“Maths in photo gallery”]   | University of Szczecin  |
| 185. | 30.09.2016                | Katowice | Charity performance „To love as one loves salt”   | Katowice Housing Co-operation Foundation  |
| 186. | 24–25.10.2016             | Warsaw   | 13th Nationwide Conference „Support of children – crime victims”  | Empowering Children Foundation in Warsaw  |
| 187. | 27.09.2016                | Opole    | Scientific and Educational Conference „Cyberviolence, human traffic, smart drugs... – New risk and challenges for upbringing and safety”  | President of the District Court in Opole  |
| 188. | 15.11.2016                | Rudno    | Nationwide Literary and Art Competition „Magical world of toys: we care for environment and move to help the Earth with Super teddy bear”   | Elementary School in Rudno  |
| 189. | 11.09.2016                | Lublin   | Fair „International Order of Smile Day Czuby Lublin – Edition VI”   | Lubelska Inicjatywa Association   |
| 190. | 07.09.2016                | Wołomin  | Conference on threats in cyberspace organised by Wołomiński Poviát addressed to self-governmental authorities and people working with children for the safety of the youngest                     | Wołomiński Poviát Starosty  |
| 191. | 15.09–31.12.2016          | Warsaw   | Nationwide Literary and Art Competition for children and youth „Janusz Korczak – wizard of our imagination”   | Janusz Korczak Polish Association in Warsaw   |

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| 192. | 01.09.2016–<br>31.01.2017 | Katowice | Competition „Działanie na równanie” [„Acting for equality”]   | Assignee of Ombudsman in Katowice                         |
| 193. | 17.09.2016                | Pruszków | Social campaign „COPY-PASTE. Show me a better world”  | Pruszkowski Powiat Starosty                               |
| 194. | 05.09.2016–<br>23.06.2017 | Warsaw   | Programme „Juices and mousses in SMART form”  | „Krajowa Unia Producentów Soków” Association              |
| 195. | 27–28.10.2016             | Warsaw   | III Congress of Education and Development   | Wolters Kluwer SA in Warsaw                               |
| 196. | 20.09.2016                | Jasło    | Integrational event on the occasion of Nationwide Kindergartener Day joined with reading action „All of Poland reads to Kids” on the theme „Fairytale Kindergartener Day” | Private Fairytale Nursery in Jasło                        |
| 197. | 27.08.2016                | Piecki   | Completion of Prevention Holiday Action joined with competition „Holiday Hero” promoting social campaign of the Ombudsman for Children „Courage safes life”               | Commune Social Welfare Centre in Piecki                   |
| 198. | 01.09.2015–<br>31.08.2017 | Warsaw   | VI edition of educational programme “Breakfast empowers”  | „Partnership for health” Coalition of Companies in Warsaw |
| 199. | 01.09.2016–<br>31.08.2017 | Warsaw   | Programme „Żółty Talerz” [“Yellow plate”]   | Kulczyk Foundation in Warsaw                              |
| 200. | 29–30.11.2016             | Warsaw   | VI Expert ITAKA Foundation Conference „Use of new technologies in searching for missing people”   | ITAKA Foundation in Warsaw                                |
| 201. | 14.10.2016                | Świdnica | I Lower Silesian Convent „Role of mediation in minor cases and cases of contacts with children”   | Sudety Mediation Centre in Świdnica                       |
| 202. | 03.10.2016–<br>30.06.2017 | Cracow   | II edition of social and educational programme „Kompas”   | Promień Nadziei Foundation in Cracow                      |
| 203. | 01–12.10.2016             | Warsaw   | XX International Children and Youth Theatre Festival „KORCZAK 2016”   | ASSITEJ Polish Centre in Cracow                           |
| 204. | 15.09.2016                | Gdynia   | Educational campaign „Z Tobą mogę więcej” [„I can do more with you”]  | „Operon” Pedagogical Publisher in Gdynia                  |
| 205. | 01.09.2016<br>–31.08.2017 | Warsaw   | VII edition of Nationwide Educational programme „Your data – your problem. Effective personal data protection. Educational initiative addressed to students and teachers” | Inspector General for Personal Data Protection in Warsaw  |

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| 206. | 24.09.2016             | Warsaw   | Children runs „Mini Marathon”   | Warsaw Marathon Foundation in Warsaw               |
| 207. | 01.11–31.12.2016       | Łódź     | Project „Teenager as aggressor and Victim of violence – educational social campaign”, carried out in the framework of a Social Plan „Support for Local Self-government Units in developing Family Violence Protection System” | Regional Social Policy Centre in Łódź              |
| 208. | 01.09.2016–30.06.2017  | Warsaw   | Antitobacco educational programme for 4th grade students of elementary school „Run for health”  | Sanitary Inspector General in Warsaw               |
| 209. | 14.10.2016             | Warsaw   | III publishing children book titled Ciasteczkowa choinka Żuczka Blo [“Cookies Christmas tree of Blo Beetle”], written by Margaret Borroughdame  | MB BOOKS Publisher in Warsaw                       |
| 210  | 15.09.2016, 01.12.2016 | Siedlce  | Releasing educational and pedagogical records „Songs of smart children” and „Letter to Santa Claus”   | Small Orchestra of our Days in Siedlce             |
| 211  | 08.11.2016             | Lublin   | Conference „Face trauma – support for a child in foster care”   | SOS Children’s Villages in Poland                  |
| 212. | 06.12.2016             | Wrocław  | Art and educational event – musical performance „Korczak” opening the project „Doctor Korczak Academy”  | Culture and Art Centre in Wrocław                  |
| 213. | 05.10.2016–30.06.2017  | Kalisz   | Programme „Porcja Pozytywnej Energii” [“Some positive energy”]  | CRIPSY NATURAL Sp. z o.o. Sp.k.                    |
| 214. | 01.10.2016–28.02.2017  | Czeladź  | Educational workshops „Kids safe online”  | „Twórcze Umysły” Association                       |
| 215. | 04–18.11.2016          | Warsaw   | XIII Mazovian Savoir-vivre Competition „Obycie umila życie” [“Good manners make life nicer”]  | „Włochy” Culture Centre in Warsaw                  |
| 216. | 11.10.2016             | Cracow   | Conference „Children’s right to family”   | Pro Familia Adoptive Family Association            |
| 217. | 14.10.2016             | Mrzeżyno | 10th Anniversary of giving a name Smile Order’s Knights to Elementary School and Public Junior High School in Mrzeżyna  | School Complex with Integrated Classes in Mrzeżyno |



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| 218. | 12.10–15.12.2016      | Warsaw           | Competition promoting support of safe and effective functioning of students with special educational needs in schools "School for everyone" III edition | Institute of Non-governmental Initiatives in Warsaw         |
| 219. | 25.10.2016            | Warsaw           | Conference „Good nourishing of children and youth in practice”  | „Szkoła na Widelcu” Foundation                              |
| 220. | 20.10–20.11.2016      | Dąbrowa Górnicza | Project „Children and fish are not heard? Children's rights in contemporary world”  | Hugon Kołłątaj Public Municipal Library in Dąbrowa Górnicza |
| 221. | 14.10.2016            | Łódź             | Initiative „Support for children with trauma – conference for professionals working with families in crisis”  | Słonie na Balkonie Foundation in Łódź                       |
| 222. | 05–07.11.2016         | Kielce           | I European Forum of New Technologies and Innovations in Education   | European Association for Educational Dialog in Wrocław      |
| 223. | 01.10.2016–12.03.2017 | Polska           | Children runs „Grand Prix City Trail Junior”  | Sport dla każdego Association in Wągrowiec                  |
| 224. | 12.10.2016–30.06.2017 | Warsaw           | Event „World Dignity Day”   | Global Dignity Poland Foundation in Warsaw                  |
| 225. | 05.10.2016            | Łódź             | Book Kot Karima i obrazek [„Karimacat and a Picture”] written by Liliana Bardijewska  | Literatura Publisher in Łódź                                |
| 226. | 27.10.2016            | Wrocław          | Conference „Violence in cyberspace as reflection of relations in social life”   | Dom Pokoju Foundation in Wrocław                            |
| 227. | od 01.11.2016         | Zamość           | Project „School of healthy smile Multimed”  | Multimed Zamość Sp. z o.o.                                  |
| 228. | 29–30.10.2016         | Busko-Zdrój      | Action „Stop children tumors in Świętokrzyskie Voivodeship”   | Słoneczna Przyszłość Foundation in Busko-Zdrój              |
| 229. | 25–26.11.2016         | Legnica          | XIX International Scientific Conference of children health in industrial, urban and rural environment   | Fundacja na Rzecz Dzieci Zagłębia Miedziowego in Legnica    |
| 230. | 17.10.2016            | Warsaw           | Action of beating record in simultaneous cardiopulmonary resuscitation  | Great Orchestra of Christmas Charity Foundation in Warsaw   |
| 231. | 30.11.2016            | Wrocław          | Project „Urtica for Children”   | Urtica for Children in Wrocław                              |
| 232. | 20.10.2016–08.05.2017 | Warsaw           | Actions of initiative group related to preparation of Sanity Congress   | Hostel – Centre of Psychosocial Rehabilitation in Otwock    |
| 233. | od 14.11.2016         | Warsaw           | Conference „I know. I feel... I help! Empathy at school”  | Kulczyk Foundation in Warsaw                                |

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| 234. | 04.11.2016            | Biłgoraj   | Scientific Conference „Threats for youth in virtual and real world. Problems – dilemmas – recommendations”      | Maria Grzegorzewska Academy of Special Education in Warsaw            |
| 235. | 29.11.2016            | Wrocław    | Scientific and educational conference „Selective mutism – let them speak”                                       | Powiat Psychological and Pedagogical Advice Complex in Wrocław        |
| 236. | 03.12.2016            | Warsaw     | Event „Cultural St. Nicolas’ Day Kulturalne with Kulturalne Dzieci Waw PL Foundation”                           | Kulturalne Dzieci Waw PL Foundation in Warsaw                         |
| 237. | 25.11.2016            | Kolbuszowa | Project „Small Teddy Bear in a great Word of literature”  | Public Nursery No. 1 in Kolbuszowa                                    |
| 238. | 04–05.11.2016         | Legnica    | Event „III Lower Silesian Forum of Children’s Friends Support Groups”   | TPD Regional Office in Legnica  |
| 239. | 01.11.2016–31.03.2017 | Gdańsk     | VII edition of Nationwide Educational Action „Planet of Energy”   | Energa S. A. in Gdańsk  |
| 240. | 15.11.2016            | Łódź       | Book by Grzegorz Kasdepke-Mam prawo! [„I have right”]   | Literatura Publisher in Łódź  |
| 241. | 01.11.2016–27.01.2017 | Lublin     | III edition of Nationwide Literary Competition related to works of Kornel Makuszyński „Reading is an adventure” | Kornel Makuszyński Elementary School No. 34 in Lublin                 |
| 242. | 06–09.12.2016         | Warsaw     | CEMS Project „Chance XI”  | Board of Student Self-government Warsaw School of Economics in Warsaw |
| 243. | 25.11.2016            | Cracow     | Project involving collection of mascots for children from oncology units „Teddy Bear Day”                       | Mam Marzenie Foundation in Cracow                                     |
| 244. | 14.11–09.12.2016      | Łódź       | XIII Łódź Competition „Children’s Rights – Human rights”  | Prof. Jan Moll Elementary School No. 44 in Łódź                       |
| 245. | 15.11.2016–01.04.2017 | Ostrołęka  | XIX Nationwide Law Knowledge Olympics   | II Toni Halik Community High School in Ostrołęka                      |
| 246. | 18.11.2016            | Lubin      | III Lublin Children March – Nationwide Children’s Rights Day  | Akademia Przedszkolaka Community Nursery in Lublin                    |
| 247. | 21.11.2016            | Będzin     | Event „Smiling International Children’s Rights Day. III Sunny Inter-Nursery Meeting”                            | Kawalerów Orderu Uśmiechu Municipal Nursery No.2 in Będzin            |
| 248. | 02.12.2016–11.02.2017 | Poznań     | Event “The largest exhibition of Lego bricks constructions in Poland held in Poznań”                            | Wystawa Klocków Sp. z o.o. S.K. in Bielsko-Biała                      |
| 249. | 09.12.2016            | Pszczyna   | Initiative „Small festival of great things”   | Do startu gotowi! Foundation in Warsaw                                |
| 250. | 22.11.2016            | Warsaw     | II Nationwide Conference „Youth in danger... drugs, smart drugs. Prevention and treatment”                      | Youth Detention Centre Warsaw-Okęcie                                  |

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| 251. | 18.11.2016                | Wojanów               | IX Commune Children Rights Competition  | Romuald Traugutt Elementary School in Wojanów                                    |
| 252. | 07.11.2016–<br>23.06.2017 | Warsaw                | 7th edition of educational programme „Żyj smacznie i zdrowo” [“Live delicious and healthy”]                   | Synertime Sp. z o.o. in Warsaw   |
| 253. | 01.11.2016–<br>15.05.2017 | Łowicz                | Nationwide literary and art competition „Bazgroł” [„Doodle”] organised by duzeka.pl portal                    | papierowypies.pl<br>popcultural portal for children                              |
| 254. | 17.11.2016                | Świdnica              | Event „Świdnica – place for fulfilling children’s wishes in the framework of Nationwide Children’s Rights Day | Polscy Olimpijczycy Junior High School with integrated classes No. 2 in Świdnica |
| 255. | 01.11–31.12.2016          | Słupsk                | Preventive and educational project „Independent and responsible”  | Informal group „Słupscy Korczakowcy” in Słupsk                                   |
| 256. | 21.11.2016                | Wałbrzych             | V Poviart Art Group „Happy childhood” for 0–III grade students  | Public Elementary School No 37 in Wałbrzych                                      |
| 257. | 18.11.2016                | Warsaw                | IX Mazovian Children’s Right Knowledge Competition „Let everyone know...”                                     | Konstanty Ildefons Gałczyński Elementary School with integrated in Warsaw        |
| 258. | 04.02.2017                | Gdańsk                | Charity concert „10 lat Przemek Dzieciom” [„Przemek Dzieciom for 10 years”]                                   | Przemek Dzieciom Foundation in Gdańsk  |
| 259. | 21.11.2016                | Grała –<br>Dąbrowizna | Third Children Conference on Children’s Rights „We know our rights”   | Kawalerów Orderu Uśmiechu Elementary School in Grała-Dąbrowizna                  |
| 260. | 24.02.2017                | Warsaw                | Charity Concert „XIV Zimowa Giełda Humoru” [„XIV Winter Humour Market”]                                       | Do startu gotowi! Foundation in Warsaw   |
| 261. | 15.12.2016–<br>10.01.2017 | Lublin                | Competition of religious knowledge on Children Ombudsman and Commissioner for Human Rights                    | Student Group of Lawyers Faculty of Law and Administration of UMCS in Lublin     |
| 262. | 24.11.2016                | Warsaw                | XXI edition of Nationwide Performance Stage of Artistic Works „OSPAR”   | Maria Grzegorzewska Academy of Special Education in Warsaw                       |
| 263. | 21.11.2016                | Toruń                 | IX Inter-school Art Competition „Children in Europe – Children’s rights”                                      | School Complex No. 28 in Toruń   |
| 264. | 03.12.2016                | Warsaw                | VII edition „A my do Betlejem” [“We are going to Betlejem”]   | AND I AM UP Foundation in Warsaw   |
| 265. | 07–08.12.2016             | Tarnów                | Scientific conference „Children rights and reality”   | Tarnów Higher School   |
| 266. | 09–19.12.2016             | Słupsk                | Action „Child’s smile”  | Muszkietierowie Szpiku Association in Słupsk                                     |

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| 267. | 01.01–30.03.2017      | Kołobrzeg | Initiative „Small patient – great rights”  | Special School Complex at Słoneczko Spa Hospital in Kołobrzeg  |
| 268. | 04–05.03.2017         | Warsaw    | VII Nationwide Scientific and Educational Conference for students and young doctor „Pediatria jakiej nie znacie” [„Pediatriy you do not know”] | Organisational committee of conference „Pediatria jakiej nie znacie” [„Pediatriy you do not know”] in Warsaw |
| 269. | 03.12.2016            | Warsaw    | Initiative „MOTOMIKOŁAJKI.PL”  | Jednym Śladem Foundation in Warsaw   |
| 270. | 01.10.2016–30.11.2017 | Warsaw    | Projekt „Galaktyka Talentów” [“Galaxy of talents”]   | Talent Malucha – Akademia Suzi Foundation in Warsaw  |
| 271. | 15–19.12.2016         | Warsaw    | IX edition of Nationwide Literary Competition „Mam prawo...” [„I have right”]  | Nursery No. 124 in Warsaw  |
| 272. | 07.02.2017            | Warsaw    | Initiative „Dzień Bezpiecznego Internetu” [„Safe Internet Day”]  | Empowering Children Foundation in Warsaw and Research and Academic Computer Network NASK in Warsaw           |
| 273. | 07.01–01.04.2017      | Łódź      | Undertaking of Grupa Azoty „Przedszkoliada Tour 2017” [„Nursery Olympics Tour 2017”]   | „SYSKO” Sport Marketing in Łódź  |
| 274. | 29.11.2016            | Świdnica  | VIII Christmas Carols and Pastorales Competition   | Jana Pawła II Elementary School No. 315 in Świdnica  |
| 275. | od 18.12.2016         | Warsaw    | Initiative „One day gwiazdka dla dzieci potrzebujących” [„One day star for children in need”]  | One Day Foundation in Warsaw   |

## APPENDIX 8. SELECTED CONFERENCE, SEMINARS AND MEETINGS

| No. | Date and place           | Organiser  | Event  |
|-----|--------------------------|--|--|
| 1   | 15 January<br>Szczyrk    | Department of Economy and Public Administration<br>Cracow University of Economics                                      | Participation in panel discussion „What are the threats for children?” in the framework of XLIII Symposium: Contemporary Economy and Public Administration   |
| 2   | 19 January<br>Warsaw     | Ombudsman for Children   | Meeting with representatives of Coalition for Family Foster Care and Danish organisation Fairstart Global Foundation, who presented major assumptions of FAIRstart training programme for foster families and staff working with children in educational care facility |
| 3   | 20 January<br>Chełm      | Rector of State Higher Vocational School   | Lecture for students of pedagogical studies „Human rights begin with children’s rights” related to education of children and various aspects of observing children’s rights in Poland  |
| 4   | 26 January<br>Warsaw     | Ombudsman for Children   | Participation in the meeting of a Group for independence preparation of children in foster care, youth educational facilities, juvenile shelters and juvenile detention, established by Ombudsman for Children   |
| 5   | 8 February<br>Warsaw     | Order of St. Camillus Ministers of the Sick – Camillian Fathres<br>Institute for Patients’ Rights and Health Education | Participation in St.Camillus Awards Gala – patron of the sick, held on the occasion of World Day of the  |
| 6   | 9 February<br>Warsaw     | Ombudsman for Children;<br>Commissioner for Human Rights   | Participation in the meeting of Expert Group on Alimony established by both Ombudsman and Commissioner   |
| 7   | 22 February<br>Warsaw    | Ombudsman for Children;<br>Association for Legal Intervention  | Meeting with teachers – award winners of I edition of Joanna Kubiak „Teacher Mediator” Competition   |
| 8   | 25–27 February<br>Warsaw | Ombudsman for Children   | Participation in debate of Codification Committee for Family Law by the Ombudsman for Children   |
| 9   | 27 February<br>Złotów    | Association for Foster Care<br>Office in Złotowo   | Participation in the Conference for custodians, social workers, teachers and foster parents „Child’s welfare – aid, support, prevention of social stigma of children in foster care”   |
| 10  | 8 March<br>Warsaw        | Foundation Forum –<br>School of Dialog   | Participation in the Gala summarizing educational project of Foundation – School of Dialog, carried out in the framework of Citizens for Democracy programme   |
| 11  | 10–12 March<br>Warsaw    | Ombudsman for Children   | Participation in a debate of Codification Committee for Family Law by the Ombudsman for Children   |

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| 12 | 15–16 March<br>Warsaw | Polish Children and Youth Foundation   | Participation in a forum of non-governmental organizations from the whole country „Smart promotion – presentation of social activities“; discussion on various aspects related to promotion of social activities addressed children and youth  |
| 13 | 18 March<br>Głogów    | Ombudsman for Children   | Meeting with directors, staff and poviata authorities – intervention related to planned liquidation of pediatric surgery ward  |
| 14 | 19 March<br>Cracow    | Centenary of the Sisters of the Holy Family of Nazareth                              | Meeting with residents of Single Mother Facility on the occasion of 10th anniversary of the first Life Window opening  |
| 15 | 30 March<br>Warsaw    | Ombudsman for Children   | Participation in a second meeting of Expert Group on Alimony, established by Ombudsman for Children and Commissioner for Human Rights, which aims at preparing proposals of actions focused on systemic changes as regards non-alimony   |
| 16 | 31 March<br>Warsaw    | Polish Radio for Children First Programme of Polish Radio                            | Participation in a special first anniversary concert of Polish Radio for Children  |
| 17 | 31 March<br>Warsaw    | Chancellery of the President of the Republic of Poland                               | Participation initiating cooperation between Emergency Legal Assistance Office of the Chancellery of the President of the Republic of Poland and institutions of ombudsman for children, commissioner for human rights, patient's rights and financial ombudsman – establishment of Systemic Analyses Group dealing with analysis of social and legal issues submitted by citizens |
| 18 | 7 April<br>Warsaw     | Management of the School Complex No.114  | Participation in benefit concert on the occasion of 90th birthday of Danuta Rosner, teacher, founder of „Błękitni” Scout and Guide Group, organizer of numerous actions for children and youth   |
| 19 | 7–9 April<br>Warsaw   | Ombudsman for Children   | Participation in a debates of Codification Committee for Family Law by the Ombudsman for Children  |
| 20 | 8 April<br>Warsaw     | Polish Episcopal Conference Association of Catholic Publishers Board of Royal Castle | Participation in the opening of XXII Fairs of Catholic Publishers – Święta Dobrej Książki [„Days of Good Book”]  |
| 21 | 15 April<br>Poznań    | Marshal of the Sejm  | Participation in grand National Assembly on the occasion of 1050th anniversary of baptism of Poland and the beginning of Polish country  |
| 22 | 19 April<br>Warsaw    | Children's Memorial Health Institute   | Participation in the opening ceremony of renovated and expanded Neonatology, Pathology and Neonatal Intensive Care Clinic in Children's Memorial Health Institute  |
| 23 | 20 April<br>Warsaw    | Constitutional Tribunal  | Participation in annual General Assembly of Constitutional Tribunal Judges   |
| 24 | 28 April<br>Warsaw    | SDE Monitoring Centre  | Meeting related to presentation of the most modern non-custodial system of sentence  |

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| 25 | 5 May<br>Toruń                    | Management of School Complex No. 6  | Participation in creativity festival of intellectually disabled persons and celebration of II Voivodeship Dignity Day of Intellectually Disabled People; inauguration of the project "With smile throughout the world – journey in the rhythm of UN Convention on the Rights of Persons with Disabilities" |
| 26 | 8 May<br>Warsaw                   | Great National Chapter of the Order of St. Stanislaus in Poland   | Participation in Investiture – celebration of awarding the Order of St. Stanislaus   |
| 27 | 13 May<br>Warsaw                  | Academy of Special Education  | Participation in the Day of Academy of Special Education   |
| 28 | 13 May<br>Warsaw                  | Apostolic Nunciature in Poland  | Meeting with Apostolic Nuncio in Poland archbishop Celestino Migliore – discussion on the importance and role of observing children's rights. The issues of preventing violence against children and child refugees.   |
| 29 | 16 May<br>Krzyżowa<br>k. Świdnicy | Lower Silesian Federation of Non-governmental Organisations   | Participation in the Lower Silesian Civil Congress – Why and how should young people be involved in civil actions? Debate, „Do the citizens need legal regulations for their social activity?“   |
| 30 | 18–22 May<br>Warsaw               | Ombudsman for Children  | Participation in the debate of Codification Committee for Family Law by the Ombudsman for Children   |
| 31 | 27 May<br>Laskowa                 | Department of Social Psychology and Interpersonal Communication Ignatianum Academy in Cracow  | Participation in nationwide scientific conference „Integration of child and family environment for the development of a child“   |
| 32 | 31 May<br>Warsaw                  | Office of World Health Organization WHO in Poland   | Participation in a seminar related to current situation and preventive actions as regards children abuse and student survey on negative experiences in childhood, planned in Poland  |
| 33 | 2 June<br>Warsaw                  | Department of Media Education Faculty of Pedagogical Sciences<br>Maria Grzegorzewska Academy of Special Education in Warsaw               | Participation in II Nationwide Scientific Conference „Cyberspace and virtual worlds“ on child in cyberspace – safety of children and youth in Internet and mobile phone networks   |
| 34 | 5 June<br>Gdańsk                  | Department of Labour Pedagogy and Career Counselling Students' Scientific Group „Sofia“ in Higher School of Social Sciences and Economics | Debate on Janusz Korczak with pedagogy students of WSSE in Gdańsk; participation in scientific seminar „Pedagogical Intelligence – Inspired by Korczak“, meeting with managing staff of selected schools and educational facilities located in Pomorskie Voivodeship                                       |
| 35 | 8 June<br>Warsaw                  | Sejm of the Republic of Poland  | Presentation of the opinion of the Ombudsman for Children about the situation in Children's Memorial Health Institute  |
| 36 | 16–18 June<br>Warsaw              | Ombudsman for Children  | Participation in the debate of Codification Committee for Family Law by the Ombudsman for Children   |
| 37 | 22 June<br>Warsaw                 | Coalition for Family Foster Care  | Participation in IV Congress of Foster Parenthood „Child is the most important“  |

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| 38 | 23 June<br>Żywiec         | Management of Poviast Hospital  | Meeting with medical staff as regards current issues related to patients' rights, including issues related to children and youth health   |
| 39 | 24 June<br>Oświęcim       | Foundation ICEAH International Centre for Education about Auschwitz and the Holocaust in National Museum Auschwitz-Birkenau       | Participation in VII International Auschwitz and Holocaust Conference on the fate of children during wars and armed conflicts; holding a lecture "Protection of children's rights during armed conflict"  |
| 40 | 28 June<br>Warsaw         | Ombudsman for Children; Commissioner for Human Rights   | Third meeting of Alimony Group, which aims at developing systemic mechanisms for improvement of situation as regards alimony for children   |
| 41 | 29 June<br>Mosty k. Gdyni | Centre of Legal Education of National Council of Legal Advisers and School and Peer Mediation Center in Gdańsk                    | Participation in the meeting with participants of Summer School of Mediators at School and Peer Mediation Academy for teachers and students of schools in Gniezno, Ostrów Wielkopolski, Poznań and Gdańsk   |
| 42 | 30 June<br>Piecki         | Commune Office; Commune Social Welfare Centre   | Participation in debate on issues related to implementing the Act on Family Support and the System of Foster Care, the Act on Family Violence Prevention, and implementation of Family 500+ programme and issues of non-alimony; discussion on local functioning of family assistants and day-support centres |
| 43 | 13 July<br>Warsaw         | World Hearing Centre Hearing Physiology and Pathology Institute; Fryderyk Chopin University of Music; Institute of Sensory Organs | Participation in Gala Concert of II International Festival for Children, Youth and Adults with Hearing Disorder „Ślimakowe Rytmy” [“Cochlea rhythms”] with participation of musicians, who play and sing thanks to cochlear implant   |
| 44 | 14 July<br>Warsaw         | Ombudsman for Children  | Meeting with the Japan group (scientists, doctors, social workers, researchers and historians of children's rights) who work daily with children and all interested in human rights   |
| 45 | 16 July<br>Warsaw         | Chief Constable   | Participation in the celebration of Policy Day in the anniversary of establishing National Police by the Sejm of the Republic of Poland   |
| 46 | 20 July<br>Warsaw         | Ombudsman for Children  | Meeting with Ombudsmen for Children – representatives of International Ombudsman Institute – IOI  |
| 47 | 22 July<br>Warsaw         | Jewish Historical Institute   | Participation in the Memory March at the streets of Warsaw at the 74th anniversary of the beginning of ghetto liquidation by the Germans  |
| 48 | 24 July<br>Warsaw         | Ombudsman for Children  | Visit of youth from Argentina, Bolivia, Chile, Peru and Italy heading for World Youth Days and meeting with Pope Francis  |
| 49 | 4 August<br>Warsaw        | Ombudsman for Children  | Participation in the working meeting related to action of Caritas Polska „Tornister pełen uśmiechów” [“Schoolbag filled with smiles”]   |



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| 50 | 11 August<br>Warsaw           | Children's Memorial Health Institute  | Discussions with the doctors of the Institute on current problems of pediatric care and the facility  |
| 51 | 26 August<br>Olsztyn          | Regional Specialist Hospital for Children   | Debate with hospital management, representatives of Marshal's Office, regional adviser in pediatrics about problems of children with EB and readiness of the hospital for comprehensive help for children with Epidermolysis bullosa, effect of introducing health certificates and the need for better assessment of procedures for children and standards of pediatric care |
| 52 | 31 August<br>Legnica<br>Żarów | Commune Office of Żarów   | Participation in numerous meetings: with family who managed to avoid deportation to the Ukraine, with commune authorities, working meeting with all workers of Social Welfare Centre and opening of indoor swimming pool  |
| 53 | 7 September<br>Warsaw         | Ombudsman for Children  | Participation in fourth meeting of the Alimony Group established in cooperation of Ombudsman for Children and Commissioner for Human Rights   |
| 54 | 9 September<br>Gdańsk         | Child and Family Foundation Fascinations Addiction Prevention Centre in Gdańsk        | Participation in the celebration of World FAS Day   |
| 55 | 12 September<br>Warsaw        | Chief Sanitary Inspectorate   | Participation in presenting results of research of students schoolbag weight in the framework of conference opening on children's health and participation in the opening of V edition of "Lekki Tornister" ["Light schoolbag"] programme   |
| 56 | 20 September<br>Zakopane      | Association of Family Judges in Poland  | Participation in the grand opening of XVIII Congress of Association of Family Judges in Poland  |
| 57 | 28 September<br>Warsaw        | Ombudsman for Children  | Meeting with parents of children born after in-vitro  |
| 58 | 1 October<br>Warsaw           | Caritas Polska  | Participation in 15th „Ubi Caritas” Gala related to honouring the institution for sensibility to the needs of the poor  |
| 59 | 3 October<br>Warsaw           | Maria Grzegorzewska Academy of Special Education in Warsaw                            | Participation in the inauguration of new academic year in the oldest pedagogical academy in Poland  |
| 60 | 4 October<br>Zielona Góra     | University of Zielona Góra  | Participation in celebration devoted to Irena Sendlerowa „Righteous among Nations”, meeting with town authorities and Youth Council of the Town   |
| 61 | 7 October<br>Warsaw           | Cardinal Stefan Wyszyński University  | Participation in grand session related to the inauguration of a new academic year   |
| 62 | 12–13 October<br>Warsaw       | Ombudsman for Children; Inspector General for Protection of Personal Data             | Participation in educational conference „Observing children's and students' rights in school practice” for representatives of schools from the whole country  |
| 63 | 13 October<br>Warsaw          | Polish Centre of International Association of Theatres for Children and Youth ASSITEJ | Participation in a gala closing and summarizing International Festival of Theatres for Children and Youth „KORCZAK” 2016  |

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| 64 | 13 October<br>Warsaw      | Ombudsman for Children   | Participation in the meeting of the Group for developing standards of adoption process, established by the Ombudsman for Children, related to the developed document „Standards of implementing actions of adoption agencies“   |
| 65 | 13 October<br>Gdańsk      | Gdańsk Social Innovation Foundation  | Meeting with representatives of the Foundation and the President of Gdańsk relating to leaving foster care  |
| 66 | 18 October<br>Częstochowa | Association for Support of Child and Family;<br>President of Circuit Court   | Participation in conference „You have right to mediation“ addressed to institutions dealing with support of child and family as well as schools; meetings with judges of Regional and Circuit Court as well as judges ordering in Częstochowa region and circuit              |
| 67 | 19 October<br>Brzeg       | Ombudsman for Children;<br>Mayor of Brzeg  | Participation in press conference on the celebration of the third Nationwide Children's Rights Day; meeting with teachers, school directors, social workers and police in order to discuss objectives and details of the celebration of Nationwide Children's Rights Day 2016 |
| 68 | 21 October<br>Głogów      | Kawalerów Orderu Uśmiechu Elementary School No.12  | Participation in I Congress of Teachers and Educators at Kawalerów Orderu Uśmiechu Schools and Centres  |
| 69 | 21 October<br>Świdnica    | President of Świdnica Town   | Participation in the grand Entrepreneurship Gala , organized since 2005   |
| 70 | 24 October<br>Warsaw      | Empowering Children Foundation (Nobody's Children Foundation)  | Participation in 13. Nationwide Conference on Support of Children – Crime Victims for several hundred of professionals from all over the world, who deal with violence issues on daily basis  |
| 71 | 4 November<br>Legnica     | Children's Friend Society  | Participation in III Lower Silesian Forum of Children's Friends Groups, meetings with authorities and students of the Public Higher School of Vocational Education  |
| 72 | 14 November<br>Warsaw     | Kulczyk Foundation   | Participation in the opening meeting of expert forum for teachers and educators „I know. I feel... I help! Empathy at school“, discussion about the child dignity   |
| 73 | 15 November<br>Warsaw     | Chancellery of the President of the Republic of Poland   | Participation in the seminar „Law gaps in the context of the issue of parental child abduction“   |
| 74 | 15 November<br>Warsaw     | Ombudsman for Children;<br>Cardinal Stefan Wyszyński University; Inspector General for Protection of Personal Data | Participation in the nationwide scientific conference „ Children's rights in social fields“; children's rights in the context of family and educational centres   |
| 75 | 20 November<br>Brzeg      | Ombudsman for Children;<br>Mayor of Brzeg  | Participation in the grand Gala summarizing the celebration of Nationwide Children's Rights Day 2016 and the premiere of preventive spectacle „Secret“ performed by the youth   |
| 76 | 27 November<br>Warsaw     | Caritas Polska   | Participation in a grand, ecumenical inauguration of action Christmas Act of Aid for Children   |

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| 77 | 28 November<br>Warsaw | Ombudsman for Children;<br>Child Rights Protection<br>Committee | Participation in jubilee conference „Children's rights in theory and practice” organized on the occasion of 35th anniversary of Child Rights Protection Committee and 15th anniversary of Ombudsman for Children Institution  |
| 78 | 7 December<br>Warsaw  | Ombudsman for Children  | Participation in debate „Assessment of regulations related to minor law in Poland as regards their compliance with the Convention on the rights of the child and recommendations of the UN Committee on the rights of the child” organised for judges, scientists, court officers |
| 79 | 9 December<br>Żywiec  | Association for Disabled<br>People in the Żywiec Area           | Participation in the meeting with the commune of the association on the occasion of its XX anniversary  |
| 80 | 16 December<br>Warsaw | Ombudsman for Children;<br>Academy of Special Edu-<br>cation    | Participation in the meeting with Finnish Ombudsman for Children, who held a lecture „Why do children in Finland enjoy life so much?”   |
| 81 | 17 December<br>Warsaw | Ombudsman for Children  | Meeting of the Finnish Ombudsman for Children with Social Advisors of Polish Ombudsman for Children   |
| 82 | 20 December<br>Łódź   | Ombudsman for Children  | Meeting with the staff of Clinic, pediatrician and nurse who reacted to the domestic violence to child  |

## APPENDIX 9. SELECTED MEETINGS PROMOTING THE RIGHTS OF THE CHILD

| No  | Date and place                 | Organiser   | Name of event   |
|-----|--------------------------------|---|---|
| 1.  | 11 January, Warsaw             | The Ombudsman for Children  | Meeting with students of the Bataliony Chłopskie Primary School no. 109 in Warsaw   |
| 2.  | 18 January, Wołomin            | Mayor of Wołomin; Management of the Queen Jadwiga Primary School no. 7 with integrating departments | Meetings with local politicians, school managers and teachers, representatives of school self-governments, children, parents; little patients and staff of the Poviast Hospital             |
| 3.  | 22 January, Warsaw             | Management of the Lower Secondary School no. 10   | Meeting with students, discussion on the rights of the child and the institution of the Ombudsman for Children. The school has implemented curriculum based on Korczak's idea               |
| 4.  | 22 January, Warsaw             | The Ombudsman for Children  | Meetings with children from the European Club from the Associated State Schools No. 1 in Kobylka; discussion on the rights of the child and child's values                                  |
| 5.  | 25–26 January, Warsaw          | The Ombudsman for Children  | Meeting with youth and managers of schools in Świdnica  |
| 6.  | 26 January, Warsaw             | Management of the Lidia and Adam Ciołkosz Children's Home No. 9                                     | Meeting with pupils of the Children's Home  |
| 7.  | 18 February, Warsaw            | The Ombudsman for Children  | Meeting with children of the I grade of Primary School No. 60 in Warsaw   |
| 8.  | 19 February, Warsaw            | The Ombudsman for Children  | Meeting with children of Kindergarten No. 158 in Warsaw-Rembertów   |
| 9.  | 23 February, Warsaw            | The Ombudsman for Children  | Meeting with students of I grade of the Primary School No. 23 in Warsaw   |
| 10. | 27 February, Złotów            | Mieczysław Augustyn Senator RP; the Association Stowarzyszenie Zastępczego Rodzicielstwa, Złotów    | Meetings with children, carers and the staff of the Physical Therapy Centre for Children „Zabajka”, children's ward of the Poviast Hospital, the Hospice of St. Elisabeth Sisters in Złotów |
| 11. | 27 February Zakrzewo           | The Association Stowarzyszenie Zastępczego Rodzicielstwa, Złotów                                    | Meeting with children and their carers from the Family Children's Home in Zakrzewo  |
| 12. | 1 March Warsaw – Stara Miłosna | Management of the Lower Secondary School No. 119  | Discussion with young people about rights and problems of children and numerous successes of students and the school  |
| 13. | 2 March, Warsaw                | The Ombudsman for Children  | Meetings with students and carers from the Grażyna Bacewicz Associated State General Education and Musical Schools of I and II degree No. 3 in Warsaw                                       |
| 14. | 3 March, Warsaw                | The Ombudsman for Children  | Visit of children from the II grad of the Primary School No. 42 in Warsaw   |

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| 15. | 7 March<br>Żabce                 | The Ombudsman for Children; the Foundation: Fundacja Przyjaciółka   | Visit in Family Home, in social therapy day care centre „Strefa Serca” and the Association Rodzicielstwo Zastępcze „Jedno Serce”   |
| 16. | 11 March<br>Mysłowice            | Management of the Primary School No. 3  | Celebration of the 10th anniversary of giving the school's name meeting with students, teachers and parents  |
| 17. | 11 March<br>Katowice             | Cordis Hospice  | Visit in the hospice which takes care, free of charge, children and adults in the last phase of cancer disease   |
| 18. | 18 March,<br>Głogów              | Management of the Primary School No. 12   | Celebration of the School Holiday; meetings with pupils of the association for children and youth SZANSA; with children treated in the Child Surgery Ward in the Poviast Hospital                          |
| 19  | 21 March<br>Bielsko-Biała        | Management of the Jerzy Kukuczka Lower Secondary School No. 11  | Meeting with the students  |
| 20. | 2 April, Warsaw                  | The Ombudsman for Children  | Visit of the the students of II grade of the Priary School No. 318 with integrating departments in Warsaw  |
| 21. | 2 April, Warsaw                  | Fundacja Ergo Sum   | Visit in the Foundation's Club „Życie jest fajne” which employs autistic and disabled persons,   |
| 22. | 2 April<br>Góra Kalwaria         | Management of the Upper Secondary School  | Meeting with the PaT community, youth, local politicians, school managers, celebration of the 5th anniversary of the local PaT group   |
| 23. | 2 April, Warsaw                  | Jaś i Małgosia Foundation   | Polska Na Niebiesko [“Poland in Blue”] – participation in action for solidarity with children suffering from autism  |
| 24. | 8 April, Warsaw                  | The Ombudsman for Children, Dziecko i Rodzina Foundation; po DRUGIE Foundation                                      | The ceremony of awards in the competition „Moc bez przemocy” for children of 11 years of age or more, under the campaign „19 dni przeciwko przemocy i krzywdzeniu” [19 days against violence and harming”] |
| 25. | 25 April, Warsaw                 | The Ombudsman for Children  | Meeting with students and their carers from the Primary School No. 330 in Warsaw   |
| 26. | 26 April, Warsaw                 | The Ombudsman for Children  | Visit of the students of Marshall Józef Piłsudski Lower Secondary School No. 2 in Kutno  |
| 27. | 26 April<br>Piotrków Trybunalski | Management of the Private Rafał Orlewski Primary School; Management of the Associated Upper Secondary Schools No. 4 | Inauguration of the Jewish Culture Festival „Sprawiedliwi 2016” organised by students  |
| 28. | 28 April<br>Dąbrowka             | Management of Primary School  | The ceremony of giving the name to the Primary School in Dąbrowka; meeting with children and local politicians   |

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| 29. | 7 May<br>Wrocław                   | Uniwersytet Dzieci Foundation;<br>Scientific and Didactic<br>Centre of the Natural Environment Academy                       | Lecture on the rights of the child for the listeners of the Children's University; meetings and conversations with children  |
| 30. | 12 May, Warsaw                     | Irena Sendlerowa Lower<br>Secondary School No. 23  | Annual celebration of the figure and activity of Irena Sendlerowa „Sprawiedliwa Wśród Narodów Świata” [“Righteous Among the Nations”]  |
| 31. | 16 maja<br>Krzyżowa<br>k. Świdnicy | Federation of NGOs of<br>Dolnośląskie Voivodeship  | Debate with the youth under the II Congress of Citizens Dolnośląski Kongres Obywatelski  |
| 32. | 19 May, Warsaw                     | „Świat na TAK” Foundation  | XXIII Adolescents' Competition Gala in Warsaw „Ośmiu Wspaniałych”  |
| 33. | 20 May<br>Osiek                    | Management and community of the Primary School   | XII meeting of the Knights of the Order of Smile Schools and facilities  |
| 34. | 24 May<br>Świdnica                 | Management of the Lower<br>Secondary School No 4   | Meetings with children and educators of the Private Kindergarten and Private Creche „Bajkowy Domek”, the Primary School No. 8 and the Centre Centrum Przyjaźni Dziecięcej SPDC „SERCE”. V anniversary Gala of the Volunteer Work, hosted by the Lower Secondary School No 4                                |
| 35. | 25 May<br>Poznań                   | Management of the Primary School No. 87  | Meeting of winners and school representatives participating in the V edition of the School Competition in Arts „Dziecko to człowiek, tylko że mały – mam prawo do zdrowego odżywiania się”; meetings with representatives of the City Council and pedagogues and a meeting with students of 2 and 3 grades |
| 36. | 27 May<br>Limanowa                 | The Division of Social Psychology and Interpersonal Communication Ignatianum Academy in Cracow                               | Visit at the Children's Ward of the Poviast Hospital in Limanowa   |
| 37. | 30 May<br>Warsaw                   | Management of the Lower<br>Secondary School No. 117;<br>Wnda Rutkiewicz Associated School No. 2                              | Meeting with school community discussion with youth about children's rights  |
| 38. | 30 May<br>Warsaw                   | The Ombudsman for<br>Children  | Visit of students of 5 and 6 grades of the Primary School No. 11 in Poręba with teachers   |
| 39. | 1 June<br>Warsaw                   | Sejm RP;<br>The Institute of National Remembrance;<br>Centre of Education Development;<br>the Ministry of National Education | Debate at the XXII session of the Sejm of children and Youth; the topic of the session were „places of memory” – material evidence of events important for local and national identity   |
| 40. | 3 June<br>Grala – Dąbrowizna       | Management of the Primary School   | Meeting with students and school Staff   |

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| 41. | 4 June<br>Tuchola        | Powiat Tucholski;<br>Local Family Support Centre; Association of parents of children requiring special care Stowarzyszenie Rodziców Dzieci Specjalnej Troski; the Association: Polski Związek Niewidomych District Kujawsko-Pomorski; Powiat Club in Tuchola | Celebration of the Powiat Day of the Child, the Day of Foster Parenting and XIV disabled persons' performance review – Przegląd Twórczości Osób Niepełnosprawnych   |
| 42. | 7 June<br>Warsaw         | Inspector General for the Protection of Personal Data  | udział w seminarium podsumowującym VI edycję Programu „Twoje dane – twoja sprawa”, promującego najciekawsze inicjatywy upowszechniające wiedzę o ochronie danych osobowych i prawa do prywatności wśród uczniów i nauczycieli   |
| 43. | 7 June<br>Warsaw         | The Ombudsman for Children   | wizyta uczniów klas I–IV Szkoły Podstawowej im. ks. Jana Twardowskiego w Siennej  |
| 44. | 9 June, Warsaw           | Management of the Associated Schools with intergating departments No. 65; Museum of the History of Polish Jews   | Meeting with children from more than 30 schools from Poland, Germany and Mexico named after Irena Sendlerowa at the 3rd International Summit of Sendlerowa Schools and the winners of the international arts and literature competition entitled „Irena Sendlerowa. Historia – terażniejszość – przyszłość” |
| 45  | 13 June<br>Zduńska Wola  | Miejska Biblioteka Publiczna (Local Library)   | Meetings with children of primary schools and lower secondary schools from the city, commune and the powiat   |
| 46  | 14 June<br>Warsaw        | The Ombudsman for Children   | Visit of students of the Primary School No. 143 in Warsaw   |
| 47. | 15 June<br>Warsaw        | The Ombudsman for Children   | Meeting with students of grades 1-3 of the Primary School in Rudno  |
| 48. | 20 June<br>Warsaw        | Management of the Associated Schools No 65 with integrating departments  | Meeting with students of facilities named after Irena Sendlerowa  |
| 49. | 20 June<br>Warsaw        | Management of Associated Special Schools No. 85  | Meeting with students and teachers, children presented the school's activity also in promoting children's rights  |
| 50. | 23 June<br>Twardorzeczka | Management of the Lower Secondary School   | The final local prevention campaign „Nie jestem niewidzialny”, [“I am not invisible”]meeting with students and teachers of the school   |
| 51. | 24 June<br>Gmina Lipowa  | The Mayor of Lipowa Commune  | Visits and meetings with students and staff of all educational facilities in the commune, meetings with children and teachers from schools in Lipowa, Leśna and Sienna  |
| 52. | 23 June<br>Żywiec        | Management of the Powiat Hospital  | Visit at the children's ward, meeting with children from Lipowa who suffered in a car accident  |
| 53. | 24 June<br>Leśna         | The Kornel Makuszyński Primary School  | Participation in the ceremony ending the school year, meeting with children, Staff, parents and local politicians   |

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| 54. | 24 June<br>Sienna               | Management of the Priest<br>Jan Twardowski Primary<br>School  | Participation in the ceremony ending the school<br>year, meeting with children, Staff, parents and local<br>politicians and pre-schoolers  |
| 55. | 29 June<br>Mosty near<br>Gdynia | Centre of Legal Education<br>Centrum Edukacji Prawnej<br>of the National Bar Council<br>and the Centre of School<br>and Peer Mediation in<br>Gdańsk | Meeting with teachers and students representing<br>schools in Gniezno, Ostrów Wielkopolski, Poznań<br>i Gdańsk   |
| 56. | 30 June<br>Mrągowo              | J. Korczak Scouts Division;<br>Local Social Service Centre  | Meetings with scouts and participants of the sum-<br>mer semi-camp „Skoczek”   |
| 57. | 30 June<br>Piecki               | Debra „Kruchy Dotyk”<br>Association   | Meeting with children suffering from Epidermolysis<br>Bullosa (EB) and their parents   |
| 58. | 30 June<br>Nawiad               | Day care facility „Mrowisko”  | Meeting with children, volunteers and employees,<br>discussion on the rights of the child and safety<br>during summer holidays   |
| 59. | 23 July<br>Ośno Lubuskie        | Koło Przyjaciół Korczako-<br>wa – Club  | Meeting with Korczakowo participants – a camp for<br>children and youth  |
| 60. | 23 July<br>Kielce               | Chorągiew Kielecka ZHP –<br>Polish Scouts Association<br>Division   | Participation in the Gala Concert of the Winners<br>of the 43rd International Scouts’ Festival of School<br>Youth’s Culture „Wiatraczek”   |
| 61. | 25 July<br>Świdnica             | Świdnica City   | Meeting with participant of the „City of the Chil-<br>dren” in Świdnica – a didactic and educational<br>project for children from 6 to 12 who cannot afford<br>to go to a camp   |
| 62. | 11 August,<br>Warsaw            | Child’s Health Institute  | Meeting with little patients   |
| 63. | 19 August,<br>Warsaw            | Fundacja Spełnionych<br>Marzeń Foundation of<br>“dreams that come true”   | Participation in the ceremony of opening the 6th<br>edition of the International Olympic Games “On-<br>ko-Olimpiada” – the championships   |
| 64. | 24 August,<br>Warsaw            | The Ombudsman for<br>Children   | Visit of children and their carers from the local<br>Culture Centre in Unisław   |
| 65. | 25 August,<br>Warsaw            | The Ombudsman for<br>Children   | Visit of children from Żarów, participants of the<br>action „Wakacje Uśmiechu” [“Holiday of the Smile”]  |
| 66. | 26 August<br>Olsztyn            | The Voivodeship Special-<br>ists Hospital for Children  | Meeting with children – patients of the hospital   |
| 67. | 27 August<br>Bobrówek           | Local Social Service Centre<br>in Piecki;<br>Mayor of the Commune;<br>Scouts’ Division in Mrą-<br>gowo  | A picnic entitled „Pożegnanie lata na harcerską<br>nutę” [“Goodbye to the summer sang to a scouts’<br>melody”] connected with the final part of the<br>preventive holiday campaign and the competi-<br>tion „Wakacyjny Bohater” [“Holiday Hero”] – as the<br>promotion of the campaign „Odwaga ratuje życie”<br>[“Courage saves life”] |
| 68. | 28 August<br>Lublin             | Caritas Polska  | Participation in the final of the 8th edition of<br>the all-Polish action of Caritas „Tornister Pełen<br>Uśmiechów” [“Back pack full of smiles”]   |
| 69. | 1 September<br>Wysoka           | Associated School and<br>Kinderrgarten Facilities   | Celebration of the school year beginning, meeting<br>with students, teachers and parents   |



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| 70. | 1 September<br>Świdnica       | Centrum Przyjaźni Dziecięcej -Centre of Child Friendship  | Inauguration of school year in the day care centre  |
| 71. | 9 September<br>Wejherowo      | Management of the Associated Special Schools no. 1  | Meeting with children and youth in the Educational Centre No. 2 for children with hearing impairment  |
| 72. | 13 September,<br>Warsaw       | The Ombudsman for Children  | Visit of students from the Associated Schools and Educational Facilities in Lubią   |
| 73. | 14 September,<br>Warsaw       | The Ombudsman for Children  | Visit of children from the Kindergarten No.50 in Warsaw under the Week of the Rights of the Child celebrated by the kindergarten  |
| 74. | 19 September,<br>Warsaw       | Fundacja „Muzyczny Krąg” [„The Circle of Music Foundation”]   | Participation in the 3rd Festival of Children’s Groups “Piosenka, Uśmiech i My” [“A song, a smile and us”]  |
| 75. | 26 September<br>Warsaw        | The Ombudsman for Children  | wizyta młodych wolontariuszy Towarzystwa Przyjaciół Dzieci z Legnicy wraz z opiekunami  |
| 76. | 29 September<br>Warsaw        | Management of the Private Primary School No. 81   | Meeting with children and school personnel dedicated to children’s rights   |
| 77. | 1 October,<br>Warsaw          | SmartStart Foundation   | Participation in charity action of painting angels for auction, the income from which will support the pupils of the foundation – children with autism  |
| 78. | 1 October,<br>Warsaw          | Polski Ośrodek Międzynarodowego Stowarzyszenia Teatrów Dla Dzieci i Młodzieży ASSITEJ – Polish Centre of the International Association of Theatres for Children and Youth | Participation in inauguration of the International Festival of theatres for children and youth „KO-RCZAK”   |
| 79. | 2 October<br>Sokołów Podlaski | Masovian Commandant of the Voivodeship Police; The Starost of Sokołów; The Mayor of Sokołów Podlaski  | Participation in the Final Gala summarizing the 5th Masovian PaT Programme Stop “Profilaktyka a Ty” [“Prevention and you”]  |
| 80. | 4 October<br>Zielona Góra     | The University of Zielona Góra  | Debate with youth „How can we now imitate Irena Sendlerowa?”  |
| 81. | 4 October<br>Przemków         | Management of the Irena Sendlerowa Associated Schools   | Meeting with students of Przemków   |
| 82. | 10 October<br>Łódź            | The Marek Edelman Dialogue Centre   | The show of the educational „Raport 2016: Sprawiedliwi” [„Report 2016 – the Righteous”] implemented by students of 3rd grade of lower and upper secondary schools   |
| 83. | 10 October<br>Łódź            | Gajusz Foundation   | Meeting with little patients of the hospice and pupils of the newly established pre-adoption emergency centre Interwencyjnego Ośrodka Preadopcyjnego Tuli Luli and the employees and members of the board of the Foundation |

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| 84. | 12 October<br>Warsaw          | The Ombudsman for Children  | Meeting with the group of children from Poland and Ukraine who take part together in the educational project dedicated to mediation under the Peer Mediation Group   |
| 85. | 13 October<br>Warsaw          | Polski Ośrodek Międzynarodowego Stowarzyszenia Teatrów Dla Dzieci i Młodzieży ASSITEJ – Polish Centre of the International Association of Theatres for Children and Youth | Meetings with children and youth – participants of the International Festival of Theatres for Children and Youth „KORCZAK” – 2016 edition  |
| 86. | 13 October<br>Gdańsk          | Gdańska Fundacja Innowacji Społecznych [Foundation of Social Innovations in Gdańsk]   | Meeting with pupils of the Foundation's Children's Home  |
| 87. | 14 October<br>Gdańsk          | Management of School and Kindergarten No. 1   | Debate with students under the motto „Human Rights begin with Children's Rights”   |
| 88. | 14 October<br>Gdańsk          | OREW<br>The John Paul II Kindergarten – European Solidarity Centre  | Meeting with children and youth on the occasion of 20th anniversary of the facility and the 10th anniversary of naming the Kindergarten after John Paul II – visit at the Department of Games and Play of the European Solidarity Centre |
| 89. | 16 October<br>Warsaw          | the Great Orchestra of Christmas Charity Foundation   | Breaking the record of resuscitating by primary school students taking part in the educational programme of the Orchestra „Ratujemy i Uczymy Ratować” [„We save and teach how to save”]  |
| 90. | 18 October<br>Częstochowa     | Management of the Juliusz Słowacki I Upper Secondary School   | Debate with students, educators and managers on the rights of the child and the tasks of the Ombudsman for Children  |
| 91. | 19 October<br>Skorogoszcz     | Management of the Primary School  | Meeting with the community of the school – the first school which adopted the name of the Knights of the Order of the Smile and is member of the Association of Innovative Schools of the Opole Region                                   |
| 92. | 21 October<br>Świdnica        | Management of the John Paul II Priary School No. 315  | Participation in the celebration of the 10th anniversary of the School, meeting with students, parents, Staff and representatives of local educational centres   |
| 93. | 22 October<br>Cracow          | The Jagiellonian University, the University of Children   | Meeting with students of the University and a lecture „Can a young man say NO legally?”  |
| 94. | 28 October<br>Warsaw          | The Ombudsman for Children  | Visit of the students of the Kindergarten „Kubuś Puchatek i Przyjaciele” from Stara Miłosna  |
| 95. | 16 November<br>Brzeg<br>Oława | The Ombudsman for Children;<br>The Mayor of Brzeg   | A scientific session for lower secondary schools connected with the celebration of the All-Polish Day of the Rights of the Child 2016  |
| 96. | 17 November<br>Brzeg          | The Ombudsman for Children; the Centre of Culture in Brzeg; Management of the Associated Schools No. 2 with integrating departments                                       | Meetings with children, youth and parents under the celebration of the All-Polish Day of the Rights of the Child 2016  |

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| 97.  | 18 November<br>Brzeg                | The Ombudsman for Children;<br>The Mayor of Brzeg  | Breaking the record of joint singing about the rights of the child, a debate with youth   |
| 98.  | 20 November<br>Brzeg                | The Ombudsman for Children;<br>The Mayor of Brzeg  | Participation in the main day of celebration of the All-Polish Day of the Rights of the Child 2016, inauguration of City „Ambassadors of the Rights of the Child” and unveiling the “Korczak’s Bench”   |
| 99.  | 21 November<br>Jerzmanowa<br>Głogów | SZANSA Association for Children and Youth  | Meeting with pre-schoolers, little children of the poviast hospital patients, participants of the debate for youth „Głogów in action” and the pupils of 8 day care centres run by the Miejskie Centrum Wspierania Rodziny [local family support centre] |
| 100. | 22 November,<br>Warsaw              | The Ombudsman for Children   | Meeting with lower secondary school students and the students of the International European School in Warsaw  |
| 101. | 25 November,<br>Warsaw              | The Ombudsman for Children   | Visit of students of grades 4-6 of the Stanisław Wyspiański Primary School No. 3 in Płońsk  |
| 102. | 6 December,<br>Warsaw               | Management of Associated Schools No. 53  | Meeting with students and personnel, debate with the representatives of students’ self-government dedicated to children’s rights  |
| 103. | 9 December<br>Łódź                  | Management of the Jan Molla Primary School No. 44, the Committee on the Rights of the Child                  | Official summary of the 13th Łódź Competition „Rights of the Child – the Human Rights”  |
| 104. | 9 December<br>Żywiec                | Association for Disabled Persons of Żywiec Land  | Meeting with children from Kinderarten No. 11 and Primary School No. 5  |
| 105. | 13 December<br>Radzymin             | Foundation of the Academy of Integration, Management of the Princess Eleonora Czartoryska Associated Schools | Debate with students under the programme of the Foundation „Wygraj życie dzięki marzeniom” [„Win your life thanks to your dreams”]  |
| 106. | 16 December<br>Warsaw               | The Ombudsman for Children   | Meetings of the Finnish and Polish Ombudsmen with children, youth; visit to Korczakianum  |
| 107. | 19 December,<br>Świdnica            | Centrum Przyjaźni Dziecięcej [“Centre of Children’s Friendship”]   | Participation in traditional Christmas Eve meeting with children, youth and staff   |
| 108. | 21 December<br>Warsaw               | The Ombudsman for Children   | Meeting with Polish scouts from Wołomin, who handed over the Light of Peace from Betleem for the 9th time   |
| 109. | 22 December<br>Warsaw               | Management of Wanda Turowska Primary School No. 15   | Participation in the final part of the competition for the most beautiful Christmas postcard, in traditional nativity play and joint singing Christmas Carols with students, teachers and guests  |
| 110. | 27 December<br>Częstochowa          | Fundacja „Ludzki Gest” – Foundation „Human Gesture” of Jakub Błaszczkowski                                   | Participation in charity event “Christmas music playing with Kuba”  |

## APPENDIX 10. MEMBERS OF THE SOCIAL ADVISORY BOARD OF THE OMBUDSMAN FOR CHILDREN

| No  | Name and surname              | Function   |
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| 1.  | Prof. Jadwiga Bińczycka       | Honorary Chairman of the Janusz Korczak Association in Warsaw  |
| 2.  | Renata Durda                  | the Manager of the All-Polish Emergency Service for Victims of Violence „Niebieska Linia” [The Blue Line] of the Institute of Health Psychology in Warsaw.   |
| 3.  | Anna Dymna                    | President of the „Mimo Wszystko” Foundation [„Despite Everything”] in Cracow.  |
| 4.  | Prof. Anna Fidelus            | Cardinal Stefan Wyszyński University in Warsaw   |
| 5.  | Elżbieta Golińska             | journalist, Member of the Board of the Foundation „Towarzystwo Przyjaciół Centrum Zdrowia Dziecka” [„Association of the Friends of the Children’s Health Centre”], editor-in-chief of the „PaTrz” newspaper, the all-Polish programme „Prevention and You” („Profilaktyka a Ty”) |
| 6.  | Grzegorz Jach                 | Author of the all-Polish programme of addiction prevention „Profilaktyka a Ty (PaT)”   |
| 7.  | Prof. Teresa Jackowska        | Head of the Ward and Manager of the Paediatric Clinic CMPK of the Bielański Hospital in Warsaw   |
| 8.  | Rafał Janiszewski             | Expert in in-patient treatment   |
| 9.  | Paweł Jaros, Ph. D.           | Judge, former Ombudsman for Children, lecturer at the Cardinal Stefan Wyszyński University in Warsaw   |
| 10. | Prof. Ewa Jarosz              | Division of the Social Pedagogy of the Silesian University in Katowice   |
| 11. | Mirosława Kątna               | Chairman of the Committee on the Protection of the Rights of the Child   |
| 12. | Laura Koba, Ph. D.            | Scientist at the Institute of Public Affairs of the Jagiellonian University in Cracow  |
| 13. | Barbara Maria Kolago          | Musician and composer  |
| 14. | Prof. Marek Konopczyński      | Polish pedagogue specialising in social rehabilitation, profesor of social sciences. Author of the concept of creative social rehabilitation   |
| 15. | Anna Lechowska                | President of the Foundation for Children SZANSA [CHANCE] in Głogów,  |
| 16. | Joanna Luberadзка-Gruca       | President of the Przyjaciółka Foundation in Warsaw   |
| 17. | Edward Lutczyn                | Visual artist  |
| 18. | Prof. Bibiana Mossakowska     | Child surgeon  |
| 19. | Prof. Bożena Muchacka         | Scientist at the Faculty of Pedagogy of the Pedagogical University of Cracow   |
| 20. | Priest Arkadiusz Nowak        | National Centre for AIDS affairs   |
| 21. | Teresa Ogrodzińska            | Foundation : Fundacja Rozwoju Dzieci im. J. A. Komeńskiego in Warsaw   |
| 22. | Małgorzata Ohme               | Child and Family Psychologist  |
| 23. | Prof. Dorota Olczak-Kowalczyk | State Consultant in child dentistry  |

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| 24. | Prof. Jan Oleszczuk             | Manager of the Division of and the Clinic of Obstetrics and Perinatology of the Medical University in Lublin   |
| 25. | Piotr Pawłowski                 | President of the Friends of Integration Association in Warsaw  |
| 26. | dr Aleksandra Piotrowska        | Child psychologist   |
| 27. | Teresa Romer                    | Justice Emeritus of the Supreme Court  |
| 28. | dr Monika Sajkowska             | Manager and President of the Board of the Foundation Dzieci Niczyje  |
| 29. | Tadeusz Sławecki                | Pedagogue, former minister of education  |
| 30. | Prof. Barbara Smolińska-Theiss  | Manager of the Division of Social Pedagogy in the Institute of Pedagogy at the Maria Grzegorzewska Special Education University in Warsaw            |
| 31. | Anna Sobiesiak                  | Manager of the Kujawsko-Pomorski Adoption and Custody Centre in Toruń  |
| 32. | Henryka Sokołowska              | President of the integrative Association „Klub Otwartych Serc” in Wieruszów  |
| 33. | Priest prof. Adam Solak         | Maria Grzegorzewska Special Education University in Warsaw,  |
| 34. | Prof. Stanisław L. Stadniczeńko | Manager of the Division of Theory, Philosophy of Law and Human Rights at the Higher School of Finances and Management in Warsaw                      |
| 35. | Prof. Wanda Stojanowska         | Head of the Division of Family Law and Juvenile Law of the Cardinal Stefan Wyszyński University in Warsaw  |
| 36. | Prof. Maciej Tanaś              | Dean of the Faculty of Pedagogical Sciences, Head of the Division of Media Education of the Maria Grzegorzewska Special Education Pedagogy in Warsaw |
| 37. | Anna Maria Wesołowska           | Justice Emeritus of the District Court   |
| 38. | Prof. Maciej Wojtyszko          | Writer, movie director   |
| 39. | Dorota Zawadzka                 | Educator and psychologist  |
| 40. | Priest Adam Żak, Ph. D          | Coordinator of Protection of children and youth at the Conference of the Poland's Episcopate   |

## APPENDIX 11. EXTRACT FROM THE REPORT<sup>874</sup> ON THE RESEARCH ON SOCIAL ATTITUDES TOWARDS USING VIOLENCE IN CHILD EDUCATION

### VIOLENCE IN EDUCATION – A WITHDRAWAL FROM TRADITION? THE 2016 OMBUDSMAN FOR CHILDREN’S REPORT

There are no studies that would prove the favourable impact of corporal punishment, despite common myth that they are effective in the process of raising a child. Researchers consistently and unanimously deny any theses that corporal punishment is useful or that they have positive influence on the process of education. It is quite the contrary, they enumerate many negative consequences of beating children. Research conducted all over the world over the meaning of corporal punishment in education, especially in the last ten years, brought rich body of evidence that those kind of practices are harmful both to children, also later in their adult life, and to the quality of relation between them and their parents. Researchers and experts in education say it clearly in unison: corporal punishment does not have any positive influence on child’s education and upbringing. What is more, they do not make the child understand the inappropriateness of their conduct – they do not lead to moral internalisation – but even stop it, as is it often stressed. In-depth research show evidence of neuro-physiological consequences of corporal punishment, that is losses of grey matter in the brain which lead to cognitive disorders in children. Research analyses and meta-analyses of various studies on the effects of corporal punishment, including spanking, allow to identify the most commonly named consequences of those educational practices<sup>875</sup>. Among them are:

- ▶ self-regulation development disorders, low level of self-regulation in adult life;
- ▶ Defiance, contrariness, “mutual coercion”;
- ▶ Child aggression, externalisation disorders – acting out;
- ▶ Anti-social behaviour – as a child and as an adult;

<sup>874</sup> Violence in education – a withdrawal from tradition? The 2016 Ombudsman for Children’s Report, edited by Professor Of the Silesian University Ewa Jarosz, PhD (Dr hab.)

<sup>875</sup> (zob. Gershoff 2002, Gershoff i Crogan-Keylor 2016, Fergusson 2013, Paolucci i inni 2004, oraz <http://www.endcorporalpunishment.org/assets/pdfs/research-summaries/Summary-research-effects-corporal%20punishment-June-2016.pdf>)

- ▶ Internalisation disorders and mental health problems (fear, depression, low self-esteem) as a child and as an adult;
- ▶ Resorting to psychoactive substances;
- ▶ Development of negative parent- child relation;
- ▶ Cognitive disorders (mainly in the field of attention concentration, and lowered IQ);
- ▶ Susceptibility to (physical) abuse by others;
- ▶ normalisation of violence, acceptance of violence, acceptance of corporal punishment;
- ▶ Perceiving the world as hostile and dangerous.

Corporal punishment include a wide range of practices against children. The UN Committee on the Rights of the Child defined it in its substance as all types of punishment for a child with use of physical force for the purpose of inflicting pain or (even slight) discomfort to the child (CRC General Comment No. 8, 2006), including any hitting the child with the hand or any other object, kicking, shaking the child, throwing objects at the child, scratching, pinching, biting, pulling their hair or ears, telling to stay in an inconvenient position (e.g. On the knees, standing with hands up), burning of any kind, painful activities (cleaning mouth with soap, forcing to swallow hot meals, force-feeding and similar acts.

Considering corporal punishment as highly damaging in the individual and social perspective, and relying on the premise of full legal protection of child against violence, many countries have introduced an absolute ban on such educational practices against children – ban on corporal punishment – since 1979. Until February 2017, 52 states all over the world introduced relevant regulations to their domestic systems of law.(zob. <http://www.endcorporalpunishment.org/>). The last ones to do so were:

**2017** – Lithuania

**2016** – Mongolia, Paraguay, Slovenia

**2015** – Benin, Ireland, Peru

**2014** – Andorra, Estonia, Nicaragua, San Marino, Argentina, Bolivia, Brazil, Malta

**2013** – Republic of Cabo Verde, Honduras, FYR Macedonia

**2011** – South Sudan

**2010** – Albania, Republic of Kongo, Kenya, Tunisia, Poland

**2008** – Liechtenstein, Luxembourg, Moldova, Costa Rica

**2007** – Togo, Spain, Venezuela, Uruguay, Portugal, New Zealand, the Netherlands

**2006** – Greece

**2005** – Hungary

**2004** – Romania, Ukraine

**2003** – Iceland

**2002** – Turkmenistan

**2000** – Germany, Israel, Bulgaria

**1999** – Croatia

**1998** – Latvia

**1997** – Denmark

**1994** – Cyprus

**1989** – Austria

**1987** – Norway

**1983** – Finland

**1979** – Sweden

Poland introduced an absolute ban on the use of corporal punishment against children in 2010, under the Act amending the Act on counteracting domestic violence.

elimination of violence against children, including violent educational practices, became the objective of the recommendations of international community, expressed in the sustainable development objectives and definitions of goals of human activity up to 2030, among which elimination of any form of violence against children was listed as one of the priorities (Goal 16.2: *End abuse, exploitation, trafficking and all forms of Violence against and torture children*)<sup>876</sup>.

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<sup>876</sup> <https://www.endviolenceagainstchildren.org/>; <https://sustainabledevelopment.un.org/?menu=1300>



Many world agendas, including the UN Committee on the Rights of the Child, Special Representative of the UN Secretary General on violence against children and thematic reports recommend that research should be carried to investigate the problem of violence in education, also – with respect to social attitudes towards the problem, which are a highly determinant factor in that matter.

The Ombudsman for Children has been monitoring the problem in Poland on a regular basis since 2011. In 2016, the study was conducted for the 6th time. The research was based on survey (CATI method) on a representative group of adult Poles (1000 persons), which comprised 730 adults who had children, including adult children; in this group of parents 283 persons had children up to 18 years of age.

The target of research included: diagnosis of the attitudes and declaration of parents about their own conduct towards their children, generational comparative study of attitudes and diagnosis of dynamics of attitudes subject to monitoring of the Ombudsman for Children, along with a comparison to the period of time before the ban was legally introduced in Poland. The following issues were subject to special scrutiny:

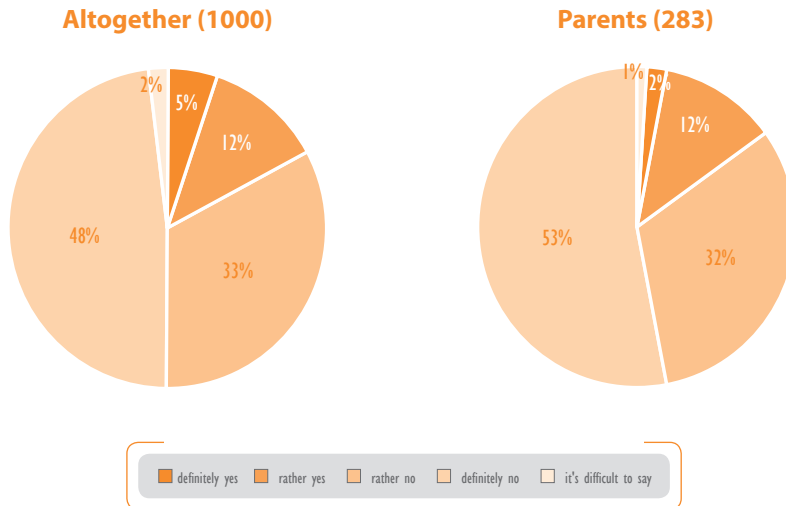
- ▶ The level of social approval of violent behaviour against children;
- ▶ The extent to which beating was considered an educational method and situations in which corporal punishment were allowed;
- ▶ The level of social awareness with respect to legal ban on beating children.
- ▶ The range of violent behaviours in education, based on parents' accounts;
- ▶ Social consent to interference in family life in case a child is beaten and preferences with respect to types of interventions and actors who should intervene in situations of violence against children.
- ▶ Social preferences with respect to personal reaction in situations when violence is used against a child.

## 1. THE PICTURE OF SOCIAL ATTITUDES TOWARDS VIOLENT BEHAVIOUR AND CORPORAL PUNISHMENT IN EDUCATION

The basic field of interest of the Ombudsman for Children is social approval of violent conduct against children, analysed in the perspective of several aspects: acceptance of beating children (thrashing), social attitude towards hitting a child (spanking) and social consent to various violent behaviours in child education. The results of analyses in particular social parameters present a picture, which can be perceived as optimistic on one hand – in that the level of social approval of violence in education, on the other hand, however – the values of parameters (factors) is still high and thus requires intense activity to lower the level of acceptance of violence against children.

### 1.1. Acceptance of beating children

Poles still approve of beating children. The general distribution of data shows that every sixth Pole (17%) accepts such behaviour.

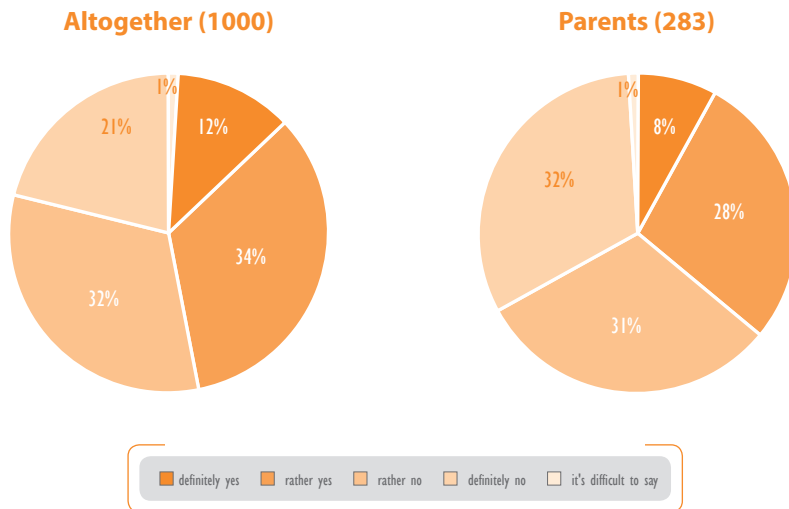


And although it may be stressed that the level of definite approval of beating children in Poland is rather low (5%), yet the distribution of data indicates that only nearly half of Poles (48%) is definitely against beating children. Parents

of children up to 18 express their negative opinion on beating children slightly more often (53%).

## 1.2. Social approval for beating children

Particularly, the attitude of Polish society toward hitting a child should be alarming. Almost every second adult (46%) accepts hitting children.

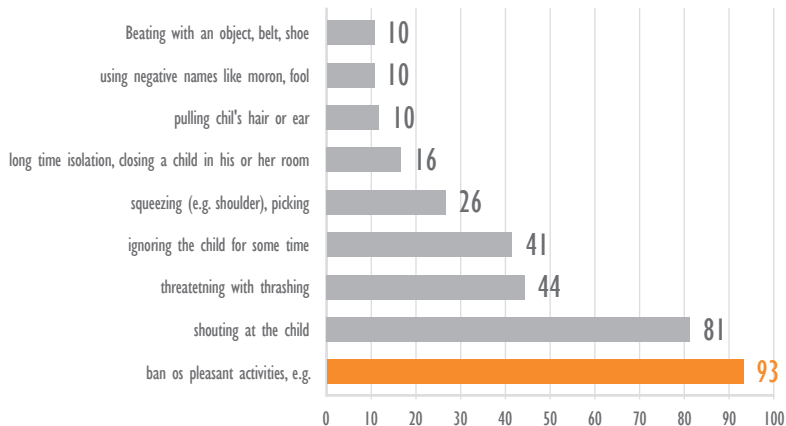


When we compare the level of acceptance of hitting a child (spanking) with the level of acceptance of thrashing, the former is much higher than the latter. It may also be pointed out that there are twice as less definite opponents of spanking than definite opponents of beating (thrashing). And so, this form of violent practice is widely accepted in society. Parents of children up to 18 express their disapproval of hitting more often – every third of the respondents declare so (32%).

### 1.3. Violent behaviours accepted in child education

The objective of the monitoring was also to investigate social approval of other (non-physical) behaviours against a child. Respondents identified behaviours which, in their opinion, could be accepted in education. Among a number of answers, one of the categories was not violent in its nature (prohibition of a pleasant thing).

#### Which of the following procedures may be, in your opinion, applied against the child in child upbringing? Altogether (1000)

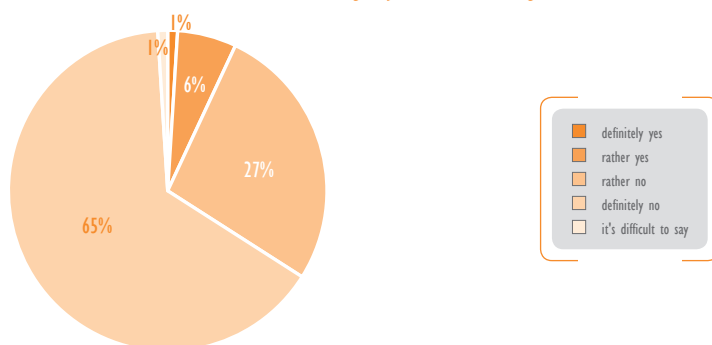


The picture of data implies an alarmingly high value of approval of shouting at the child (more than 80%), and it may be also noticed that other violent practices are characteristic in that they are highly approved by the society. Almost every second Pole does not see anything wrong in threatening a child with beating (44%). More than 40% approves of hostile ignorance towards a child (treating a child as if the child did not exist), which harmful from the psychological point of view. Using physical force in anger, like squeezing or pinching a child, is approved by every fourth respondent (26%), and pulling the child's hair or beating the child with an object is approved by every tenth Pole. Analyses proved that the level of approval of behaviours presented to respondents was slightly lower among parents of children up to 18 years of age.

## 1.4. Acknowledging (recognizing) beating as an educational method

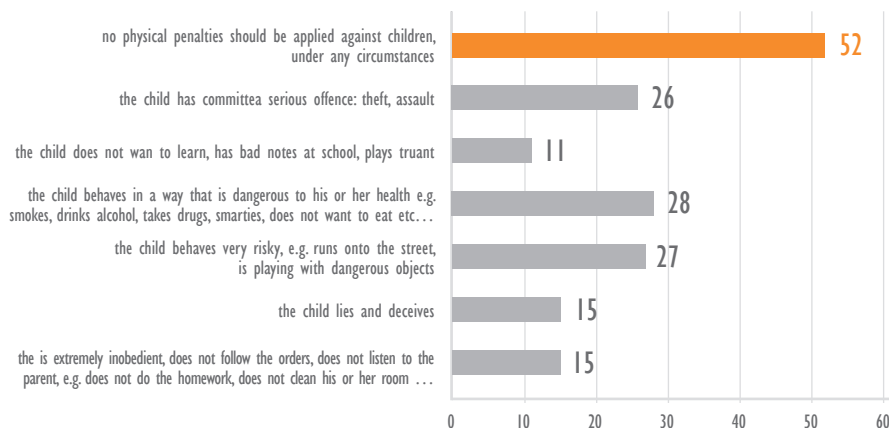
Respondents expressed also their opinions whether they acknowledged beating children as an educational method. When they were directly asked about their opinion about the following statement: “Beating a child is sometimes the most effective educational method”, few of them answered that they definitely agreed. At the same time, it is worth to look at answers that definitely denied that beating is an educational method – beating children is definitely excluded as an educational method by 2/3 of Poles.

**Bicie dziecka jest w niektórych sytuacjach najbardziej skuteczną metodą wychowawczą**



Respondents, when asked “In your opinion, in what kind of circumstances a child would deserve to be beaten?”, expressed their positive attitude towards corporal punishment (data in %, n=1000), much more often than when asked directly about it.

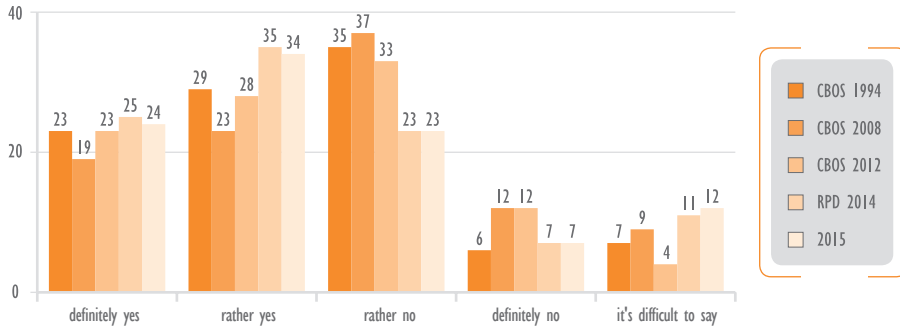
## In what circumstances, in your opinion, a child deserves to be "beaten up" (n=1000)



It means then that as a matter of fact, positive attitude towards beating is much more common. Only 72% of Poles definitely exclude corporal punishment regardless of the circumstances – regardless of the nature of the child’s “guilt”. A position that a child deserves to be corporally punished if the child’s conduct exceeded certain standards was declared by almost one third of Poles. If this conduct means an act that goes beyond social norms for children or is dangerous for the child (drinking alcohol, smoking), almost every third of the respondents believes that a child deserves to be corporally punished (by beating – 28-27%). Every fourth of the respondents (26%) accepts beating as an educational method in case the child’s conduct bears the hallmarks of a crime (e.g. theft). Defiance and deception on the part of a child are also a good reason to apply corporal punishment for some respondents (15%). A child’s negative attitude towards school and learning was the least often mentioned reason to apply a corporal punishment (10%).

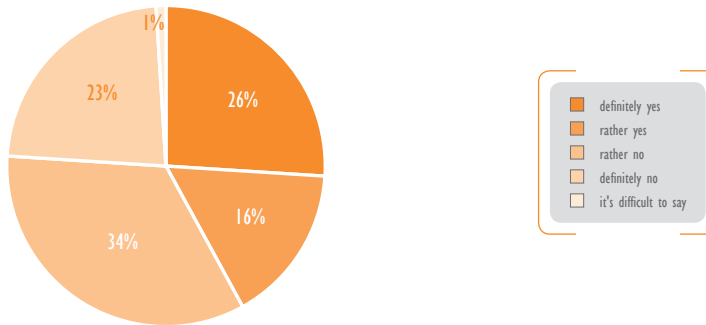
To complement this picture of dynamics in approval of corporal punishment, based on the applied factor of answers “Children should not be subject to corporal punishment in any circumstances”, it may be noticed, that as compared to the previous values of factors (below),

### Disapproval of physical punishment in the years 1994 – 2015 (data in %)



analogous data obtained from answers to a direct question do not give any reasons for optimistic interpretation, as the number of persons who expressed their absolute disapproval for corporal punishment did not increase.

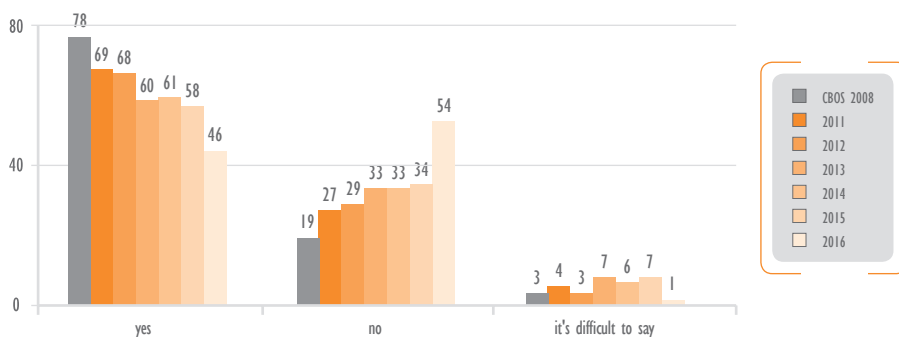
### Children should not be physically punished, in any way, in any circumstances (data of 2016 for n=1000)



## 2. DYNAMICS OF FACTORS OF SOCIAL APPROVAL OF CORPORAL PUNISHMENT

Regular surveys conducted by the Ombudsman for Children since 2011 allow to follow the dynamics of social attitudes towards violence in education. In the perspective of two main factors of violent behaviour approval, that is hitting and beating, analyses clearly indicate a downward trend and a meaningful change in social attitude since the ban on corporal punishment was introduced in Poland as compared to the period before the ban.

Approval for child beating in the years 2008 – 2016

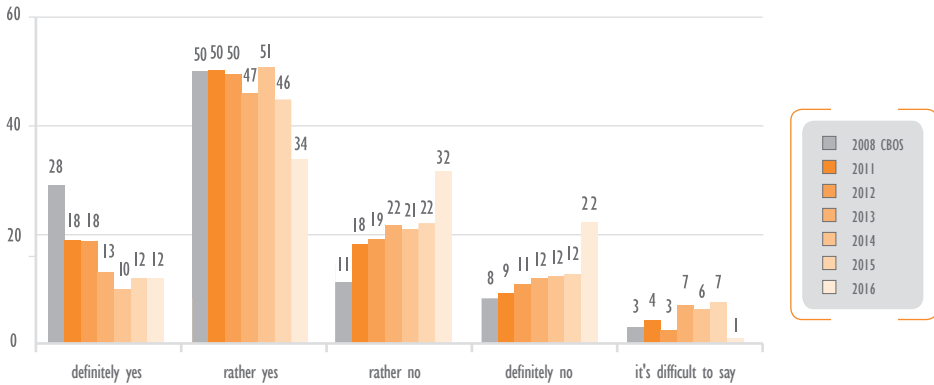


APPENDICES

As we can see from the tables, in the period when the survey was being carried out (since 2011), the level of approval dropped by 23 percentage points, as compared to a similar survey by CBOS in 2008, this drop is greater and amounts to 32%. At the same time, the number of opponents of spanking grew by 27 percentage points. What clearly emerges from that picture is a positive change in the attitude towards corporal punishment. At the same time, when we focus on definite answers, it may be seen that in this group of answers (definitely yes and definitely no), drops and, respectively, rises have reached the level of more than 10 percent since 2008. The picture of data shows that the greatest change occurred in the attitudes of moderate nature. It also shows that the group of definite supporters of spanking (since 2013) has in fact remained the same (see the diagram above).

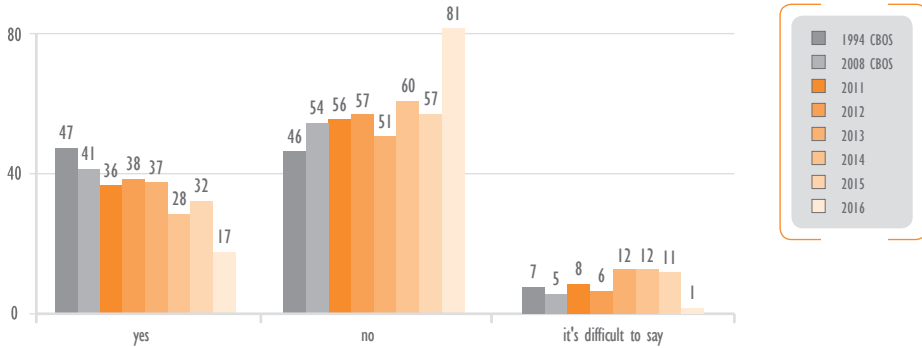


Approval of child beating in the years 2008 – 2016 – detailed data (%)



Putting it optimistically, we may notice a clear downward trend in the group of supporters of beating children and analogous increase of the number of opponents.

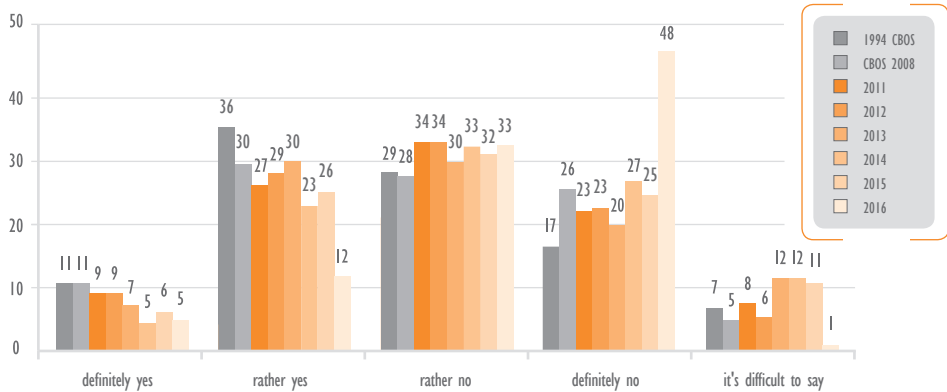
Approval of child beating in the years 2008 – 2016 (%)



According to the data, in the period covered by the Ombudsman for Children’s surveys, the approval of beating children dropped by more than a half – by 19%. There is an even greater difference as compared to the year 2008 (24%) and to the year 1994<sup>877</sup> (30 %). Contradictory attitudes in that time dropped irregularly, with a significant rise in 2016 reaching 24%. Interestingly, this rise is especially characteristic for the group of definite opponents of beating children (see the diagram below).

<sup>877</sup> The question “do you agree with the statement that a thrashing has not done anything wrong to anybody yet” was also asked in the CBOS survey in 1994 (CBOS, 2012).

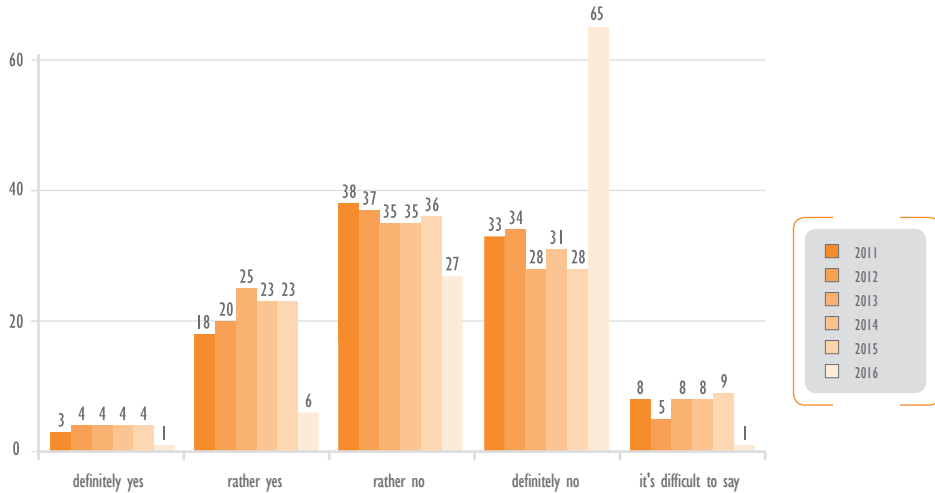
### Approval of child beating in the years 2008 – 2016 – detailed data (%)



High rise in the group of definite answers against child beating does not thus surely mean that such a meaningful change in attitudes is really proceeding. It seems that this high rise may be partially explained by the fact that we stop to admit that we beat children, and expressing an approval of beating is currently perceived as inconsistent with the public opinion which clearly disapproves of such educational practice. In other words, even if do not deal with a real change of attitudes here, we deal with change in awareness in that approval of beating is not approved by the public opinion. If we are to interpret the differences in such way, the final conclusion is still positive, as even such change is desired socially and pedagogically.

Monitoring of the dynamics in attitudes referred also to the issue of acknowledging beating as an educational method. The distribution of data shows a line of change, though not very regular.

### Acknowledging beating as educational method in the years 2011-2016 (%)



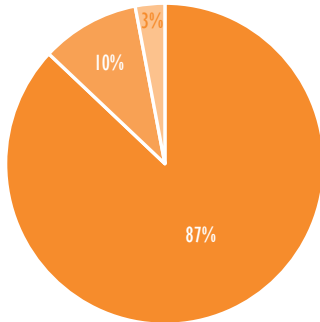
Also in this field, the number of opponents in the group of definite answers grew in 2016, but it should probably be explained by a change in data collection methodology (CAPI to CATI).

### 3. PARENTS' ACCOUNTS OF THEIR VIOLENT BEHAVIOURS AGAINST THEIR CHILDREN

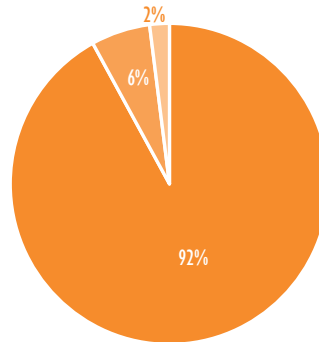
Since 2014, monitoring has included analysis of the scope of occurring violent educational practices by parents in their own perspective. Despite being aware how great the influence of parental awareness of trends in social attitude is, hence the tendency to disclose such situations, it was assumed that even underestimated data would be valuable in terms of tendency orientation and monitoring of the dynamics of potential changes.

Data obtained in 2016 indicate that few parents admit to thrashing their children (8%) and that those who do, belong to an “older generation” (13%).

Persons who have children (n=700)



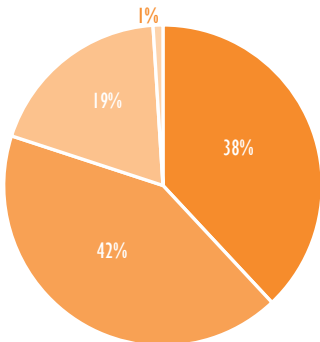
Parents of children up to 18 years old



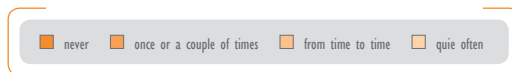
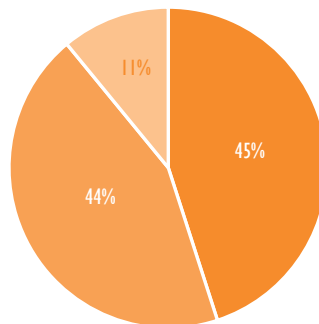
It seems that no matter how much underestimated these factors are, the fact of low level of disclosure and a difference in levels of disclosure between both generations of parents may probably be interpreted as the occurring tendency of 'withdrawal' from traditional violent education.

The picture of parents applying violent behaviour in the form of spanking looks quite differently.

Persons who have children (including adult children) n=700



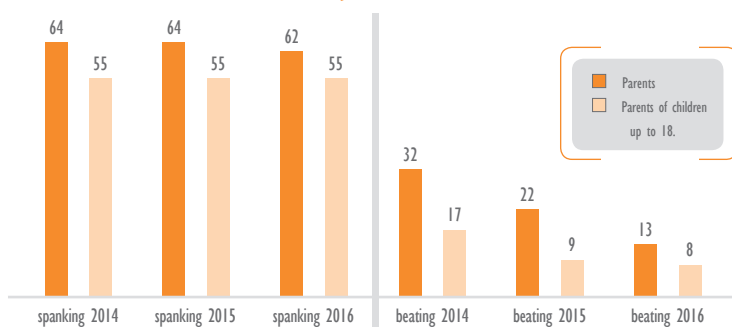
Parents of children up to 18 years old



Parents admit to spanking much more eagerly than to thrashing. More than half of parents (55%) of children up to 18 admitted to have been using spanks. As far as the previous generation of parents is concerned (those whose children are already grown up), this value is much higher (62%). It seems that this rather spectacular difference in the number of persons who admit to spanking and beating may be explained by the fact that spanking had once not been perceived as violence the way it is today.

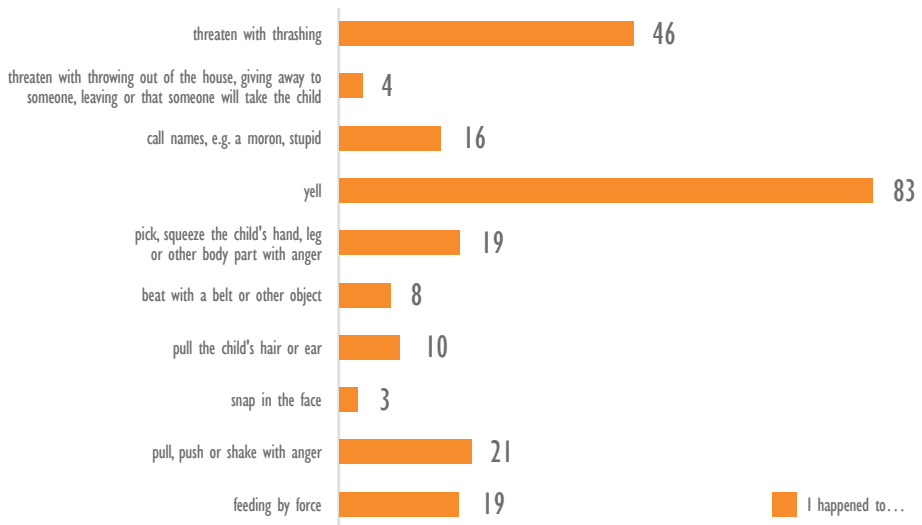
This interpretation seems to be confirmed by a picture of dynamics of factors in the perspective of recent years (since 2014), which clearly shows a stagnation of measures regarding spanking and a decrease (in both groups of parents) in the percentage reflecting the parents' account of beating (see the diagram below).

**The dynamics of the reports by parents on their own violent conduct in the years 2012-2016 (%)**



At the same time, to extend the picture emerging from the survey of 2016, parents were asked an additional question about other behaviour towards their children – such that include various types of physical and mental violence.

### Have you ever happened to do anything mentioned below to your child? (Parents of children up to 18 years old, %)



If we compare the account of parents on their varied violent conduct against their children, it appears that they most often speak of shouting at the child and threatening the child with beating.

The first type of behaviour was reported by the great majority of parents (83%) and the second – by 46%.

Pinching a child in anger and force-feeding was reported by every fifth parent (19%).

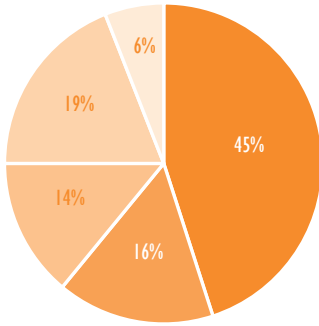
Slightly more parents admitted to jerking and pushing a child with anger (21%).

The least often mentioned behaviour was slapping the child's face and threatening the child with throwing him/her out of the house.

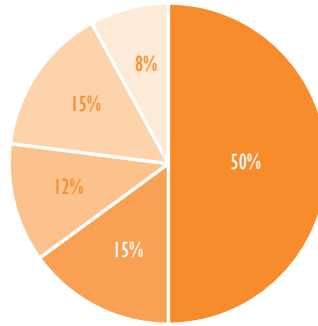
## 4. AWARENESS OF PROHIBITION OF CORPORAL PUNISHMENT IN POLAND

In the context of social approval of corporal punishment in education and raising a child, also social awareness of formal (legal) ban on the use of corporal punishment should be considered, as it was introduced in Poland in 2010.

**Persons who have children (also adult) n=730**



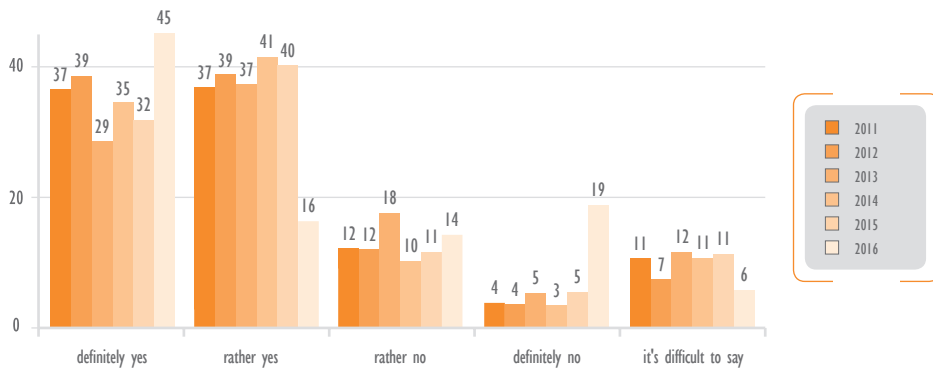
**Parents of have children up to 18 years old**



Also in this field positive changes may be observed.

45% of the respondents declare that they know that beating children is banned in Poland (category: definitely yes), with slightly higher percentage in the group of parents of children up to 18 (50%).

**Knowledge on the ban on corporal punishment in the years 2011-2016**

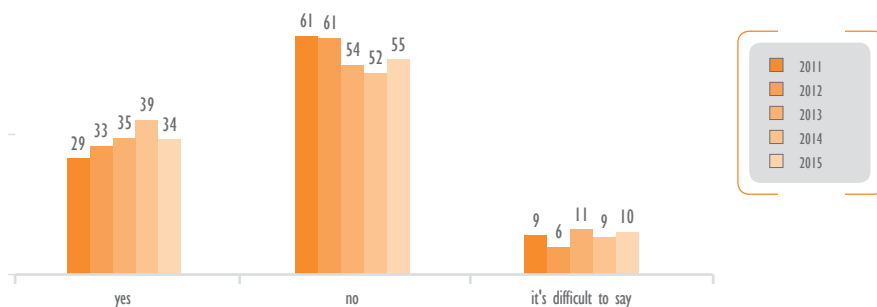


As compared to previous years, the increase in 2016 is particularly noticeable. The reasons for it are surely partially related to different methodology of data collection.

## ATTITUDES TOWARDS POSSIBLE INTERVENTION AND REACTING TO SITUATIONS INVOLVING VIOLENCE AGAINST CHILDREN

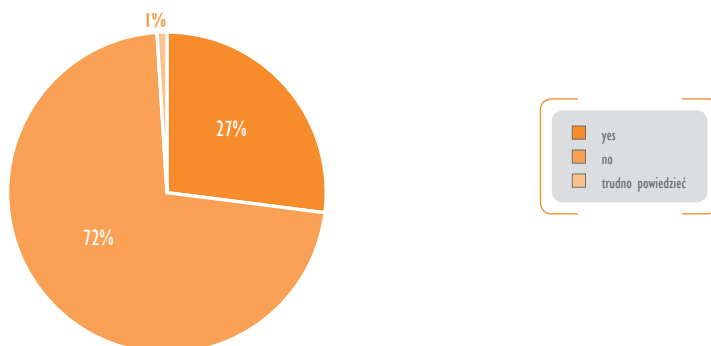
In the previous editions of monitoring, social attitudes towards interfering in family life in case parents inflicted violence against their children were quite stable in their values. It was mostly believed that the way parents treated their children is not a private affair of the parents.

**Would you agree with the following statement: the way parents treat their children is solely their private and personal affair, even when they apply corporal punishment? (data of 2011-2015 in %)**



In 2016, this factor grew considerably to 72%.

**Would you agree with the statement: The way parents treat their child is solely their private and personal affair, even if they apply corporal punishment (data of 2016 for n=1000)**

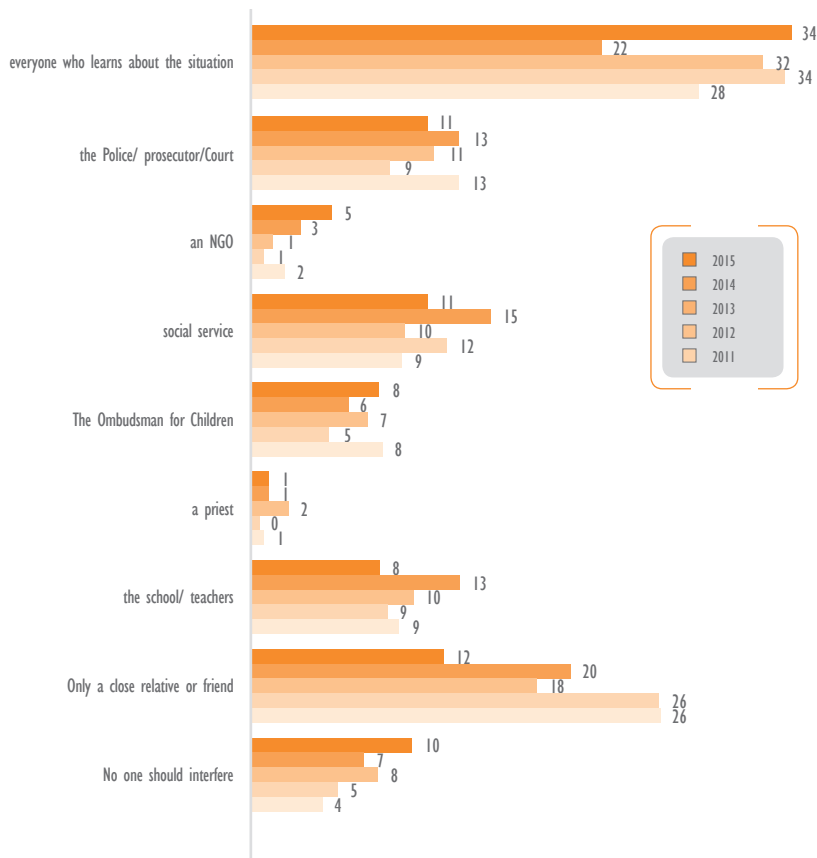




A similar comparison can be made with respect to results in attitudes towards possible intervention (who should intervene) in case a child is badly treated in the family.

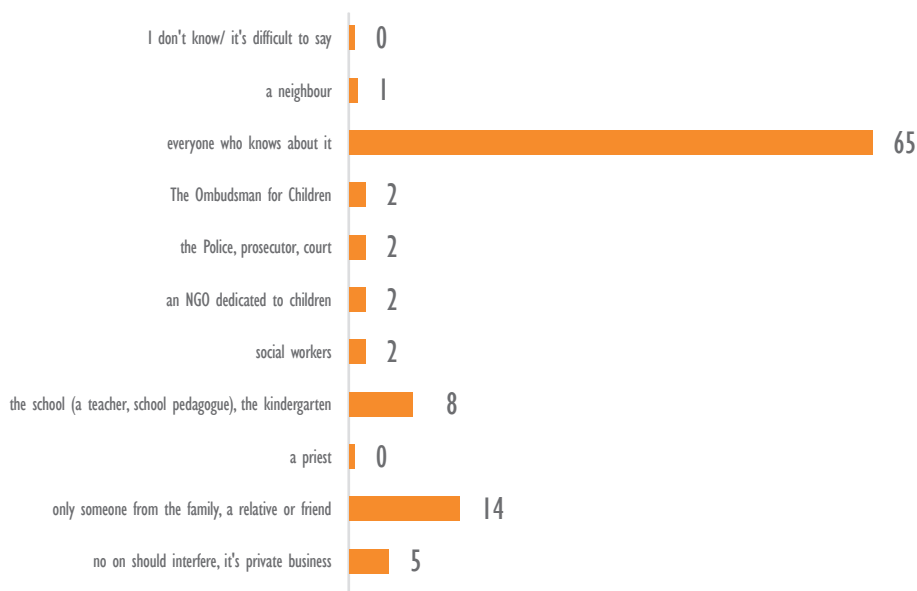
In the previous surveys the proportions of choice as to a person or institution who or which should intervene were nearly equal.

**Who, in your opinion, should first of all take measures against a family if a child is badly treated by this family? data of 2011-2015**



The data from 2016 show that only a slight reformulation of the question: “Who should react if a child is beaten by the parents?” reveals a completely different picture of social preferences.

**Who, in your opinion, should react as first when a child is beaten by his or her parents? (data of 2016 for n=1000)**



As it may appear, the respondents declared in this way in their great majority (65%) a socially promoted attitude (which has been promoted mainly by the campaigns of the Ombudsman for Children since 2013 – “React to violence against children. You’ve Got the Right”. At the same time the data obtained from the answers to those two different questions seem to confirm this picture of social readiness to react to situations when children are subject to violence.

**Situation 1. *The neighbourhood:***

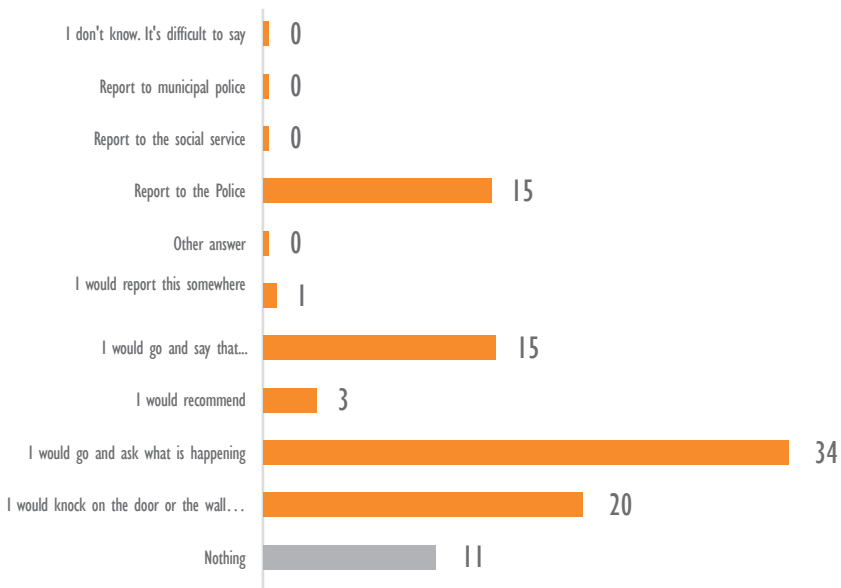
Please imagine that you can hear screaming and shouting next door and a child desperately screaming “don’t beat me, don’t beat me”. What would you do?

**What would you do in the following situation: supposedly a child is being beaten next door? (data of 2016 for n=1000)**



It must be stressed here that as compared to 2015, the number of persons who declared that they would not react at all decreased by 10% (see below) and the number of persons who would go and ask what was happening (risk a confrontation with a parent) increased from 34 to 52%.

**What would you do in the following situation: you can hear people shouting next door and a child desperately screaming "don't beat me" (data of 2015 for n = 1017)**



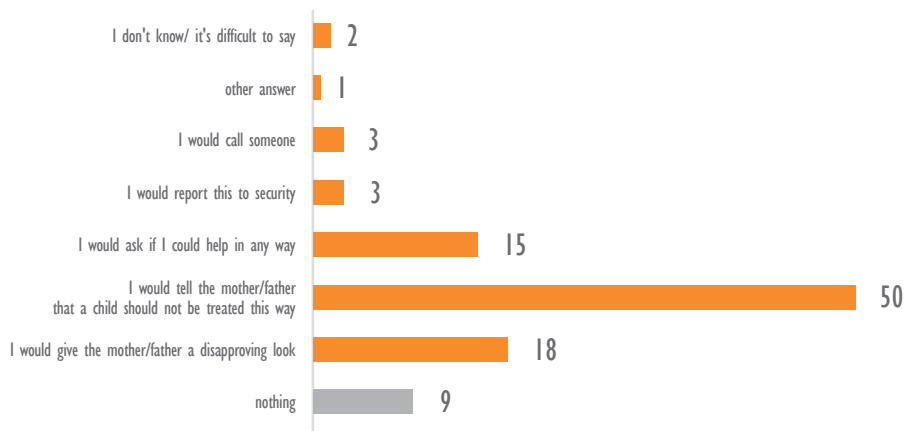
## Situation 2. In a public place:

“Please imagine that you see a boy in shop with his parent who is annoyed and is jerking a small child, giving him/her a spank and threatening that as soon as they come home, he/she would be given more.

What would you do?”

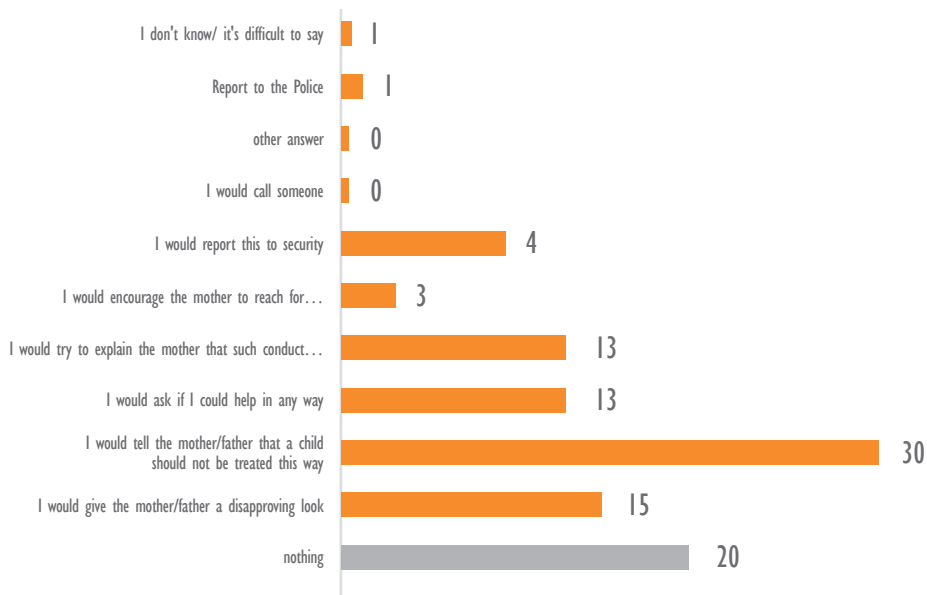
The data show that the respondents more often declare that they would ignore the situation than in case of neighbours.

### What would you do in such a situation (in a public place) data of 2016 for n = 1000



At the same time is it worth noticing that as compared to previous survey in 2015, the data

**What would you do in such a situation (in a public place)  
data of 2015 for n = 1017**



show that the percentage of persons who would not do anything decreased by twice as much – from 20% to 9%.

Also the percentage of persons who declared reaction by confronting the parent (commenting that one should not treat children like this) increased from 30% to 50%.

The data presented above seem to imply a social tendency of change in that matter.

Respondents when asked about their reaction to violent treatment of a child and probable way they would proceed, declared that they would personally react in some way, depending on the context of the violent behaviour.

## ■ SUMMARY – RECOMMENDATIONS

Based on the presented survey results regarding social attitudes towards violence in education and child raising, a couple of basic conclusions can be drawn:

- ▶ The level of social approval towards violence in education depends on the type of violence. Hitting a child (spanking) and threatening a child with thrashing is characteristic for almost half of the adult part of society; thrashing is approved of by every sixth Pole, beating with an object – every tenth Pole.
- ▶ Few adult Poles admit currently to believe that beating is a good educational method but, at the same time, in case a child is insubordinate, or in case of particularly dangerous circumstances or risky situations, almost 1/3 of Poles are convinced that a child deserves a corporal punishment.
- ▶ Only half of the adult society is definitely against corporal punishment.
- ▶ A transformation in social attitudes towards violence in education is taking place, with a downward tendency in social approval, noticeable in several perspectives:
  - ▶ In all declarations about approval of violent behaviours and acknowledging beating as an educational method, parents of minor children less frequently approved of it than the respondents in general.
  - ▶ The distribution of approval of violent treatment and acknowledging beating as an educational method in terms of age shows that younger persons less often approved of violent education.
  - ▶ Also weaker approval of violence in education can be observed in subsequent measurement of basic factors over the last years.
- ▶ Less than a half of the adult society knows that corporal punishment is banned in Poland though social awareness of this fact is growing. Only half of parents of minor children know about the ban.
- ▶ Application of violent behaviour by parents against their children is still a great problem in Poland. More than half of them admit to hitting a child (spanking), yet considerable majority do not admit to beating a child (thrashing). Most of the parents admit to shouting at their child and almost a half of them – to threatening the child with beating. Yet the figures reflecting the scale of beating decreased in the perspective of last couple of years and as compared to previous generations.

The picture of social attitudes towards violence in education and upbringing as shown on the basis of the survey may prompt some recommendations how to

proceed to eliminate the problem of accepting violence in education as well as violent behaviour itself. The most important are:

- ▶ Raising social awareness on the ban on violence against children and its meaning;
- ▶ Raising social awareness on how harmful violence in education and upbringing is and on the rights of the child;
- ▶ Educational and training programmes and psycho-corrective trainings for present and future parents;
- ▶ Promotion of positive parenting;
- ▶ Support and help for parents in their care and upbringing of a child;
- ▶ Appropriate education of professionals who recognize, diagnose and react to the problem of domestic violence and including this topicality in trainings for professionals (also in university and high schools curricula);
- ▶ Educational programmes that promote the rights of the child, develop children's empowerment and educate about non-violent social relations addressed to children;
- ▶ Development of social participation of children.

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## APPENDIX 12. THE RESULTS OF REVIEW OF CASE FILES INDICATED BY THE MINISTER OF JUSTICE REGARDING PLACEMENT OF A CHILD IN FOSTER CARE ONLY FOR THE REASON OF BAD ECONOMIC CONDITION OF THE PARENTS

### I. GENERAL COMMENTS

Pursuant to Article 32 item 1 of the Act of 09 June 2011 on family support and foster care system (Dz. U., Journal of Laws of 2016, Item 575), in case parents cannot provide care and education for their child, foster care is provided. As Article 2 item 2 of the Act says, the system of foster care is composed of a group of persons, institutions and procedures the aim of whose is to provide temporary care and education to children in case their parents cannot do so.

Foster care is a form of temporary care. By power of this institution, state bodies take measures to provide the child with care and education when parents cannot afford it correctly<sup>878</sup>. It must be stressed here that state bodies responsible for supervision and checking whether parents fulfil their parental duties correctly (family courts, public administration bodies responsible for custody) cannot step into the sphere assigned to the family unless this family cannot provide care and education to their child. Families who function correctly in terms of care and upbringing, but facing difficulties in terms of financial security or conditions of residence or unemployment, should be offered assistance and support under separate regulations of law<sup>879</sup>.

Foster care is provided every time the parents cannot provide care and education to their child, hence – in case parents are deprived of their parental authority or have it limited or suspended as well as in situations arising from fortuitous events such as death of a parent and loss of legal capacity. Moreover, pursuant to Article 100 § 1 of the Family and Guardianship Code, a family court is obliged to support parents if it is necessary to facilitate their due performance of parental obligations. To be even more specific, each of the parents may address the guardianship court with a request for provision of foster care to their child. Article 35 item 2 of the Act on family support and foster care system provides then that in case of emergency, upon request or upon consent

<sup>878</sup> S. Nitecki, *Ustawa o wspieraniu rodziny i systemie pieczy zastępczej. Komentarz*, WK2016.

<sup>879</sup> K. Tryniszewska, *Ustawa o wspieraniu rodziny i systemie pieczy zastępczej. Komentarz*, II, LEX 2015.

of the parents, it is possible to place a child, under an agreement concluded between a foster family or a family running a family children's home and a starost competent in terms of the family's domicile or the residence of the family children's home.

Pursuant to Article 112 3 § 1 of the Family and Guardianship Code, a child can be placed only when previously applied measures as set forth in Article § 2 point 1-4 of the FGC and other forms of parental support as set forth in regulations on family support and foster care system, had not eliminated the risk for the child's well-being, unless the necessity of placement results from serious danger to the child, especially a danger to child's life or health.

Pursuant to Article 1123 § 2 of the FGC, placing a child against the will of the parents exclusively for the reason of poverty is not permissible.

As stated by the European Court of Human Rights in its judgement of 13 March 2012, ref. no. 4547/10, removing a child from his or her natural family environment should be the means of last resort. Family bonds may be broken only in extraordinary circumstances and everyone must do their best to secure personal relationships and, if necessary, rebuild the family. It is not enough to conclude that a child may be placed in a setting because it is more favourable in terms of his or her education.

## II. THE RESULTS

The Ministry of Justice published recently on its internet site a publication entitled Preventing from removing children because of poverty – a draft adopted by the Council of Ministers, which described 61 cases in which “poor economic and living conditions were the only reason why courts issued decisions on placing children”.

According to the information submitted by the Minister of Justice, in the period from 01 January 2015 to 30 June 2015, 15 regional courts had issued altogether 61 decision on placing a minor out of biological family purely because of bad economic conditions of living.

The Ombudsman, alarmed by this fact, decided to review all cases that had been concluded with such decision and addressed relevant courts.

12 regional courts (Regional Court in: Białystok, Kartuzy, Wjherowo, Gliwice, Bolesławiec, Bytom, Siemianowice Śląskie, Katowice-Zachód w Katowicach, Konin, Szczytno, Żagań and Warsaw -Żoliborz in Warsaw) sent the files of 43

cases to the Ombudsman for Children but 11 of them (excluding the Court in Bolesławiec) indicated that none of their decisions referred to placement of a minor solely due to bad economic condition of the family. The presidents of those courts informed that the cases had been mentioned in the statistical reports of the Ministry MS-S16 for the 1st half of 2015 by mistake because of an statistical forms incorrectly filled by court employees or mistakes arising from failures of the electronic database, as a result of which the reason of bad economic condition was displayed as the only ground for placement.

Three courts (Regional Court in: Świeć, Bytom and Giżycko) submitted explanation to the Ombudsman for Children with respect to 16 cases and informed that the data given to the Minister of Justice did not refer to any specific case concluded with placement only because of poverty and resulted from the fact that court employees had made a mistake when filling forms.

Additionally, the President of the Regional Court in Giżycko informed that he had analysed all cases of 2015 (14 cases) which concluded in placement and stated that in none of those cases economic condition of the family was the only reason for it.

It must be underlined here that it is absolutely necessary to immediately remove the mistakes of the system which led to provision of wrong data to the Ministry of Justice by 14 courts. It is also important to prevent such errors from taking place in the future, as they misguide assessment of facts and lead to faulty conclusions.

**Based on analysis of 43 case files, the Ombudsman for Children concluded that removing and placing a child only for the reason of poverty had never been the case.**

The grounds based on which guardianship courts decided to place a child in foster care in cases in 2015 included:

- ▶ **The need to change the current custody of the child** – 15 cases, including:
  - ▶ Cases in which a decision on temporary establishment of foster family was altered (Article 1125 § 2 of FGC),
  - ▶ Cases in which institutional care was replaced with family foster care;
- ▶ **Parental neglect** – 9 cases, including:
  - ▶ Parental neglect combined with addiction of at least one parent – 6 cases;
- ▶ **Abandoning a child by the parent** – 6 cases;

- ▶ **Full orphanhood** – 5 cases;
- ▶ **Minor age of the child's mother** – 2 cases;
- ▶ **Death of a parent and inability of the other parent to take care of the child** – 2 cases;
- ▶ **Mental disability of the leading carer** – 2 cases;
- ▶ **Violence against a minor** – 1 case.

It must be also stressed that in one of the cases analysed by the Ombudsman, the measure of interference in parental authority in the form of removing and placing a child was not applied.

Only in 8 cases the problem of financial difficulties of the family was mentioned, but this premise came along other reasons of placement.

**It must be further stressed that in none of the analysed cases the final court decisions were appealed against. In one case only the court presented a statement of reasons, upon request of the participants.**

One case, however, requires to be discussed in detail. The case was sent by the Regional Court in B■■■■, because the President of the III Family and Minors Department of Regional Court in B■■■■ Informed on 05 May 2016 that the only reason why 4 children were removed from their biological family was its bad economic condition.

As the analysis of the case shows, economic condition was one of the main but not the only reason for placement. As it could be concluded from the body of evidence, the local social service centre addressed the family court with a request for appointing a guardian for the parents and their four children. The family was supported by a family assistant because of their housing problems, alcoholism of the parents and their parental incompetence (neglect in terms of hygiene, health, education, leaving children unattended). The only source of maintenance was the family allowance in amount of 800 zlotys per month and occasional work done by the father with the income of about 400 zlotys per month. The family assistant could not succeed in encouraging the parents to take relevant steps to improve on time their financial situation, as the children were undernourished. Despite being supported, the parents did not apply for additional social welfare benefits. By decision of 18 April 2014, the Regional Court in B■■■■ instituted the proceedings pertaining to settlement of guardianship for the minors. On 09 May 2014 the court secured the minors by appointing a guardian for the time of the proceedings who supervised the exercise of parental authority by the parents. Due to gross negligence against

the children, the guardianship court, by decision of 05 June 2014 altered its decision of 09 May 2014 in that the children were placed in an institutional form of foster care. On 09 June 2014, paternal grandparents filed a motion for appointment of foster family. The Regional Court, by decision of 11 June 2014, altered its previous decision in that the court entrusted the grandparents with care of the minors for the time of the proceedings. In the course of the proceedings, the court admitted the expert's opinion issued by a Family Diagnostic and Consultation Centre. The opinion, prepared on 04 December 2014 said, that parental competences of the parents were much limited because of their features of intellect and personality. The mother displayed also her addiction to alcohol. The parents were not independent and ingenious, though they received support from social services – family assistant. The opinion said also that the parents were little critical and reflexive against each other and each other's conduct, hopeless when facing the needs and problems of children. The paternal grandmother died as the proceedings were in course. The paternal father took care of the children who – in view of the foster care provider – did it in a proper way and provided appropriate housing, educational and emotional conditions for the children. By decision of 26 March 2015, the Regional Court in B■■■■ limited the parental authority of the parents by placing the minors in foster care of the grandfather and subjecting this care to supervision of a court-appointed guardian. The decision was not appealed against.

### ■ III. CONCLUSIONS FROM THE CASE FILES

Having in mind the results of the research, in Ombudsman's opinion the rights of children or the well-being of children had not been violated or offended by placing children in foster care solely for the reason of poverty in any of the analysed cases.

### APPENDIX 13. REPORT ON THE STUDY ON EDUCATIONAL AND CARE AND LEGAL STATUS OF CHILDREN IN THE AGE FROM 0 TO 10 STAYING IN INSTITUTIONALISED FORMS OF FOSTER CARE

The Ombudsman for Children has been consistently, since 2014, undertaking measures to prevent little children from being placed in residential institutions.

In the course of this activity, the Ombudsman had addressed i.a. All the Voivodes with a request for information on the number of children at the age from 0 to 10 who were staying in foster care institutions (as of 30 July 2016).

The following table presents the data submitted from the Voivodeships:

**Table 1.** The number of children from 0 to 1 living in institutionalised forms of foster care

| The number of children from 0 to 1 |          |                                    |                                    |                      |                     |                        |
|------------------------------------|----------|------------------------------------|------------------------------------|----------------------|---------------------|------------------------|
| Name of the Voivodeship            | In total | Placed with minor mother or father | Placed because of health condition | Placed with siblings | Placed as emergency | Placed against the law |
| Dolnośląskie                       | 29       | 2                                  | 15                                 | 4                    | 19                  | 1                      |
| Kujawsko-Pomorskie                 | 17       | 7                                  | 4                                  | 1                    | 5                   | 0                      |
| Lubelskie                          | 9        | 6                                  | 0                                  | 1                    | 2                   | 0                      |
| Lubuskie                           | 0        | 0                                  | 0                                  | 0                    | 0                   | 0                      |
| Łódzkie                            | 57       | 3                                  | 2                                  | 6                    | 48                  | 3                      |
| Małopolskie                        | 13       | 8                                  | 2                                  | 0                    | 1                   | 2                      |
| Mazowieckie                        | 16       | 6                                  | 1                                  | 5                    | 4                   | 0                      |
| Opolskie                           | 1        | 1                                  | 0                                  | 0                    | 0                   | 0                      |
| Podkarpackie                       | 7        | 2                                  | 1                                  | 2                    | 2                   | 0                      |
| Podlaskie                          | 15       | 7                                  | 2                                  | 0                    | 2                   | 4                      |
| Pomorskie                          | 1        | 0                                  | 0                                  | 0                    | 0                   | 0                      |
| Śląskie                            | 18       | 14                                 | 0                                  | 1                    | 5                   | 0                      |
| Świętokrzyskie                     | 2        | 1                                  | 0                                  | 1                    | 0                   | 0                      |

|                     |            |           |           |           |           |           |
|---------------------|------------|-----------|-----------|-----------|-----------|-----------|
| Warmińsko-Mazurskie | 6          | 3         | 0         | 1         | 2         | 0         |
| Wielkopolskie       | 7          | 3         | 0         | 3         | 4         | 0         |
| Zachodniopomorskie  | 8          | 3         | 0         | 0         | 0         | 3         |
| <b>In total</b>     | <b>206</b> | <b>66</b> | <b>27</b> | <b>25</b> | <b>94</b> | <b>13</b> |

**Table 2.** The number of children from 1 to 3 living in institutionalised forms of foster care

| The number of children from 1 to 3 |            |                                    |                                    |                      |                     |                        |
|------------------------------------|------------|------------------------------------|------------------------------------|----------------------|---------------------|------------------------|
| Name of the Voivodeship            | In total   | Placed with minor mother or father | Placed because of health condition | Placed with siblings | Placed as emergency | Placed against the law |
| Dolnośląskie                       | 88         | 6                                  | 17                                 | 32                   | 36                  | 5                      |
| Kujawsko-Pomorskie                 | 44         | 2                                  | 3                                  | 19                   | 17                  | 3                      |
| Lubelskie                          | 16         | 4                                  | 1                                  | 7                    | 4                   | 2                      |
| Lubuskie                           | 1          | 1                                  | 0                                  | 0                    | 0                   | 0                      |
| Łódzkie                            | 68         | 0                                  | 4                                  | 12                   | 58                  | 5                      |
| Małopolskie                        | 19         | 5                                  | 4                                  | 0                    | 4                   | 2                      |
| Mazowieckie                        | 22         | 3                                  | 3                                  | 10                   | 2                   | 5                      |
| Opolskie                           | 7          | 2                                  | 0                                  | 4                    | 4                   | 4                      |
| Podkarpackie                       | 17         | 3                                  | 4                                  | 9                    | 1                   | 0                      |
| Podlaskie                          | 12         | 3                                  | 2                                  | 0                    | 4                   | 3                      |
| Pomorskie                          | 6          | 1                                  | 0                                  | 4                    | 1                   | 0                      |
| Śląskie                            | 72         | 12                                 | 24                                 | 25                   | 20                  | 0                      |
| Świętokrzyskie                     | 11         | 2                                  | 1                                  | 5                    | 4                   | 1                      |
| Warmińsko-Mazurskie                | 16         | 5                                  | 3                                  | 6                    | 2                   | 0                      |
| Wielkopolskie                      | 12         | 2                                  | 0                                  | 8                    | 6                   | 0                      |
| Zachodniopomorskie                 | 22         | 3                                  | 0                                  | 9                    | 0                   | 10                     |
| <b>In total</b>                    | <b>433</b> | <b>54</b>                          | <b>66</b>                          | <b>150</b>           | <b>163</b>          | <b>40</b>              |

**Table 3.** The number of children from 3 to 7 living in institutionalised forms of foster care

| The number of children from 3 to 7 |            |                                    |                                    |                      |                     |                        |
|------------------------------------|------------|------------------------------------|------------------------------------|----------------------|---------------------|------------------------|
| Name of the Voivodeship            | In total   | Placed with minor mother or father | Placed because of health condition | Placed with siblings | Placed as emergency | Placed against the law |
| Dolnośląskie                       | 132        | 1                                  | 11                                 | 89                   | 22                  | 18                     |
| Kujawsko-Pomorskie                 | 77         | 4                                  | 11                                 | 46                   | 15                  | 1                      |
| Lubelskie                          | 58         | 0                                  | 2                                  | 39                   | 11                  | 12                     |
| Lubuskie                           | 6          | 0                                  | 0                                  | 5                    | 1                   | 0                      |
| Łódzkie                            | 117        | 3                                  | 5                                  | 91                   | 53                  | 10                     |
| Małopolskie                        | 52         | 0                                  | 10                                 | 28                   | 17                  | 4                      |
| Mazowieckie                        | 44         | 0                                  | 2                                  | 37                   | 4                   | 3                      |
| Opolskie                           | 25         | 0                                  | 0                                  | 22                   | 9                   | 3                      |
| Podkarpackie                       | 38         | 2                                  | 3                                  | 31                   | 2                   | 0                      |
| Podlaskie                          | 20         | 1                                  | 1                                  | 10                   | 4                   | 4                      |
| Pomorskie                          | 18         | 0                                  | 0                                  | 17                   | 1                   | 0                      |
| Śląskie                            | 186        | 2                                  | 49                                 | 107                  | 67                  | 14                     |
| Świętokrzyskie                     | 40         | 2                                  | 1                                  | 29                   | 10                  | 4                      |
| Warmińsko-Mazurskie                | 45         | 0                                  | 1                                  | 35                   | 5                   | 1                      |
| Wielkopolskie                      | 37         | 0                                  | 0                                  | 23                   | 9                   | 9                      |
| Zachodniopomorskie                 | 46         | 1                                  | 1                                  | 35                   | 1                   | 10                     |
| <b>In total</b>                    | <b>941</b> | <b>16</b>                          | <b>97</b>                          | <b>644</b>           | <b>231</b>          | <b>93</b>              |



**Table 4.** The number of children from 7 to 10 living in institutionalised forms of foster care

| The number of children from 7 to 10 |              |                                    |                                    |                      |                     |                        |
|-------------------------------------|--------------|------------------------------------|------------------------------------|----------------------|---------------------|------------------------|
| Name of the Voivodeship             | In total     | Placed with minor mother or father | Placed because of health condition | Placed with siblings | Placed as emergency | Placed against the law |
| Dolnośląskie                        | 193          | 0                                  | 10                                 | 123                  | 46                  | 33                     |
| Kujawsko-Pomorskie                  | 150          | 0                                  | 7                                  | 121                  | 19                  | 3                      |
| Lubelskie                           | 78           | 0                                  | 1                                  | 63                   | 14                  | 3                      |
| Lubuskie                            | 47           | 0                                  | 0                                  | 46                   | 1                   | 0                      |
| Łódzkie                             | 150          | 0                                  | 4                                  | 131                  | 40                  | 3                      |
| Małopolskie                         | 109          | 0                                  | 12                                 | 77                   | 19                  | 14                     |
| Mazowieckie                         | 115          | 0                                  | 5                                  | 93                   | 13                  | 3                      |
| Opolskie                            | 73           | 0                                  | 0                                  | 59                   | 19                  | 18                     |
| Podkarpackie                        | 48           | 0                                  | 1                                  | 44                   | 3                   | 0                      |
| Podlaskie                           | 34           | 0                                  | 2                                  | 21                   | 7                   | 4                      |
| Pomorskie                           | 64           | 0                                  | 0                                  | 58                   | 6                   | 0                      |
| Śląskie                             | 288          | 0                                  | 38                                 | 207                  | 87                  | 16                     |
| Świętokrzyskie                      | 66           | 1                                  | 3                                  | 55                   | 7                   | 3                      |
| Warmińsko-Mazurskie                 | 66           | 0                                  | 2                                  | 55                   | 7                   | 0                      |
| Wielkopolskie                       | 99           | 0                                  | 5                                  | 78                   | 21                  | 9                      |
| Zachodniopomorskie                  | 142          | 1                                  | 4                                  | 118                  | 8                   | 2                      |
| <b>In total</b>                     | <b>1,722</b> | <b>2</b>                           | <b>94</b>                          | <b>1,349</b>         | <b>317</b>          | <b>111</b>             |

The data show that as of the day of 30 June 2016, there were 3,302 children from 0 to 10 years of age placed in foster care, including 206 children at the age 0-1, 433 children at the age 1-3, 941 children at the age 3-7 and 1,722 children at the age 7-10.

In the Ombudsman's opinion, the state's interference into the life of a family and deciding upon placing a child in foster care, out of the biological family, should be the last resort and may take place only when the child's well-being

is at risk. Pursuant to the Act of 09 June 2011 on family support and foster care system (Dz. U., Journal of Laws of 2016, Item 575 with amendments – hereinafter as “The Act”) the rule is that children taken from their biological families for the time of family crisis should be placed in foster care that is constructed as a family. In Article 4, point 1 the Act says that “when applying the Act, child’s and family’s subjectivity should be taken into account as well as the child’s right to be raised in a family, and, if being raised up outside family environment is necessary – the right to care and education in family-type forms of foster care (...)” Next, pursuant to Article 95 item 2 and Article 231 of the Act, from the day 01 January 2016, children under 10 cannot be placed in institutional forms of foster care. The Act provides for some exceptions, namely if a mother or father of the child is placed in a given facility or in other extraordinary circumstances, especially when the child’s condition argues for it or when placement refers also to the siblings of the child. Placing a child under 10 in institutional forms of foster care if no conditions as mentioned above occur is against the Act and infringes the child’s well-being.

Circumstances indicated in Article 95 item 2 of the Act under which it is possible to place a little child in institutional form of foster care should be treated absolutely exceptionally and not as a rule by courts and foster care providers, to solve the problem of lack of vacancies in foster families.

As the Ombudsman for Children was informed, there was a numerous group of minors placed against the regulations of Article 95 item 2 of the Act, among the children in institutional forms of foster care. In facilities all across Poland 257 children from 0 to 10 were placed against the Act, including 13 children from 0 to 1, 40 children from 1 to 3, 93 from 3 to 7 and 111 children from 7 to 10 years of age.

When diagnosing the situation of little children the Ombudsman for Children asked the Voivodes for data concerning the number of foster families (non-professional, professional, professional emergency centres, and professional specialist families) that operated in every Voivodeship. Table no. 5 presents the data concerning the number of foster families in particular voivodeship.

**Table 5.** Number of foster families

| Name of the Voivodeship | Non-professional families | Professional families | Professional families providing emergency foster care | Professional specialist families |
|-------------------------|---------------------------|-----------------------|---|----------------------------------|
| Dolnośląskie            | 1033                      | 140                   | 37  | 21                               |
| Kujawsko-pomorskie      | 666                       | 73                    | 30  | 16                               |
| Lubelskie               | 508                       | 64                    | 19  | 5                                |
| Lubuskie                | 455                       | 51                    | 40  | 7                                |
| Łódzkie                 | 911                       | 78                    | 41  | 22                               |
| Małopolskie             | 618                       | 83                    | 66  | 27                               |
| Mazowieckie             | 1240                      | 99                    | 43  | 16                               |
| Opolskie                | 312                       | 25                    | 8   | 4                                |
| Podkarpackie            | 469                       | 65                    | 10  | 13                               |
| Podlaskie               | 271                       | 50                    | 2   | 2                                |
| Pomorskie               | 726                       | 120                   | 57  | 32                               |
| Śląskie                 | 1633                      | 188                   | 59  | 17                               |
| Świętokrzyskie          | 290                       | 19                    | 12  | 4                                |
| Warmińsko-mazurskie     | 544                       | 95                    | 26  | 7                                |
| Wielkopolskie           | 1091                      | 162                   | 51  | 33                               |
| Zachodniopomorskie      | 2410                      | 386                   | 210   | 59                               |
| <b>In total</b>         | <b>13177</b>              | <b>1698</b>           | <b>711</b>  | <b>285</b>                       |

The Report z oceny realizacji ustawy o wspieraniu rodziny i systemie pieczy zastępczej (Report on the evaluation of the implementation of the Act on family support and foster care system) developed by the Koalicja na rzecz Rodzinnej Opieki Zastępczej (Coalition for Family Foster Care) issued in 2015 (available at: [www.koalicja.org](http://www.koalicja.org)). It was also mentioned that in 22 poviats, children were placed in institutions, and there were no children placed in professional family foster care. The following poviats were highlighted in the Report:

**Table 6.** Poviats with no children under professional foster care which place children in institutional forms of care

|                                       | Name of the Voivodeship | Related and non-professional families | Professional foster families | Institutions of foster care | Number of children under foster care |
|---------------------------------------|-------------------------|---------------------------------------|------------------------------|-----------------------------|--------------------------------------|
| Starost's Office Zlotoryjski Powiat   | dolnośląskie            | 47%                                   | 0%                           | 53%                         | 163                                  |
| Starost's Office Grudziądzki Powiat   | kujawsko-pomorskie      | 40%                                   | 0%                           | 60%                         | 115                                  |
| Starost's Office Łęczyński Powiat     | lubelskie               | 76%                                   | 0%                           | 24%                         | 118                                  |
| Starost's Office Łukowski Powiat      | lubelskie               | 54%                                   | 0%                           | 46%                         | 153                                  |
| Starost's Office Radzyński Powiat     | lubelskie               | 71%                                   | 0%                           | 29%                         | 102                                  |
| Starost's Office Włodawski Powiat     | lubelskie               | 80%                                   | 0%                           | 20%                         | 71                                   |
| Starost's Office Łaski Powiat         | łódzkie                 | 79%                                   | 0%                           | 21%                         | 102                                  |
| Starost's Office Rawski Powiat        | łódzkie                 | 56%                                   | 0%                           | 44%                         | 98                                   |
| Starost's Office Wieluński Powiat     | łódzkie                 | 74%                                   | 0%                           | 26%                         | 131                                  |
| Starost's Office Płoński Powiat       | mazowieckie             | 69%                                   | 0%                           | 31%                         | 167                                  |
| Starost's Office Węgrowski Powiat     | mazowieckie             | 71%                                   | 0%                           | 29%                         | 102                                  |
| Starost's Office Głubczycki Powiat    | opolskie                | 64%                                   | 0%                           | 36%                         | 125                                  |
| Starost's Office Kluczborski Powiat   | opolskie                | 63%                                   | 0%                           | 37%                         | 144                                  |
| Starost's Office Leżajski Powiat      | podkarpackie            | 69%                                   | 0%                           | 31%                         | 101                                  |
| Starost's Office Tarnobrzeski Powiat  | podkarpackie            | 52%                                   | 0%                           | 48%                         | 91                                   |
| Starost's Office Białostocki Powiat   | podlaskie               | 62%                                   | 0%                           | 38%                         | 227                                  |
| Starost's Office Zambrowski Powiat    | podlaskie               | 35%                                   | 0%                           | 65%                         | 93                                   |
| Starost's Office Częstochowski Powiat | śląskie                 | 63%                                   | 0%                           | 37%                         | 240                                  |
| Starost's Office Kłobucki Powiat      | śląskie                 | 51%                                   | 0%                           | 49%                         | 114                                  |
| Starost's Office Kazimierski Powiat   | świętokrzyskie          | 32%                                   | 0%                           | 68%                         | 72                                   |

|  |                |     |    |     |     |
|--|----------------|-----|----|-----|-----|
| Starost's Office<br>Opatowski Powiat   | świętokrzyskie | 75% | 0% | 25% | 100 |
| Starost's Office<br>Wolsztyński Powiat | wielkopolskie  | 63% | 0% | 38% | 80  |

Pursuant to Article 756 item 11 of the Act, the administrative unit of poviats or an entity to which this task was assigned under Article 190 are the organizers of foster care. Article 76 item 4 point 1) of the Act says that the organizer of the family foster care is primarily obliged to recruit candidates for professional foster families, non-professional foster families or to run a family children's home. Operations undertaken by the organizer should focus first of all on gaining persons willing to perform the function of a foster family and on supporting the ones that already exist. This task is connected with building a social infrastructure in the poviats that would let the poviats realise the tasks in the field of foster care the poviats were appointed with. To achieve this, the organizer will have to undertake many measures of non-regulatory nature, aimed at promoting institution of foster care in local environment and encouraging persons and families to become foster carers. The types of undertaken measures had not been defined by the legislator, so the organizer would have to be innovative and seek its own ways of recruiting candidates to perform the function of foster carers<sup>880</sup>.

In the opinion of the Ombudsman for Children, it is necessary to develop mechanisms of law that would actually allow to hold organisers of foster care liable in case they do not perform the duties pursuant to Article 76 item 4 of the Act. Currently, the consequences of this inactivity are born only by children. This, according to the Ombudsman, is unacceptable.

The Ombudsman for Children shall verify the data collected from the voivodes, inspecting the situation of children under 10 placed in institutions individually.

According to the information given by the voivodes, the reasons why children were placed in institutions were in particular:

- ▶ Family court decisions which directly decided about placement in institutions or indicated a specific residential institution;
- ▶ Too little number of foster families;
- ▶ Lack of candidates for foster families;

<sup>880</sup> Nitecki Stanisław, Ustawa o wspieraniu rodziny i systemie pieczy zastępczej. Komentarz Published by: Wolters Kluwer 2016

- ▶ Too little number of foster families who would be able to provide relevant care to children requiring special help or special therapies due to their health condition;
- ▶ Child's stay with minor mother or father;
- ▶ Older siblings staying in residential institutions;
- ▶ Emergency measures (lack of available foster families for emergency cases);
- ▶ Insufficient number of specialists who could provide specialist counselling and relevant support to foster families.

## ■ COMMENTS AND CONCLUSIONS:

- 1) According to the Ombudsman for Children, placing little children in institutionalised form of care against the regulations of law infringes the well-being of the child. Circumstances indicated in Article 95 item 2 of the Act under which it is possible to place a little child in institutional form of foster care should be treated absolutely exceptionally and not as a rule by courts and foster care providers, as a means to solve the problem of lack of vacancies in foster families.
- 2) It is the obligation of the starosts – as foster care organisers – to establish new foster families and provide for relevant conditions to develop family foster care in general. It is necessary to develop mechanisms of law that will actually allow to hold organisers of foster care liable if they do not fulfil their obligations arising from the Act.
- 3) Measures must be taken to gain candidates for foster families, especially professional and specialist foster families and families that operate as emergency shelters.
- 4) It is necessary to develop a programme of support and motivation for candidates of foster parents under which they would be provided with specific assistance, as e.g. help in obtaining a place to live and run their foster family, financial support to buy or lease a care for the time of care of children.
- 5) A system of support for the existing families must be developed by developing a coherent programme by self-governments that would define privileges for foster families (for example: exemption from or financial support in paying fees for state kindergartens and crèches, free public transport etc). It is necessary to introduce systemic conveniences and improvement

in access to specialists (also doctors) to allow for immediate diagnosis of and support for a child.

- 6) Regular, cyclical trainings, workshops, integrating meetings need to be introduced for foster families, such that would help them in their every day life and improve access to specialists (pedagogues, psychologists, psychotherapists) to counteract the so called phenomenon of the “burn-out syndrome”.
- 7) Various forms of financial support, tax relieves and benefits for employers must be introduced for creating new working places for persons who are foster carers.
- 8) It is necessary to diagnose the reasons why foster families are dissolved, and to undertake measures to counteract this phenomenon.
- 9) Multi-faceted measures must be initiated, including campaigns that encourage people to become foster parents.
- 10) A series of trainings must be conducted for judges referring to adjudication in line with the child’s well-being and pursuant to Article 4 and Article 95 item 1 and 2 of the Act, which say that little children should be placed in foster families, and Article 103 item 9, which says that a child up to 10 years of age, received in an emergency care facility, should be immediately moved to a foster family.
- 11) It is necessary to educate young people in foster care to build their awareness and openness with respect to family foster care.

The above mentioned comments and conclusions will be presented by the Ombudsman for Children to relevant bodies and institutions responsible for realisation of the tasks mentioned above.

## APPENDIX 14. PERFORMANCE STANDARDS IN OPERATION OF ADOPTION AGENCIES

*Project of the Ombudsman for Children*

### Performance standards in operation of adoption agencies

Developed on the basis of

- 1) The Convention on the Rights of the Child (Dz. U., Journal of Laws, of 1991, No. 120 Item 525 with subsequent amendments)
- 2) Act of 25 February 1964 – Family and Guardianship Code (Dz. U., Journal of Laws of 2015, Item 2082)
- 3) Act of 17 November 1964 – Code of Civil Procedure (Dz. U., Journal of Laws of 2014, Item 101 with later amendments).
- 4) Act of 09 June 2011 on family support and foster care system ( Dz. U., Journal of Laws of 2015, Item 332 with later amendments).
- 5) Ordinance of the Minister of Labour and Social Policy of 09 December 2011 on trainings for candidates for the role of foster carer (Dz. U. Journal of Laws, No 272, Item 1610.)
- 6) Ordinance of the Minister of Labour and Social Policy of 20 August 2015 on the specimen of adoption interview questionnaire and the specimen of the chart of the child, including the records of the case (Dz. U., Journal of Laws item 1303).
- 7) Ordinance of the Minister of Family, Labour and Social Policy of 18 February 2016 on financial reports on performance of tasks in the field of family support and foster care system (Dz. U., Journal of Laws item 213).
- 8) Announcement by the Minister of Labour and Social Policy of 11 October 2013 on the list of adoption agencies authorised to collaborate with central state authorities of foreign countries or organisations or adoption agencies licensed or authorised by those authorities (M.P. Item 850).



- 9) Announcement by the Minister of Labour and Social Policy of 11 October 2013 on appointing an adoption agency competent in keeping a central database of children waiting for adoption (M.P. Item 851).

In order to:

- ▶ help a child who is in foster care, registered to an adoption agency, find a family,
- ▶ provide the child with environment of healthy adoption family who would satisfy the child's mental, physical, social, moral and spiritual needs, one that would shape the child's personality and guarantee the child's correct development, by careful selection of adoptive parents,
- ▶ help the candidates for adoptive parents to take a well-informed decision to adopt a child and be supportive in the post-adoptive period,
- ▶ upgrade the quality of services and standardise the principles of adoption agencies' operation

performance standards in operation of adoption agencies are hereby established.

### **Standards of operation of adoption agencies refer to:**

- 1) The child in adoption procedure.
- 2) The principles of adoption procedure.
- 3) Supervision over the course of personal contact between the child and applicants for adoptive parents by an adoption agency.
- 4) The conditions of adoption inquiry.
- 5) Records kept by adoption agencies.
- 6) Staff, equipment and housing conditions of adoption agencies.

The standards are applicable in adoption procedure of a married couple and of a single person who want to become adoptive parents.

## ■ Part 1

### The child in adoption procedure.

#### General part

- 1) A minor with a settled legal status that allows for adoption can be adopted, only for this minor's sake.
- 2) Adoption takes place only under a decision issued by a court.
- 3) If a child has reached the age of 13, the child must give his or her consent to adoption and be heard by the court.
- 4) The court should hear a child subject to adoption if the child is under 13 but is capable of understanding the idea of adoption.
- 5) By way of exception, the court may adjudicate adoption without the child's consent or without hearing the child, if the child is not capable of giving his or her consent, or when the relation between the child and future adoptive parent indicates that the child believes to be a child of the future adoptive parent and asking the child for consent or hearing the child would be against the child's best interest.
- 6) Adoption results in creation of such a relationship between the child and adoptive parents as is between children and biological parents.
- 7) An adopted child acquires rights and obligations arising from the relationship of blood towards the relatives of the adoptive parents.
- 8) After adoption, the relationship of blood between the adopted child and his or her biological parents cease to exist, as do the child's rights and obligations arising from the relationship of blood towards his or her biological relatives, and the rights and obligations of those relatives towards the adopted child.
- 9) After the court issues a decision on the child's personal contact with the candidates for adoptive parents, the child has the right, at the moment of moving to another place of stay, to take all personal things important for the child, namely mementoes, photographs, toys and other objects the child is emotionally attached to. Adoptive parents should respect the child's decisions in that matter.

- 10) Adoption that results in the adoptee changing his or her current place of residence in the Republic of Poland to a place of residence in another state may take place only if this is the only way the adoptee may be provided with proper family environment.

### Entering a child to an adoption agency

- 11) After the adoption agency receives information about a child that the child may be qualified to adoption, the agency enters the child's data into the Register of Children for Adoption and takes following steps:
  - a) Addresses, depending on the place of stay of the entered child, a provider of family foster care, team for periodical review of the situation of the child placed in an institutional foster care of a manager of a family-type residential institution with a request for submission of the set of opinions, information and records of the child, pursuant to Article 130a of the Act on family support and foster care system, unless the adoption agency already has those opinions, information and records,
  - b) Takes measures to determine and settle the legal status of the child, unless it is already settled, according to submitted documents and information,
  - c) Addresses relevant institution with a request for information and records necessary to assess fully and correctly the situation of the entered child, unless it is already assessed in the submitted records and other documents,
  - d) Establishes a Child's Record (Karta Dziecka) which includes detailed information on the child's legal, family and health condition based on information submitted to the adoption agency, pursuant to Article 164a of the Act on family support and foster care system,
  - e) Based on the collected documents and comprehensive analysis of the child's situation, including the child's consent to adoption if the child has reached the age of 13, or lack of such consent, and after hearing the child, if the child's age and level of maturity allow, makes a decision about qualifying the child or not to domestic adoption, not later than within 30 days from the moment of establishing the Child's Record,
  - f) Qualifies the entered child to domestic adoption, if the adoption is in line with the child's well-being and the best interest of the child,

- g) Prepares a certificate of qualification for domestic adoption and selects an adoptive family that best suits the needs of the child (a specimen of the qualification certificate is attached as Appendix 1 thereto).
- 12) In case the adoption agency cannot establish the Child's Record because there is no information about the child's legal status, the agency addresses relevant adoption agency which keeps a Voivodeship Database (Wojewódzki Bank Danych -WBD) with a request for settlement of the child's legal status.
  - 13) Only children whose legal status is settled may be qualified for adoption. The process of qualification includes:
    - a) Assessment of the child's legal status,
    - b) Psychological and physical health diagnosis,
    - c) Identification of specific needs of the child to find a best-matching family,
    - d) Assessment by a psychologist of the child's potential in building an emotional bond in his/her future family,
    - e) Assessment of the legal status of the child's siblings,
    - f) Analysis of current emotional bonds between the child and close persons by a psychologist,
    - g) A holistic analysis of the child's situation, in order to conclude whether adoption will serve the child's well-being.

### **Introducing the child to the applicants**

- 14) If a child is qualified for adoption, the adoption procedure is a process that secures safe transition of the child from foster care to adoptive family.
- 15) Introducing adoptive parents into the child's life should be carried out in condition of trust, safety, step by step, with due consideration of the child's age and individual aspects.
- 16) The first contact between the child and applicants takes place in presence of adoption agency employee, in a setting that guarantees comfort and sense of safety to the child. It should also take place in the presence of person close for the child.

- 17) Subsequent meetings between the child and the applicants are supervised by the adoption agency employee.
- 18) Such meeting can only take place upon consent of the child's legal carer.
- 19) If necessary, and also if the best interest of the child argues for it, further meetings with applicants may take place in presence of legal/actual carer of the child or a person close for the child.
- 20) The contact between the child and the applicants should be arranged in such way that the child can make personal contact with the applicants.
- 21) If this contact takes place at the place where the child lives, other children in foster care should be cared by their foster carer at that time.
- 22) The number and frequency of child's meetings with applicants before an application for adoption is filed to the court depends on the rate of building mutual relations, easiness of making emotional bonds and the child's readiness to be adopted.
- 23) The adoption agency which qualified the child for adoption informs the legal/actual carer of the child about filing an adoption application to the court, and in case the child was entered to Voivodeship Database – it should also be informed of this fact.
- 24) After the court issues a decision on personal contact of the child with the applicants, they take over personal care of the child.
- 25) Personal contact between the child and the applicants takes place with due respect for the child's rights and needs, in a manner that does not disturb the child's sense of safety.
- 26) Upon applying for adoption to the court, applicants are obliged to remain in permanent contact with the adoption agency which qualified the child for adoption or with an agency which qualified the family and with the legal/actual carer of the child, if it does not stand against the child's well-being.
- 27) Adoption agency takes direct supervision over the contacts between the child and the applicants and makes official reports on the course of meetings.

- 28) Adoption agency makes a report summarising the process of contacts between the child and the applicants and submits it to the relevant court.
- 29) If the applicants do not stay in touch with the agency which qualified the family, the agency is obliged to submit the information on the course of contact between the child and the parents to the adoption agency which qualified the child.
- 30) If a pregnant woman who intends to have her child adopted, points a specific adoption agency, the adoption procedure should be managed by this agency. Otherwise the adoption procedure should be managed by the adoption agency with which the woman collaborated during pregnancy.
- 31) If a pregnant woman who intends to have her child adopted did not collaborate with any adoption agency nor pointed one, the adoption procedure should be managed by an adoption agency located within the territory of the voivodeship where the child lives.

## ■ Part 2

### Adoption procedure and its rules

#### General part

- 32) The adoption procedure includes:
  - a) preliminary diagnosis of the candidates for adoptive parents (applicants)
  - b) training for applicants,
  - c) qualification for applicants,
  - d) selection of applicants to match a child.
- 33) An adoption agency running an adoption procedure is guided by the principle that adoption must serve the well-being of a child and the realisation of the child's right to be raised and to developed in a family, with full respect for the rights of applicants.
- 34) The adoption agency collaborates particularly with actors who provide family-type and institutional foster care and other competent actors in

the field of family support and foster care system, including the coordinator of foster care, provider of family-type foster care and social service units, courts and their supportive bodies, educational institutions, health care centres, churches, religious associations and community networks.

- 35) The adoption agency collaborates with the court, particularly it notifies the court on the circumstances that justify initiation of guardianship proceedings *ex officio*.
- 36) The adoption agency issues relevant opinion upon request of the court.
- 37) The adoption agency provides support and assistance to pregnant women and biological families who want to have their children adopted.
- 38) The adoption agency, upon qualifying the child for adoption, hears the child if the child's age and level of maturity allow to, and, considering any other relevant circumstances, takes the opinion of the child into account. In case the child's carer fails to collaborate, the agency notifies the provider of foster care about it.
- 39) The adoption agency immediately informs the applicants who had adopted the siblings of the child qualified for adoption that is possible to adopt this child, according to their previously submitted declaration on readiness to adopt the siblings of the adopted child.
- 40) The adoption agency, on selecting the applicants, is guided by the principle that the difference in age between the applicant and the child should not exceed 40 years. This principle does not apply in case of adopting siblings subsequently or when one spouse adopts a child of the other spouse.
- 41) The adoption agency selects the applicants that best suit the needs of a child. On selecting applicants, the agency should take into consideration married couples who create a family setting best suitable for the child's needs in the first place, and if it is not possible – single persons.
- 42) The adoption agency gives priority to applicants who had accomplished a relevant training and were qualified by this agency, followed by qualified applicants waiting for adoption in another adoption agency within the territory of the voivodeship, followed by applicants from outside the voivodeship.

- 43) The adoption agency, after the child is entered into the WDB, is monitoring the search for applicants in adoption agencies in the voivodeships in which it resides and in other voivodeships.
- 44) The adoption agency which qualified the child for domestic adoption, immediately notifies the agency that keeps the WDB and the Central Database (CBD) and the adoption agency authorised to run the international adoption procedure and searching for an adoptive family for a child, about any change of the current state of affairs that may have significant influence on the course of the adoption procedure, particularly about making contact between a child and applicants, any applications and requests filed to the court concerning the child or about suspension of the adoption procedure.
- 45) The adoption agency which qualified the child for domestic adoption immediately notifies the agency that keeps the WDB and CBD and the adoption agency authorised to run international adoption procedure and which is searching for international family for the child about the fact that the reason why the adoption procedure was suspended has ceased to exist and that the international adoption procedure may be reopened.
- 46) If the adoption agency has selected the family according to procedure of domestic adoption for a child qualified for international adoption, the agency is obliged to immediately notify the agency which keeps the WDB and CBD and the agency authorised to run an international adoption procedure which is searching for international family for the child about the fact of matching a family to the child.
- 47) If the contact between the applicants and the child are correct, the agency which qualified the child for adoption notifies immediately the WDB and CBD about the need to stop the search for adoptive family for this child.
- 48) The adoption agency sends to the agency authorised to run the international adoption procedure the information about irregularities in collaboration with a foreign licensed adoption organisation, if such occur.
- 49) The adoption agency which qualified the child for adoption and the adoption agency which qualified the applicants determine in collaboration which one of them will supervise the contact between the applicants and the child, until the court issues a decision on personal contact.



- 50) The adoption agency which qualified the child for adoption sends to adoption agency which keeps the WBD and CBD the information about adoption, naming the court, case file number and the date the adoption decision became legally binding.

### Requirements for adoptive parents

- 51) Candidates for adoptive parents must meet requirements listed in the Family and Guardianship Code and the Act on family support and foster care system and provide a guarantee of being the adoptive family for the child at least until the child reaches the age of majority.
- 52) Candidates for adoptive parents may only be persons who have full legal capacity, who fully enjoy their public rights, who have certain personal competences, who can prove that they will perform their parental duties with due diligence and will secure correct development of the child.
- 53) Candidates for adoptive parents must be the guarantee of due diligence in performing their parental duties and their health condition must facilitate this performance.
- 54) A person who has his or her parental authority suspended, is deprived of the parental authority under a legally binding decision, or who was sentenced for intentional crime or intentional tax crime, cannot become the candidate for adoptive parent.
- 55) Candidates for adoptive parents reside within the territory of the Republic of Poland (this does not apply to those candidates who apply for international adoption).
- 56) If married, the candidates for adoptive parents should be his marriage for 3 years.
- 57) The adoption agency informs the candidates for adoptive parents about the adoption procedure and requirements for applicants (specimen of notice for persons who want to adopt – appendix 2).
- 58) Candidates for adoptive parents are obliged to be holders of a qualification opinion and a certificate of accomplished training for applicants, organised by the adoption agency, unless, under regulations of the Act on family support and foster care system, the requirement of mandatory training does not apply to them.

- 59) Candidates for adoptive parents (applicants) should live in economically appropriate setting that allows them to maintain another member of family and to provide proper conditions for the child's development.
- 60) Also the applicants should provide for relevant housing conditions for the adopted child (e.g. a separate room for the adopted child/children).
- 61) Applicants give their consent in writing to participate in the adoption procedure that includes: filing required documents, psychological and pedagogical diagnosis, adoption inquiry, preliminary qualification of the assessed motivation to adopt a child, a training and qualification for adoptive parent and provide all necessary information to the adoption agency.

### The adoption proceedings

- 62) The adoption agency enters persons into the Register of Candidates for Adoptive Parents, who come to the agency and who file the following documents:
  - a) A written application for commencement of adoption procedure,
  - b) A written consent to enter into adoption procedure (appendix no. 3) and consent to personal data processing (appendix no. 4)
  - c) A declaration by the applicants that they are applying for or participating in an adoption procedure in another agency, which one, and, indication of reasons why collaboration with that agency was terminated (appendix 5).
  - d) Full copy of marriage certificate (dated not earlier than 3 months before the application to the adoption agency), if the candidates are a married couple,
  - e) Full copy of birth certificate – if the candidate is a single person,
  - f) Full copy of birth certificates of other children under parental authority of the applicants and living in them in shared household,
  - g) Health certificates confirming that the applicant are healthy enough to provide care of a child,
  - h) Income statement (a Xerox copy of the annual tax declaration – PIT, possibly a certificate of income of a farmer or other type of income),

- i) Information about clear record in the National Criminal Record,
  - j) Copy of the legally valid judgement of divorce or judgement of marriage dissolution – in case of an applicant who was previously married , but the marriage was terminated by divorce or dissolution,
  - k) Declaration by the applicant that he had not been legally deprived of parental authority, this authority was not limited nor suspended (appendix 6),
  - l) Curriculum vitae of the applicant,
  - m) Other documents which may be meaningful, in opinion of the candidate, in the course of the adoption procedure (i.a. additional reviews, opinions, certificates).
  - n) Photographs of the applicants (for example, a family picture).
- 63) In case of subsequent application for adoption, the applicants file again the documents mentioned in p. 62.
- 64) The adoption agency is obliged to enter the applicants to the Register of Candidates for Adoption immediately after they file an application for commencement of adoption procedure, along with documents mentioned in point 62, and start the preliminary assessment procedure.

### Stages of the adoption procedure

- 65) The adoption agency informs about the reasons why the procedure was terminated, at any stage of the adoption procedure and upon written request of the parents.
- 66) In justified cases, the adoption agency may suspend the adoption procedure at any stage.
- 67) The adoption procedure is composed of 8 stages.
- 68) **Stage one** includes:
- a) First interview, presentation of all procedures and requirements for the applicants,
  - b) Filing documents by the applicants according to point 62 above,

- c) Psychological and pedagogical diagnosis and assessment of the candidates' motivation to become adoptive parents,
  - d) Background interview in the place of residence of the candidates for adoptive parents,
  - e) Preliminary qualification of the applicants that allows them to start a training for adoptive parents.
- 69) In case the applicants receive a positive preliminary assessment of the Qualification Commission at the adoption agency, the Commission refers them immediately to the training, as mentioned in point 58.
- 70) In case of negative opinion, the procedure is terminated.
- 71) In case the applicants do not meet the formal requirements pursuant to the regulations of law, the adoption agency abandons the next step of preliminary assessment. In exceptional cases, the adoption agency may conditionally allow the applicants to enter the training mentioned in point 58.
- 72) The Qualification Commission may refrain from qualifying the applicants for the training in case of applicants:
- a) Who are related to the child subject to adoption,
  - b) Who had already adopted the siblings of the child subject to adoption,
  - c) Who provide family foster care to the child subject to adoption, except for persons or spouses who do not meet the requirements for foster families in the scope of necessary trainings, and to whom the court had temporarily entrusted the function of foster family under Article 109 § 2 point 5 of the Family and Guardianship Code,
  - d) Who are applying for adoption of another child, and who had accomplished a training organised by the adoption agency before and hold the relevant certificate.
- 73) In case of adoption by related persons who do not have a domicile in the Republic of Poland, and when adopted, the child would change the place of stay and start living in another country, the adoption agency does not commence the adoption procedure and if such procedure has already

started – the agency suspends it. Documents of adoption are sent to the adoption agency by CBD.

- 74) In case applicants inform they are ready to file an application and documents as mentioned in point 62, the adoption agency should schedule a date of meeting at which the applicants would file all the documents not later than within a month from the moment the applicants inform about their readiness.
- 75) **Stage two** of the procedure refers to applicants who were given a positive assessment of the Qualification Commission and comprises:
  - a) Training for applicants for adoption, according to a curriculum approved by the competent minister for family affairs,
  - b) Certificate of accomplished training (appendix 7),
  - c) Issuance of qualifying opinion by the Qualification Commission (appendix 8).
- 76) In case the qualifying opinion is positive, the applicants move to the third stage of the adoption procedure.
- 77) In case the opinion is negative, the adoption procedure is terminated.
- 78) **Stage three** of the adoption procedure is the time when the applicants are waiting for the child. In this time, the adoption agency analyses personal competences of the applicants to select the best matching family for the child.
- 79) **Stage four** of the adoption procedure includes: selection of applicants for adoptive parents for a specific child, with consideration of the child's individual needs and the care and educational potential of the family.
- 80) On selecting the relevant adoptive family the adoption agency takes into account in particular:
  - a) Applicants' acceptance of the child's background and possible developmental and health deficits,
  - b) reunification of siblings, pursuant to Article 166a of the Act on family support and foster care system
  - c) Personal predispositions of the applicants,

- d) Health condition, family condition, story of life and marriage of the applicants,
  - e) place of living of the candidates and of the biological family,
  - f) Financial potential of the applicants, whether they are capable of securing the child's mental, health, educational and other individual needs,
  - g) The way the applicants will provide care of the child after adoption (i.a.the use of maternity or paternity leaves),
  - h) Age of the applicants,
  - i) The time the applicants have already been waiting.
- 81) After the adoptive family is selected, they are informed about the child's legal status, health and developmental condition, family background, all of which is included in the Child's Record.
- 82) Applicants, having learned this information, can take their time to assess the situation and take their decision whether they are capable of satisfying the child's needs.
- 83) Applicants have the right to refuse to adopt the child as suggested by the adoption agency.
- 84) The Qualification Commission analyses the reasons of the refusal and decides whether to continue the adoption procedure or withdraw the qualification.
- 85) The Qualification Commission's decision on withdrawing the qualification of the applicant is preceded by hearing their reasons why they refused to accept the child selected by the agency.
- 86) After the applicants decide to adopt the child, the adoption agency notifies the legal/actual carer of the child that adoptive family has been found and schedules a date and time of the first meeting between the child and the applicants.
- 87) Applicants are entitled to receive detailed information about the child from the legal/actual carer of the child.
- 88) **Stage five** is about contact between the child and his or her future adoptive family.

- 89) If the applicants uphold their decision to adopt the child, they are entitled to meet the child. This first meeting takes place in a setting friendly to the child and making the child feel safe.
- 90) It takes place in the presence of the adoption agency employee and a person close to the child. If the child's well-being requires so, the employee of the adoption agency may also be present at subsequent meetings.
- 91) **Stage six** includes:
  - a) The procedure of filing an application to the court for adoption and personal contact with the child by the applicants,
  - b) Further meetings with the child until the court issues a decision on personal contact.
- 92) In case the applicants fully accept the child and correct bonds between the child and the future parents are built, the applicants file applications mentioned in point 91a.
- 93) The adoption agency provides assistance in filling the applications mentioned in point 91a and attaches the full set of updated documents, pursuant to the regulations of law.
- 94) After the applications are filed, the applicants meet the child at the place of his stay under foster care until the court issues the decision on personal contact with the child.
- 95) The adoption agency, upon request of the competent court, sends to this court a certificate of accomplished training mentioned in point 58m qualification opinion about the applicants and an opinion on the candidates for adoptive parents mentioned in Article 586 § 4 of the Code of Civil Procedure.
- 96) **Stage seven** is about taking over personal care of the child by the future adoptive parents.
- 97) They take over care of the child after the court issues a decision on personal contact.
- 98) This takes place at the place of their residence.
- 99) An employee of the adoption agency monitors and personally supervises the process of personal contact with the adoptive parents.

- 100) Future adoptive parents are obliged to remain in permanent contact with the adoption agency which qualified the child for adoption or with an agency which qualified the family and with the legal/actual carer of the child, if it does not stand against the child's well-being.
- 101) The adoption agency submits a report on the course of personal contact between the child and the future parents.
- 102) Candidates for adoptive parents may file a declaration in the adoption agency that they are ready to adopt the siblings of the child in the future and may declare that they are willing to receive an information from the agency that it is possible (appendix 9).
- 103) **Stage eight** includes steps to be taken after the court issues a decision on adoption.
- 104) After this decision, the adoption agency is available for the adoptive parents if they need any support or information and encourages them to ask any other adoption agency for help if necessary.
- 105) Help and support for families who have adopted a child in their performance as adoptive parents are defined in the Act on family support and foster care system. It may particularly include:
- a) Organising workshops that upgrade the parental skills,
  - b) Organising groups of support,
  - c) Preparing and sharing information about institutions and specialist centres which offer therapies or support to children and families.
- 106) Adoptive family may stay in contact with persons important for the child before adoption, if it serves the well-being of the child.

### Qualification of the applicants

- 107) After the applicants accomplish their training as mentioned in point 58, the Qualification Commission, based on the collected materials and body of evidence, issues a qualification opinion about the applicants or refuses to give it.
- 108) In the qualification opinion, the Commission may define the age limits of the child who in its opinion, could be adopted by the applicants. In



case they declare their will to adopt more than one child, the Commission should put it in the opinion.

- 109) A refusal to issue a qualification opinion does not mean that the applicants cannot apply for qualification in the adoption agency, if the reason of the refusal has ceased to exist.
- 110) In case there are any doubts as to the positive qualification, in particular if new circumstances and premises occur that may influence the process of adoption, the Qualification Commission may, until the court proceedings pertaining to adoption are closed with a legally binding decision, review its decision and withdraw the previously issued qualification.
- 111) After 3 years from the moment the applicants get the qualification opinion, the Qualification Commission reviews the qualification granted to the applicants. This review consists of a subsequent background interview in the place of residence of the candidates for adoptive parents, and valid health, income and clear criminal record certificates.
- 112) After 5 years from the moment the applicants get the qualification opinion, the Commission reopens the adoption procedure that includes: submission of health, income and clear criminal record certificates, repeated psychological and pedagogical diagnosis and adoption inquiry in the place of the applicants' residence.
- 113) In case the adoptive family applies for adoption of another child, the adoption agency carries out an adoption interview again. The agency gives another psychological and pedagogical diagnosis of the adoptive family, if at least 5 years have passed since the previous diagnosis or any circumstances have occurred that necessitate subsequent diagnosis. Qualification Commission may refer the applicants to a complementary training. The adoptive family submits to the agency updated documents required to open adoption procedure and the Commission carries out a new qualification of the applicants.
- 114) In case of adoption by member(s) of family, the adoption procedure involves the candidate for adoptive parent (relative of biological parents or spouse of the biological parent), as well as the parent of the child and the child. The family is obliged to prepare the child for adoption and discuss the situation of the family with the child.

- 115) The adoption agency, upon request of the applicants, gives them only the documents they had filed in the course of the procedure.

### ■ Part 3

#### **Supervision over the course of personal contact between the child and applicants for adoptive parents**

- 116) The first contact between the applicants and the child takes place in the presence of the adoption agency employee and a person close to the child. If the child's well-being requires so, the employee of the adoption agency may also be present at subsequent meetings.
- 117) Adoption agency takes direct supervision over the contacts between the child and the applicants and takes official reports on the course of meetings.
- 118) Adoption agency makes a summary report on the process of contacts between the child and the applicants and submits it to the relevant court.

### ■ Part 4

#### **The conditions of adoption inquiry**

- 119) An employee of the adoption agency personally carries out a background interview at the domicile of the applicants with the use of questionnaire for adoption inquiry, pursuant to Appendix 1 to the Ordinance of the Minister of Labour and Social Policy of 20 August 2015 on the specimen of adoption interview questionnaire and the specimen of the chart of the child, including the records of the case (Dz. U., Journal of Laws item 1303).
- 120) If a background inquiry had been already carried out earlier by a court appointed guardian at the domicile of the applicants, the employee of the adoption agency, when carrying the inquiry, may use the data obtained by the guardian (entered into the records of the case, particularly with respect to housing conditions).

## ■ Part 5

### Records kept by adoption agencies Registers; Rules and Regulations

- 121) The adoption agency keeps in particular the following registers:
- a) Register of Children Entered into Adoption (specimen – Appendix no. 10);
  - b) Register of Candidates for Adoptive Parents, as mentioned in point 62, (Specimen – Appendix no. 11);
  - c) Register of Certificates of accomplished training for adoptive parents (Appendix no. 12);
  - d) Register of Support and Psychological, Pedagogical and Family Law Assistance and Counselling (specimen – Appendix no. 13);
- 122) An adoption agency has a Rules and Regulations of the Qualification Commission of the agency (specimen – Appendix no. 14);
- 123) An adoption agency with WBD has Rules and Regulation of WBD (specimen – Appendix no. 15);
- 124) An adoption agency with CBD has Rules and Regulation of WBD (specimen – Appendix no. 16);
- 125) An adoption agency may also keep other internal registers and rules and regulations.

## ■ Part 6

### Staff, equipment and housing conditions of adoption agencies

- 126) An adoption agency secures the performance and continuance of the agency's work and guarantees specialist help in adoption and post-adoption procedure.
- 127) An adoption agency has diagnostic tools to examine adults and children, IT equipment, office equipment, audio-visual devices and other tools necessary to perform its tasks.

- 128) An adoption agency enables its employees to participate in trainings, conferences, seminars and other meetings and events about adoption and foster care to upgrade their competences, skills and qualifications.
- 129) An adoption agency provides for housing conditions relevant to perform its tasks, including: a room for psychological and pedagogical diagnosis, training room, a room for diagnosing children and a meeting room for applicants and the child (if possible, with a two-way mirror), an office and back up rooms.

\* See full text on: [http://brpd.gov.pl/sites/default/files/standardy\\_realizacji\\_zadan\\_osrodkow\\_adopcyjnych.pdf](http://brpd.gov.pl/sites/default/files/standardy_realizacji_zadan_osrodkow_adopcyjnych.pdf)

## APPENDIX 15. RECOMMENDATIONS OF THE OMBUDSMAN FOR CHILDREN REGARDING EFFECTIVE INDEPENDENCE GAINING BY CHILDREN PLACED IN FOSTER CARE UNDER A COURT DECISION AND IN OTHER TYPES OF FACILITIES AND BY MOTHERS WHO LEAVE HOMES FOR MOTHER WITH CHILDREN AND PREGNANT WOMEN.

The Ombudsman for Children has analysed many cases and came to a conclusion that not all facilities interpreted the well-being of children they cared of in the right way. The substance of their educational work is adapting and adjusting the children to the life in the facility, and the educational success comes when the minors act in line with the rules and regulations of the facility. This is a completely wrong assumption. This basic misunderstanding results in serious consequences that make performance of tasks appointed to those facilities impossible. To illustrate this, there is a commonly but unfortunately, mindlessly system of “penalties and rewards” used as an educational tool under the rules and regulations. It is worth mentioning here that this solution dates back to 19th century and was taken from the prison system. This “forced” adaptation and adjustment to rigid rules and regulations in many facilities, in connection with insufficient development of social contacts outside brings two kinds of consequences: it teaches children to act conventionally under the rules of the so called false institutional socialisation and disempowers them in their functioning outside the realm of the facility, in open society. This in turn makes them potential charges of other institutions of support, where they get after they leave the facility.

Children who are brought up in such facilities gain a set of features of identity which can be defined as the “identity of a charge under custody”. Hence, they cannot function as regular citizens and take socially accepted roles in private and social life after they leave the facility, as in the time they were being educated there, they were not being prepared to take these roles (the role of a boy or a girl, a friend, a student, young man, young woman and, in the future – a husband, a wife, a father or mother, an employee, a young citizen etc.).

Yet the fundamental mission and the leading role of those facilities should be to teach children how to live an independent, creative and responsible life in a society at large (in family, at work, as a citizen). This is the objective the whole infrastructure, the organisational structure and methodology of work of the facility should be subordinated to.

The only way to achieve it is to reconstruct the philosophy of institutional education into a process of teaching a pupil how to become independent from the very moment the pupil crosses the threshold of the facility, by developing his potentials (talents, predispositions, skills, interests, competences etc.), instead of the previously applied system of comprehensive care and manipulation with his behaviour.

Activities connected with gaining independence by children brought up by various types of facilities should be oriented towards comprehensive diagnosing of their “strong points”, that is their potential. Only this educational basis allows to achieve real educational success. This is the foundation of educational work, which should impose the direction of all pedagogical and custodial activities and measures. This requires from the facilities, on the one hand, a far reaching open-mindedness to external environment, and on the other hand, a change in the formula of working methodology, the substance of which should be to strive for support in cognitive and social development of pupils by accustoming them to extra-institutional social networks that provide positive “teaching situations” in a society at large.

In the Ombudsman for Children’s opinion, this need to implement a modern and suiting social needs and following the contemporary pedagogical thought mission (principles and standards) of facilities in the field of making their pupils independent arises not only from the disappointing educational results of the facilities, but, first of all, is a sign of responsibility of the “world of adults” for the “world of children and youth” and inherent obligation resting with the adults to improve the social, cultural and moral condition of the young generation of Polish people.

Another important argument to bring these changes into life should also be the noticeable disproportions and differences of infrastructural, organisational and methodical nature between the facilities themselves. Hence the urgency to define both the modern role of facilities that would properly perform their tasks and the basic standards in making the pupils independent so that there appears a model that meets expectations and satisfies needs of today’s society, and follows the current state of pedagogical sciences.

## **I. Recommendations for poviats as administrative units performing tasks related to independence gaining by pupils of various facilities, arising from the act on social welfare and the act on family support and foster care system**

- 1) To develop a local system of support for pupils in the process of becoming independent (e.g. To establish regional offices of independence gaining which would coordinate the pupils entering into real life).
- 2) To organise trainings about the role of a carer in the process of independence gaining (his duties and responsibility).
- 3) To regularly upgrade the competences of carers (including supervision).
- 4) To make the service professional – professional carers in the poviat’s “system of independence gaining”. To verify candidates for carers by a coordinator of the programme of independence gaining and a team for periodical review of the child’s situation (in case of a pupil of a residential institution).
- 5) To define a maximum number of pupils for one carer (3 persons).
- 6) Including the facilities in the offer of other local institutions (e.g. work agency, to inform the facility about job offers, internships, trainings, seasonal works for pupils), the department of housing (cooperating with housing cooperatives to find apartments for pupils who are becoming independent).
- 7) To build a mentoring system (volunteered by adults) for young people who are becoming independent.

## **II. Recommendations for facilities which support their pupils in their becoming independent**

- 1) To check the needs of the child (also hear his or her opinion in that field).
- 2) To keep a register of the pupil’s potential which must be developed, diagnosed and considered in the process of independence gaining:
  - a) Mental skills,
  - b) Physical fitness and predispositions (including the need to teach a healthy lifestyle),

- c) Intellectual skills,
  - d) Social skills,
  - e) Cultural skills,
  - f) Task and vocational skills,
  - g) Self-service skills.
- 3) To develop a Programme of Independence Gaining consulted with the pupil, independence carer and educator to define the pupil's needs- and potential-oriented programme. The programme should include a plan of activities, also information for the child what kind of support the child might expect and where (which institutions);
  - 4) To train in supporting youth in the process of independence gaining, to allow the pupil to develop as a person, to supervise. To provide methodological and psychological support for pupils;
  - 5) To introduce the obligation to pass the Programme to a new carer, if the old one is replaced;
  - 6) To oblige the carer to file a motion for a council flat – if necessary – before the child reaches the age of majority. To introduce the obligation of indicating a date and time of granting the apartment;
  - 7) To introduce the obligation of organising workshops for youth in the field of their rights and shaping social and vocational competences;
  - 8) To take into account in the workplan of the carer the tasks connected with the process of independence gaining by pupils;
  - 9) To intensify the work with the pupil at least a year before he or she leaves the facility.
  - 10) To introduce organisational improvements and changes into local procedures for independence gaining so that young mothers can receive proper support when becoming independent.



**APPENDIX 16. SAFETY AND FUNDAMENTAL RIGHTS AT STAKE FOR CHILDREN ON THE MOVE**

**Safety and fundamental rights  
at stake for children on the move**

**Call for the EU and European Countries to implement a Child Rights Perspective in the Reception of Migrating Children**

APPENDICES

ENOC Taskforce Children on the move 2016

This research was commissioned by the ENOC Taskforce Children on the Move on behalf of the European Network of Ombudspersons for Children (ENOC).

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Amsterdam/Stockholm, 2016.

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## SUMMARY

According to UNHCR, more than 60 million people worldwide are refugees. Half of them are children. These children are a particularly vulnerable group and at risk of violence, abuse, exploitation, trauma and even death. They are in need of specific protection measures, something all European countries have agreed to by ratifying the UN Convention on the Rights of the Child (UNCRC).

During 2015, the number of children coming to Europe to seek international protection increased massively – in 2014, 144,550 children applied for asylum in EU member states, while in 2015 – although there are still major gaps in the information provided by Eurostat – at least 337,000 children were registered as asylum seekers, which amounts to 29% of all asylum seekers. The most significant increase started in June 2015, when refugees changed their main irregular route to Europe from between Northern Africa and Italy to a route from Turkey to Greece. According to UNHCR, in June 16% of all migrants crossing the Mediterranean were children, while by December the number of children arriving by this route was 35%.

Children on the move face many safety risks and concerns and when Europe is not proving able to handle the influx of migrants from a child rights perspective, these risks become even more severe. The European Ombudspersons for Children (ENOC) therefore decided to develop this report, to establish an overview of the current safety risks for children on the move in Europe and of the degree to which they have access to their rights, both while travelling to and through Europe and upon arrival in their country of destination.

Due to the lack of legal opportunities to enter the EU to apply for asylum, almost all children use irregular routes, facilitated by smugglers, to reach Europe. Some arrive via different land routes from Eastern European states to neighbouring EU member states, but most cross the Mediterranean on small boats, mainly from Turkey to Greece, but also from Northern Africa to Italy.

The sea journey is dangerous for children – about 30% of migrants drowning are children. During the winter, children arrive wet and cold, and many are at risk of hypothermia, causing different illnesses, including pneumonia. Volunteers working at the shores in Greece are now reporting children dying of hypothermia upon arrival. Babies and small children are particularly vulnerable.

On the route through Europe children face several risks – some children are separated from their parents during the journey, mainly at chaotic border con-

trols, some children are at risk of sexual abuse and violence at the different transit centres. The transit and reception centres on the Western Balkans route are of a poor standard, lacking basic sanitation facilities and are not properly winterized. Unaccompanied children are particularly vulnerable and face an increased risk of becoming victims of trafficking and sexual exploitation. Many unaccompanied children do not want to disclose to the authorities that they are children, due to fear of being put in locked child protection facilities, unable to continue their journey to northern Europe. Many children, both unaccompanied children and children travelling with their families, are being extorted by smugglers, including threats against family members still in the country of origin or in refugee camps. Due to Western Balkans countries closing their borders for other nationalities than Syrians, Afghans and Iraqis, children are now being left stranded in Greece, trying to find alternative routes to get to northern Europe.

Unfortunately, the risks for children on the move do not stop when they reach the country of destination. Some states do not have a system for legal guardianship for unaccompanied children, leaving these children without secure adult protection. In other countries the appointment of a legal guardian takes too long. There are reports from various countries of violent actions by locals targeting refugee children, but also of violence between child refugees. The low proportion of girls arriving makes them a particularly vulnerable group. Many countries also report on children going missing from the reception centres, becoming at risk of being victims of trafficking or exploitation. Many countries allow children to be placed in detention, sometimes for several months, in facilities that are rarely designed to be child-friendly.

Another concern for children in destination countries is the housing situation, which has deteriorated in many states due to the increase of refugees in 2015. Upon arrival, children are placed in emergency shelters, designed to accommodate refugee children for just a few days. However, in most countries children stay in these facilities for weeks or even months, without the possibility of receiving education, having any form of privacy or taking part in leisure activities. Almost all states fulfil basic needs like proper food and clothing. While access to physical health care appears to be covered, children are less likely to receive psychological care should they need it.

The right to information and the right to be heard are not sufficiently protected. These rights are important for the fulfilment of practically every other right children on the move should enjoy. A child that is left in the dark about what will happen to him or her next will not be able to prosper or make informed

choices. Of equal importance is for adults around the child to listen to what he/she says and wants, which helps to prevent children from going missing from the system. Securing these rights is therefore vital for the protection of and assistance to children on the move.

An analysis of the European response to the increased influx of migrants reveals that Europe is failing to address these issues. While border control and other measures to restrict immigration are at the top of the agenda for both the EU as well as individual countries, actions to protect children are not taken. The EU Agenda for Migration, guiding the EU institutions and Member States in handling the influx, mentions only a single action regarding children, which is placed in a footnote. Also, from a child rights perspective, the actions taken by individual states are worrying, in particular the restrictions possibilities for family reunification that many states have announced.

Although the main legal instruments within the European asylum and migration system include references to the UNCRC and child-specific regulations, child rights, in particular the best interest of the child, are not being implemented. Some children are also almost invisible in EU policies, including children arriving with their family, children not applying for asylum and stateless children.

To ensure children on the move and the risks they face are put on the European agenda and that specific actions targeting these children are taken to ensure their rights are respected, ENOC urgently calls on the European Commission to develop a **comprehensive EU action plan for all migrant children**.

The EU and all its member states should also ensure the following:

### **1. Prioritize children in the EU relocation scheme**

It was decided in September 2015 that 160.000 people will be relocated to the different member states. As children are among the most vulnerable groups, they should be prioritized in this relocation scheme.

### **2. Make better use of legal opportunities to enter the EU**

This includes, for example, increasing the possibilities for family reunification, increasing the resettlement quotas and issuing humanitarian visas.

### **3. A child rights perspective in humanitarian aid**

The conditions for financial assistance to third countries should include a child rights perspective, such as ensuring the right to education and having child protection systems in place. This applies in particular the aid provided by the EU to Turkey in accordance with the action plan agreed to on 15 October and 29 November 2015.

#### **4. Set minimum standards for reception and transit centres**

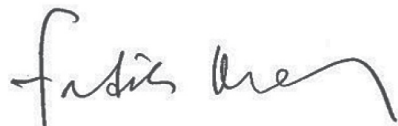
Reception and transit centres should be made winter-proof (winterized) without delay. Subsequently, the EU and the European Council should develop minimum standards for emergency reception and transit centres, and provide assistance to member states and non-EU countries to meet those standards. This includes provision of heating, warm water, warm clothing, food and practical and medical assistance by trained workers. Child-friendly spaces should be guaranteed as well as child safeguarding protocols. These standards should be a guiding principle for the Hotspots that will be set up in Italy and Greece.

#### **5. Comprehensive data collection**

In order to improve conditions for children on the move, it is essential that comprehensive data is collected and shared at the European level. Data should be disaggregated based on age, gender and country of origin, and unaccompanied children should be visualised.



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## INTRODUCTION

Due to ongoing armed conflicts, civil war and repression in several countries in the Middle-East and Eastern Africa, the number of people seeking international protection in Europe has risen dramatically over the past years. Among them are many children. Refugee children, and children on the move in general, have always been at increased risk of violation of their rights. The increased number of refugees entering Europe has worsened their situation, as services in many countries are overstretched.

There is little doubt that the influx of asylum seekers into Europe will remain high over the coming year. Many Syrians realise that the war in Syria is not likely to end in the near future. Instability in Iraq and Afghanistan has only increased. Syrians who sought refuge in neighbouring countries are now travelling further, as they have too few opportunities to work, get education and build a new future for themselves. Afghani boys based in Iran are being sent to fight in Syria by the Iranian authorities<sup>1</sup>. The situation in many countries in East Africa and the Horn of Africa remains unstable as well<sup>2</sup>. Even though the majority of refugee children seek protection in other parts of their own country or third countries in the region, the number of immigrants in Europe will remain large compared to previous years.

As independent ombudspersons and commissioners for children, ENOC members aim to protect the fundamental rights of children in Europe. Children on the move are children first and foremost. Every European country has ratified the UN Convention on the Rights of the Child (UNCRC), and has thereby taken up the obligation to protect the rights of all children residing within its territory, independent of their nationality or legal status. The Convention sets out the basic rights for all children on a signatory state's territory, all of which are relevant to children on the move. The four general principles<sup>3</sup> of the UNCRC should guide all actions and decisions regarding children. The UNCRC also has specific provisions related to this group of children: Article 22 ensures the rights of children seeking refugee status or that are considered to be a refugee; Article 10 sets out that State Parties shall consider requests for family reunification in a positive, humane and expeditious manner where a child is separated from

<sup>1</sup> Based on interviews with advisors from UNHCR.

<sup>2</sup> UNHCR Subregional operations profile – East and Horn of Africa

<sup>3</sup> Article 2 – non-discrimination; Article 3 – best interest of the child; Article 6 – the child's right to survival and development; and Article 12 – the child's right to be heard

his/her parent/s; Article 37 states that deprivation of a child's liberty shall only be used as a measure of last resort and for the shortest possible time.

With respect to unaccompanied and separated children, Articles 19 and 20 are also of particular relevance, ensuring that a child separated from his or her parents is given special assistance (Article 20) and, while in such care, is protected against violence and abuse (Article 19). Article 35, protecting children from trafficking, as well as Optional Protocol number 2 to the UNCRC on the sale of children, child prostitution and child pornography, are also highly relevant for children on the move. The Committee on the Rights of the Child published a General Comment on unaccompanied and separated children<sup>4</sup> describing how the rights of these children must be ensured by State Parties, including issues related to family reunification, age assessment and detention. Other General Comments of particular interest for children on the move are the General Comments on the right to be heard<sup>5</sup> and the one on the assessment of the best interest of the child<sup>6</sup>.

As ENOC warned in 2013 in a public position statement, European countries fail to fulfil this obligation<sup>7</sup>. Children on the move may experience violence, trafficking, trauma and death, and the vast majority do not have full access to their rights. The purposes of the statement included laying down recommendations for child-friendly reception, the training of personnel dealing with children, age assessment in the child's best interest, independent guardians for unaccompanied and separated children, and the need for alternatives for detention. Most importantly, it stressed that the best interests of children on the move should be treated as a primary consideration in all actions and decisions affecting them. In an accompanying statement, ENOC members appealed to the European and international community to help Syrian children in refugee camps in order to avoid a humanitarian catastrophe<sup>8</sup>.

Two years later, despite various efforts from governments and European and international institutions, the situation of these children remains critical. For that reason, ENOC formed the taskforce 'Children on the move' at its 19th Gen-

<sup>4</sup> General comment no. 6 – Treatment of Unaccompanied and Separated Children Outside Their Country of Origin (2005)

<sup>5</sup> General comment no. 12 – The right of the child to be heard (2009).

<sup>6</sup> General comment no. 14 – on the right of the child to have his or her best interests taken as a primary consideration (2013).

<sup>7</sup> ENOC position statement on "Children on the move" 2013.

<sup>8</sup> ENOC Joint Statement on 'Urgent help required for Syrian children in refugee camps to avoid humanitarian catastrophe', 2013.

eral Assembly in The Hague in September 2015<sup>9</sup>. This taskforce monitors the fulfilment of the rights of children on the move in Europe, acting on behalf of the 41 European ombudspersons and commissioners who are members of ENOC. It is comprised of ENOC members from the following countries or regions: The Netherlands (chair), Sweden, Flanders, Wallonia, Croatia, England, Greece, Italy, Malta, Poland and Catalonia. The taskforce commissioned research in order to identify the main safety risks and concerns about access to rights for children on the move. This report is the first product of this joint research. The focus of this report is on the situation for two groups of children who seek international protection in Europe: those who are still travelling to and through Europe and those who have recently arrived in their destination country. Many safety risks also apply to other groups of children on the move, such as poverty migrants and children who were granted or refused international protection. Incidentally, mention will be made of issues that apply specifically to these groups of children, although an in-depth analysis of their particular situation is beyond the scope of this report.

This report was prepared by the offices of the Ombudspersons of The Netherlands (chair) and Sweden. To identify the risks children are facing when travelling to and through Europe to seek international protection or escape poverty, we gathered information mainly by interviews with officials and advisors of institutions and organisations including the European Commission, other EU agencies, the Council of Europe, IOM, OHCHR, UNICEF, UNHCR, ICRC, Save the Children, SOS Children's Villages International and Terre des Hommes, as well as a member of the European Parliament. ENOC members have also visited transit centres in the Former Yugoslav Republic of Macedonia.

The members of the ENOC taskforce on children on the move and the ombudspersons of Latvia, Lithuania and Estonia conducted research on the situation of children in their countries or regions. The Netherlands' office provided a reporting form to facilitate uniform reporting. This form can be found in Appendix 1. The form contained questions on safety concerns and fulfilment of all essential children's rights, such as access to healthcare and education, the right to information and the right to be heard.

### Outline of this report

The first chapter provides an overview of the main facts and figures concerning children on the move in Europe during 2014 and 2015. Chapter 2 lists the safe-

<sup>9</sup> ENOC Statement on 'Children on the move', 2015.

ty risks that children face while on the road and describes safety risks and the extent to which children have access to their rights in destination countries. In chapter 3, the response to the high influx of migrants by the European Union and European countries is described. Finally, chapter 4 lists the conclusions and recommendations for international and European institutions as well as countries within the Council of Europe.

## 1. ONE THIRD OF THE ASYLUM SEEKERS IN EUROPE ARE CHILDREN

### Chapter Summary

- ▶ There is a lack of reliable data on the number of migrants entering the EU. A particular concern is the lack of reliable information on the number of unaccompanied children and disaggregated information on gender and age.
- ▶ In 2015, over 1 million refugees arrived in Europe across the Mediterranean, 25% of whom were children. 29% of registered asylum seekers are children, according to Eurostat.
- ▶ The number of children arriving by sea is growing – from one in ten in June 2015 to one in three by the end of the year. Organisations providing aid to refugees travelling through Europe reported an increased number of girls and children with disabilities.
- ▶ The number of unaccompanied children has increased dramatically – in 2014, 23,150 unaccompanied children applied for asylum in the EU. In 2015, in Sweden alone, more than 35,000 unaccompanied children applied for asylum.

### 1.1. Refugees in the world

According to UNHCR there were about 60 million refugees in the world at the end of 2014, 50% of whom were children. Most of the refugees, 38 million, are internally displaced people, seeking protection in another part of their home country. 20 million seek international protection, mostly in countries neighbouring their own. Developing countries are host to over 86% of the world's refugees. Turkey is the country hosting the greatest number of refugees, about 2 million, most of whom are Syrian refugees<sup>10</sup>.

In Syria, 13.5 million people are in need of humanitarian assistance and 6.5 million people are internally displaced. In November 2015, 4.3 million Syrians had been registered and were awaiting registration in neighbouring countries – Turkey (2.2 million), Lebanon (1 million), Jordan (630,000), Iraq (245,000) and Egypt & North Africa (128,000)<sup>11</sup>.

<sup>10</sup> Information from UNHCR.

<sup>11</sup> ECHO fact sheet Syria Crisis, November 2015 .

## 1.2 Official data from Eurostat on EU Member States

In Europe there is a huge lack of reliable data regarding the number of migrants (refugees and irregular migrants) entering Europe as a whole as well as the European Union. This is a particular concern regarding children, and specifically unaccompanied children<sup>12</sup>. This was raised already in 2010 by the European Commission in its Action Plan on Unaccompanied Minors<sup>13</sup>. Below is a compilation of the official data available.

Eurostat receives information from the Member States, but these are not always comprehensive and disaggregated on age, gender, country of origin etc. According to UNICEF and UNHCR, some countries do not register unaccompanied children as unaccompanied<sup>14</sup>.

The number of children applying for asylum in the EU has increased very much in 2015 compared to 2014. In 2014 26% of the asylum seekers were below the age of 18, in 2015 this has increased to 29%<sup>15</sup>.

**In 2015, 363,890 children applied for asylum in the EU, accounting for 29% of all asylum seekers.**

According to Eurostat there were a total of 562,680 first time asylum applicants in 2014<sup>16</sup>. Out of these, 144,550 were children<sup>17</sup> (approx. 26% of all), 23,150 of whom were unaccompanied<sup>18</sup>. In its third quarterly report for 2015, Eurostat states that the number of first time asylum applicants had increased

<sup>12</sup> Acaps and Mapaction situation analysis – Transit Country Migrant Crisis December 2015.

<sup>13</sup> COM(2010)213 Final Action Plan on Unaccompanied Minors (2010 – 2014).

<sup>14</sup> IOM and UNICEF Data Brief: Migration of Children to Europe 30 November 2015.

<sup>15</sup> On January 19, data was still lacking for several states for November and December, including for Sweden (December only) which receives the highest number of unaccompanied children in the EU.

<sup>16</sup> Table “Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded)” (migr\_asyappctza) “Asylum\_ applicant”.

<sup>17</sup> Ibid

<sup>18</sup> Table “Asylum applicants considered to be unaccompanied minors by citizenship, age and sex Annual data (rounded)” (migr\_asyunaa).

with 150% compared with the third quarter of 2014 and almost doubled compared with the second quarter of 2015<sup>19</sup>.

In 2015, according to the data available in January 2016, 1,248,365 people had applied for asylum in the EU Member States, 363,890 of whom were children, i.e. 29% of all asylum seekers<sup>20</sup>.

**Table 1.** Asylum applicants July 2014 – December 2015<sup>21</sup>

|                 | Jul.-Sep.<br>2014 | Oct.-Dec.<br>2014 | Jan.-Mar.<br>2015 | Apr.-Jun.<br>2015 | Jul.-Sep.<br>2015 | Oct.-Dec.<br>2015 |
|-----------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| <b>Total</b>    | 181,360           | 203,235           | 208,975           | 233,410           | 440,125           | 365,855           |
| <b>Children</b> | 47,450            | 51,570            | 56,780            | 60,660            | 124,895           | 121,555           |

In the third quarter of 2015, asylum applicants to the EU Member States originated from 149 countries. The main countries of origin were Syria, Afghanistan and Iraq<sup>22</sup>.

The main countries of destination in the third quarter were Germany, Hungary, Sweden, Italy and Austria – overall, these five countries received 75% of all first-time asylum applicants<sup>23</sup>. It is worth noting that according to Eurostat statistics for October and November, Hungary has decreased the number of first-time asylum applicants drastically – from 30,495 in September to 490 in October and 195 in November<sup>24</sup>. Sweden introduced mandatory ID checks on public transportation to Sweden on 4 January 2016<sup>25</sup>, which has led to a decrease in the flow of asylum seekers: in the week before ID checks were introduced (28 December 2015 – 3 January 2016) 2,081 people applied for asylum<sup>26</sup>. Between

<sup>19</sup> Eurostat Asylum Quarterly Report 2015, viewed on 20 December 2015.

<sup>20</sup> Table “Asylum and first time asylum applicants by citizenship, age and sex Monthly data (rounded)” first time applicants, numbers checked on 19 January 2016- for December major countries of destination such as Austria, the Netherlands and Sweden are not included, as well as many other states. Several states are also missing in the information for November.

<sup>21</sup> Table “Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded)” (migr\_asyappctza) “Asylum\_applicant”.

<sup>22</sup> Eurostat Asylum Quarterly Report 2015 viewed on 20 December 2015.

<sup>23</sup> Ibid.

<sup>24</sup> Table “Asylum and new asylum applicants – monthly data (tps00189)”, viewed on 20 December 2015.

<sup>25</sup> Information from the Swedish government.

<sup>26</sup> Information from the Swedish Migration Agency.

4 and 10 January 1,094 people applied<sup>27</sup>, and 930 people applied between 11 and 17 January<sup>28</sup>.

The information in Eurostat's official online database presents a number of problems:

- ▶ The data only includes children who have applied for asylum – other children are invisible in this system
- ▶ Eurostat only presents an annual figure for the number of unaccompanied children (even though several Member States have this information on at least a monthly basis) – some states do not register children as unaccompanied (see below) which leads to a concern that these data could be unreliable
- ▶ The number of children is divided into two groups – under 14 and between 14 and 17 years of age – making it difficult to easily assess how many children have applied for asylum in EU 28+.
- ▶ States are lagging behind in reporting on their data to Eurostat and/or Eurostat is lagging behind in adding the data into the tables. On 19 January 2016, there were data on the number of asylum applicants in December for no more than three EU states and one non-EU state, although the numbers in, for instance, Sweden were available there on 1 January 2016. For several states data was also missing for November<sup>29</sup>.

### 1.3. Information from other sources

Organisations such as UNHCR, UNICEF and IOM collect data both from the governments and from their observations on the route through Europe.

According to estimates from UNHCR 1,014,836 people arrived in Europe by sea in 2015, 25% of whom were children. Of this number, 851,319 arrived in Greece, 153,600 in Italy, 3,592 in Spain and 105 in Malta. The numbers of children arriving in different countries vary considerably: in Greece, about 28% were children, while the ratio for Italy was 11%. The main countries of origin for people arriving by sea are Syria, Afghanistan, Iraq and Eritrea<sup>30</sup>.

**UNHCR estimates that in 2015, 851,319 people arrived by sea in Greece.  
28% were children.**

<sup>27</sup> Information from the Swedish Migration Agency.

<sup>28</sup> Information from the Swedish Migration Agency.

<sup>29</sup> Table "Asylum and new asylum applicants – monthly data (tps00189)", viewed on 19 January 2016.

<sup>30</sup> UNHCR Dashboard Refugees/Migrants Emergency Response – Mediterranean viewed on 7 January 2016.

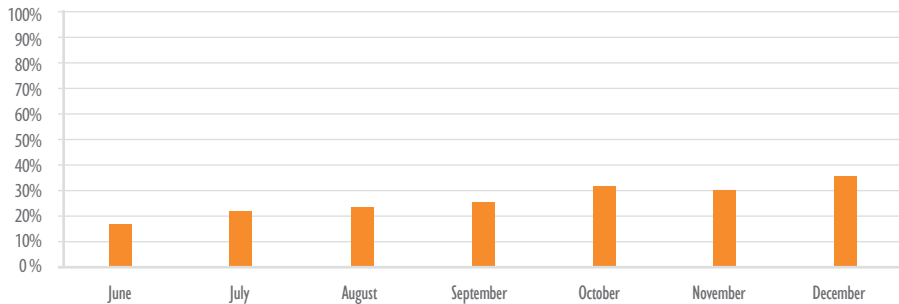


According to IOM and UNICEF<sup>31</sup> the following statistics are available regarding unaccompanied children for 2015:

- ▶ Sweden is the country receiving the highest number of unaccompanied children – according to the Swedish Migration Agency 35,369 unaccompanied children had applied for asylum by the end of 2015<sup>32</sup>.
- ▶ In Norway, 3,800 unaccompanied children had applied for asylum up to and including October.
- ▶ Italy registered 10,820 unaccompanied children arriving by sea.
- ▶ The Former Yugoslav Republic of Macedonia registered 15,000 unaccompanied children crossing the border from Greece between mid-June and late November.
- ▶ It is difficult to get accurate numbers of unaccompanied children or children separated from their parents since the formal registration procedures in some countries do not allow for their identification.

According to UNICEF, more children are now entering Europe as migrants. In Serbia, 35% of the migrants passing through are children, compared to 27% in September. In the Former Yugoslav Republic of Macedonia, this ratio has increased from 23% in September to 37% in December<sup>33</sup>.

**Fig. 1** Increasing share of children among asylum seekers



Source: UNHCR<sup>34</sup>

<sup>31</sup> IOM and UNICEF Data Brief: Migration of Children to Europe 30 November 2015.

<sup>32</sup> Information provided by the Swedish Migration Agency.

<sup>33</sup> UNICEF Regional Humanitarian Situation Report #7 11 January 2016: Refugee and migrant crisis in Europe.

<sup>34</sup> Men Women and Children – trends of arrivals to Greece June – 16 Jan 2016, available on UNHCR dashboard

According to UNHCR and UNICEF<sup>35</sup> they can see, based on their observations on the routes, certain trends that the number of unaccompanied girls is rising. UNICEF also reports on more children with disabilities. The only trend that is certain is that the number of children has increased<sup>36</sup>.

## 2. THE SYTUATION FOR CHILDREN OF THE MOVE

### Chapter summary

- ▶ Children on the move face major safety risks on their journey to and through Europe.
- ▶ These risks include illness and even death, trafficking, separation from parents, extortion by smugglers and exploitation and abuse.
- ▶ European countries and institutions are clearly failing to protect children on the move during their journey.
- ▶ Although living conditions are fair to good in regular asylum centres, there are concerns about conditions in reception and transit centres along the route and emergency centres in destination countries.
- ▶ In destination countries, the lack of legal guardianship and the fact that children go missing from the system are profound problems.
- ▶ The majority of children have access to healthcare and education, but in many countries, newly arrived children remain deprived of these rights.
- ▶ Some states put migrating children in detention for weeks or months in

This chapter explores the risks children on the move face when travelling to and through Europe, as well as in the country of destination.

The possibilities of entering the EU legally for migrants, including children, are limited due to the visa requirements<sup>37</sup> and the sanctions for carriers<sup>38</sup> established within the Schengen Agreement<sup>39</sup>.

The main possibility for children from a third country to legally enter the EU is through family reunification. The EU directive on family reunification makes it

<sup>35</sup> Information provided in interview for this study by advisers at UNICEF and UNHCR

<sup>36</sup> Based on interviews in Geneva on 14-15 December 2015 with advisers from UNICEF, UNHCR; Save the Children, OHCHR, Terre des Homme, IOM and ICRC.

<sup>37</sup> Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

<sup>38</sup> Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985.

<sup>39</sup> Information from DG Migration and Home Affairs.

possible for non-EU nationals, including refugees, to reunite with family members residing in EU Member States<sup>40</sup>. Until now, family reunification has been the main legal route to the EU for children – 208,515 children were given residency permits on this ground<sup>41</sup>. In an attempt to stem the influx of refugees many states have now declared that they will restrict the possibilities of family reunification (see chapter 3 on the EU's response for more information), something that will infringe the right of the child to be with his/her parents and most likely will force more children to take the dangerous irregular routes to enter the EU with the help of smugglers.

Another possibility for refugees to enter the EU legally is through resettlement, where displaced individuals in clear need of international protection, are transferred to a safe country on submission of UNHCR. In 2014, 3,030 children were given protection in one of 15 EU Member States through this possibility<sup>42</sup>. The Council of European Union agreed on 20 July 2015 to a resettlement scheme, giving 20,000 refugees the possibility to protection in the EU Member States as well as Iceland, Norway and Liechtenstein<sup>43</sup>.

Humanitarian visas are another legal entry channel, which has been used by 16 EU Member States and most often on an exceptional basis<sup>44</sup>.

## 2.1 Safety risks for children travelling to and through Europe

Due to the limited possibilities to enter the EU, children seeking international protection make use of irregular routes, which subjects them to a number of safety risks. Most children enter Europe by boat from Turkey to Greece. They then continue their journey to the northern European states through the Western Balkans route<sup>45</sup>, re-entering the EU in Croatia or Hungary, and via Austria

<sup>40</sup> Council Directive 2003/86/EC on the right to family reunification.

<sup>41</sup> Table First permits issued for family reasons by reason, length of validity and citizenship (migr\_resfam) viewed on 20 December 2015.

<sup>42</sup> Resettled persons by age, sex and citizenship Annual data (rounded) (migr\_asyresa) viewed on 20 December 2015.

<sup>43</sup> Council of the European Union 11130/15 Conclusions of the Representatives of the Governments of the Member States meeting within the Council on resettling through multilateral and national schemes 20 000 persons in clear need of international protection.

<sup>44</sup> European Parliament Study for the LIBE Committee Humanitarian visas: option or obligation? 2014.

<sup>45</sup> Greece-the Former Yugoslav Republic of Macedonia-Serbia-Croatia (Hungary)-Slovenia-Austria.

to Germany<sup>46</sup>. Most of those who continue take the boat to Sweden or travel by train or bus through Denmark to Sweden<sup>47</sup>.

The main focus of this research is on safety issues within European territory, as covered by ENOC members. Many of these risks also concern children who are still in third countries. All children are vulnerable, but some groups are of particular concern. UNICEF has, through its operations in the field along the route through Europe, identified five groups of children at increased risk:<sup>48</sup>

- ▶ Babies and small children.
- ▶ Children with disabilities and special needs.
- ▶ Lost children.
- ▶ Stranded children.
- ▶ Unaccompanied adolescents on the move.

### Illness and death

The main risk for children travelling to Europe to seek international protection is the dangerous journey across the Mediterranean. UNHCR estimates that in 2015 3,771 people died or went missing during a sea crossing to Europe<sup>49</sup>. According to IOM, more than 30% of all deaths in the Aegean Sea were children<sup>50</sup>.

**There are reports of babies dying of hypothermia after landing.**

The journey across the sea in ill-equipped boats is detrimental to children's health. Many migrants arriving are wet and cold, some children are suffering from hypothermia and are at risk of developing pneumonia, and there are reports of babies dying of hypothermia after landing. Many organisations have reported on the lack of coordination and immediate support at the shores in Greece<sup>51</sup>. Most reception centres are usually situated inland, at a considerable distance from the shore where migrants enter Greece. For example, in Lesbos early in the summer of 2015 migrants had to walk 70 km to the reception centre, although a number of NGOs provided transport for at least children

<sup>46</sup> UNHCR Dashboard Refugees/Migrants Emergency Response – Mediterranean.

<sup>47</sup> Information from the Swedish Migration Agency.

<sup>48</sup> IOM and UNICEF Data Brief: Migration of Children to Europe 30 November 2015.

<sup>49</sup> <http://data.unhcr.org/mediterranean/regional.php> viewed on 7 January 2016

<sup>50</sup> IOM and UNICEF Data Brief: Migration of Children to Europe, 30 November 2015

<sup>51</sup> Interviews with Save the Children, UNHCR, OHCHR, ICRC

and families<sup>52</sup>. Meanwhile the UNHCR provides full transport to the reception centre.

**In Lesbos, migrants have to walk 70 km from the beach to the reception centre.**

Another issue that has been highlighted by various organisations is the fact that conditions are even harsher now that it is winter. Many organisations<sup>53</sup> highlight the winter period as a major concern for children on the move. The cold seawater increases the risk of hypothermia. It is more difficult to get warm and dry once out of the water. Many refugees do not have adequate clothing for the weather conditions they are travelling in and routes are becoming muddy and wet. All of these factors increase the risk of serious disease among refugees, especially for babies and small children. The situation of children travelling through Europe is even more problematic because transit centres are not adequately equipped for the winter season. The UNCHR informed us in mid-December that, depending on the country, only 22% to 45% of available accommodation had been “winterized”<sup>54</sup>.

**In mid-December 2015, only 22% to 45% of the transit centres in Europe had been “winterized” .**

### Poor accommodation in reception and transit centres

In addition to the problems with winterization mentioned above, there are several other problems in reception and transit centres<sup>55</sup>:

- ▶ Reception and transit centres are often of a poor standard, lacking basic sanitation facilities like hot water and proper toilets.
- ▶ Children do not receive sufficient healthcare.

<sup>52</sup> Interviews with Save the Children.

<sup>53</sup> Unicef Unicef Serbia Save the Children and Save the Children Acaps & MapAction, as well as information from interviews with advisors from Terre des Hommes, SOS Children’s Villages International and UNHCR.

<sup>54</sup> On December 18, 2015, 45% of available accommodation in Serbia had been winterized, while in FYRoM and Slovenia, respectively, 30% and 36% of available winter accommodation had been winterised. In Croatia, winterisation activities reached 22%.

<sup>55</sup> Information provided by Save the Children, UNHCR and OHCHR, Greece’s Ombudsman for Children, SOS Children’s Villages International.

- ▶ Children may have to stay in these centres for a long time, lacking basic protection (such as access to social services) and rights (such as access to education and access to a guardian for unaccompanied children).
- ▶ For children in families, the centres often lack a child-friendly space and/or play area.
- ▶ Some of the centres for unaccompanied children are locked facilities to prevent children from leaving.

### Separation from family

Along the route, there have been numerous instances of children being separated from their parents, some as early on in their journey as Turkey, some on their journey through Europe. Many of the separations have occurred in chaotic situations at or just across borders:

- ▶ When people enter a boat to Greece, smugglers do not think about keeping families together but push as many people as possible into a boat and sail off the minute it is full, sometimes leaving a parent or a child behind<sup>56</sup>.
- ▶ When people are crossing borders there have been several chaotic situations where children and parents have become separated. The fear that the border might close soon, as was the case with the Hungarian border in mid-September, may push families to travel at a pace that children cannot keep up with<sup>57</sup>. It has happened at such occasions that the parents made the choice to cross the border without the child, hoping that their child would be reunited with them when arriving at the border<sup>58</sup>.
- ▶ At some borders, authorities or NGOs are providing transport to a registration centre or the next border, and in those instances there have been incidental cases of family separation<sup>59</sup>:
  - There have been cases of families being split up as they were waiting in line to board buses.
  - In some cases, transportation was only provided for women, girls and younger boys, leaving fathers and older boys to walk to the next border.
  - Different buses have been provided for women and children (for boys up to a certain age) and for men and older boys, sometimes arriving at different border crossings.

<sup>56</sup> Information provided in interviews with advisors from UNHCR and ICRC.

<sup>57</sup> Information from UNHCR, SOS Children's Villages International.

<sup>58</sup> Information from interviews with advisors at UNHCR.

<sup>59</sup> Information provided by advisors at UNHCR and ICRC.

The ICRC is working on restoring family links throughout Europe. They have set up a specific website called Trace the Face<sup>60</sup>, where parents or children can, with the assistance of volunteers from the Red Cross, submit a notification of a missing person. This can be done right at the border crossings with the use of tablets. According to ICRC the number of separations has decreased in the later part of the autumn.

## Trafficking

Many different actors have highlighted trafficking over the past years as a significant risk for children in general and unaccompanied children in particular while travelling through Europe. Trafficking can occur for various exploitative reasons, but sexual exploitation is the most common form of trafficking in Europe. Girls are also particularly vulnerable to falling victim to traffickers, which is one of the reasons why there are fewer girls than boys entering Europe unaccompanied.

According to several sources there has been an increase in trafficking following the mass influx of migrants into Europe over the summer and autumn of 2015<sup>61</sup>. Some sources<sup>62</sup> talk about a sharp increase, although it is very difficult to estimate the total number of trafficking victims. Most cases are not reported, meaning police records do not reflect reality. Children arriving in Europe accompanied by family also fall prey to traffickers – sometimes the adults claiming guardianship of the child do not have a family link, but are in fact the trafficker. Sometimes children are being trafficked by an extended family member they are travelling with. Children who are separated from their family en route are at a greater risk of falling victims to traffickers<sup>63</sup>.

## Extortion by smugglers

Some children and families (as well as other migrants) are allowed to travel to and through Europe for free by the smugglers, on the understanding that they have to pay for the assistance upon arrival in their country of destination. To ensure that the migrants actually pay, smugglers often threaten to harm family members in their home country or refugee camps retributions, such as mar-

<sup>60</sup> Trace the Face.

<sup>61</sup> Interviews with advisors at the European Commission, Save the Children, IOM, UNHCR and UNICEF.

<sup>62</sup> Information provided by an official within the European Commission anti-trafficking unit, receiving information from several organisations.

<sup>63</sup> Information provided by an official within the European Commission anti-trafficking unit.

rying a sister off to someone in the smuggler's network. This makes the child fearful, and also forces the child to do whatever it takes to be able to pay the smuggler, including prostitution, stealing and begging<sup>64</sup>.

### Sexual exploitation and sexual abuse

Apart from the risk of trafficking, children travelling through Europe are also at risk of becoming victims of sexual exploitation and sexual abuse. Some children need money to continue their journey through Europe, and one way is to resort to prostitution. Children could also fall victim to other people exploiting them for sexual purposes. Some children are also sexually abused on the journey through Europe, for example in camps and transit facilities where children and adults are in the same facilities and even sleep in the same rooms<sup>65</sup>.

### Children stranded in Greece

Several organisations have highlighted the fact that children, as well as other migrants, have been stranded in Greece in the last months of 2015, living in parks in Athens. For some, this is due to a lack of funds to continue their journey, and they stay in Athens trying to find ways of earning money to continue. These children are at great risk of falling victim to trafficking, different forms of exploitation, not least sexual exploitation, begging, stealing, drug dealing, etc<sup>66</sup>.

Other children are stranded due to their nationality – the Former Yugoslav Republic of Macedonia has closed its borders to anyone who is not from Syria, Afghanistan and Iraq, leaving all other nationalities who want to continue through Europe stranded in Greece<sup>67</sup>.

This might lead to children seeking new, risky ways to continue their journey.

### Rejection or avoidance of protection

Child protection has become a challenge for the different organisations working in the area of migration, as well as for governments, due to the uncommon nature of the migrant flow. Migrants currently arriving in Europe do not want the kind of assistance the organisations are used to from their work in

<sup>64</sup> Information from interviews with advisors at IOM and UNHCR.

<sup>65</sup> Information from interviews with advisors at UNHCR and UNICEF.

<sup>66</sup> Information from interviews with advisors at UNHCR and UNICEF.

<sup>67</sup> UNICEF Refugee and migrant crisis in Europe Regional Humanitarian Situation Report # 4, 24 November 2015.



conflict-hit areas in other parts of the world. Migrants coming to Europe have a clear goal with regard to their country of destination<sup>68</sup>. They are very eager to keep on moving on their route to the country of destination and there are stories of women giving birth and continuing just an hour later and of individuals bleeding but refusing medical assistance<sup>69</sup>.

**There are reports of children burning or scratching their fingertips in order to make it difficult for the authorities to take their fingerprints and be registered in EURODAC.**

As far as children, and in particular unaccompanied children, are concerned many do not want to disclose that they are children when entering Europe in Greece or Italy. If they do, many are taken by the national authorities, placed in child protection systems (sometimes in locked facilities) and could be forced to participate in family reunification schemes. They pretend to be adults to be able to travel on. Only after they reach their country of destination, they will reveal their real age<sup>70</sup>. There are also some anecdotal reports of children burning or scratching their fingertips in order to make it difficult for the authorities to take their fingerprints and be registered in EURODAC<sup>71</sup>.

This unprecedented behaviour from refugees poses new challenges for governments, authorities and organisations wishing to provide protection and assistance to children and families. The fact that children are not registered and go missing from the systems makes it difficult to protect them and keep track of their whereabouts. What is the best interest for a child who wishes to continue his/her journey instead of being enrolled in a child protection system, which might include being placed in a locked facility? Is it to force the child into the system, with the risk of detention and/or dangerous attempts to escape, or is it to let the child continue his/her journey with the risk of falling victim to smugglers, traffickers or exploitation? And how can local aid workers convince parents to take a break for a night or two on their journey in order to let their children rest and maybe receive much needed medical attention?

<sup>68</sup> Information from interviews with advisors UNHCR, UNICEF, Save the Children.

<sup>69</sup> Information from interviews with advisors at UNHCR.

<sup>70</sup> Information from interviews with advisors at UNHCR, UNICEF, Save the Children.

<sup>71</sup> Information provided by Anna Maria Corazza Bildt, member of the European Parliament, as well as by participants at a meeting at the Fundamental Rights Agency in December 2015.

## 2.2. Safety risks, concerns and access to rights in destination countries

Once children have arrived in their country of destination, depending on their background, reasons for migration and the procedures in that particular country, a long journey may still await them. When residing in a destination country, whether children are granted international protection or not, it is crucial that they have full access to their rights. As a bare minimum, children need to have a roof over their heads, be safe, well-nourished and receive appropriate clothing. Unaccompanied children must have a legal guardian appointed to them. It is also essential that children are not placed in migration detention and that dragged-out disputes in case of the slightest doubt about a child's age are avoided, as this is known to be detrimental to a child's wellbeing and development. Importantly, Europe cannot be satisfied with simply meeting these minimum standards. In order to prosper and develop, children need a child-friendly environment, opportunities for play and leisure, education, accessible and high-quality health services and the possibility to influence their own daily lives. A stable and welcoming environment is all the more important for children who have endured so much. The ombudspersons that participated in this research provided information on the extent to which the rights of children seeking international protection in their countries are secured.

### Safety risks

Although most ombudspersons consider the overall safety of children in their destination countries to be fair or even good, there are some severe risks. Like unaccompanied children who are still travelling through Europe, these children are vulnerable to trafficking and exploitation. For instance, in Malta, children who received humanitarian protection up to the age of 18 sometimes go missing shortly before they reach that age. In the United Kingdom (UK), identifying at-risk individuals is not sufficiently developed and therefore measures that could protect these children, such as enhanced foster placement, are not always used. In Greece, many unaccompanied children that are placed in designated centres, stay there for only a few days, after which they disappear to travel further through Europe. Children in Greece who are waiting to be registered face a high risk of experiencing violence or falling victim to people with bad intentions. Greece's ombudsman for children therefore rated the safety of this group to be low. In Sweden, the problem of children going missing has been reported for years.

**Several countries do not have a legal guardianship system for unaccompanied minors.**

A severe risk for unaccompanied children is the lack of legal guardianship systems in some countries. In Belgium, Italy, Sweden, the Netherlands, Lithuania and Latvia there is a more or less effective system for assigning independent legal guardians who support, advice and protect the children under their care. Greece lacks such a system; in Poland, guardians are only responsible for administrative proceedings. In Malta, unaccompanied children are assigned a dedicated social worker who performs many of the tasks of a legal guardian. As the social workers are employed by the organisation responsible for asylum seekers in Malta, they do not qualify for independent legal guardianship. Apart from Northern Ireland, there is no legal guardianship system in the UK. In Estonia, the local government are required to act as a legal guardian for unaccompanied children, but so far no local governments has ever applied for guardianship of a child in court. Countries that do have a legal guardianship system are now dealing with – sometimes severe – delays in the appointment of guardians<sup>72</sup>.

**Several countries report more cases of violence towards asylum seekers, including attacks on asylum centres and arson attempts.**

Tensions between young people from different origins form another potential risk, which can make children feel unsafe and sometimes leads to actual violent behaviour. In addition to that, there appear to be more cases of violence towards asylum seekers in several countries, including attacks on centres for asylum seekers and accompanied children, and arson attempts. The low proportion of girls in relation to boys among unaccompanied children makes them a particular vulnerable group at risk of several safety concerns.

Ombudspersons mention several safeguards that exist to protect children from violence. These include ensuring sufficient staffing, a mandatory background check for staff working with children and providing them with sufficient training, accommodating unaccompanied children in designated facilities and housing families with children apart from single men. Due to the high influx, these safeguards are no longer fully in place in many countries.

<sup>72</sup> This was reported by Sweden, Catalonia, Belgium and the Netherlands.

## Age assessment

Following General Comment No. 6 from the Committee on the Rights of the Child, ENOC is of the opinion that age assessment “should primarily take place on the basis of documentary evidence. When documentary evidence is not sufficient, and in cases of serious doubt about the age of the child, further examination may be conducted as a measure of last resort”<sup>73</sup>. ENOC has further stated that age assessment should involve physical, social and psychological evaluation, that age assessment should be open to appeal and that every person claiming to be a child should be considered and treated as a child until the decision is final<sup>74</sup>.

Over two thirds of the ombudspersons report that in the absence of sufficient documentary evidence a medical examination is carried out. This may consist of a skeletal age assessment only, on the basis of wrist, collar bone and/or dental X-ray imaging. Some countries use a combination of clinical and skeletal medical examination. In Malta, Sweden and Greece, interviews are often part of the assessment as well. In the United Kingdom, medical examination is hardly ever used; instead, the evaluation of a social worker is decisive. The extent to which a social worker is trained and capable to make such an assessment varies.

It is problematic that there is no multidisciplinary approach in most countries to determine the age of individuals claiming to be a child. Other concerns that have been reported include the lack of possibilities for legal remedy, the lack of information that is provided about the procedure and the observation of a number of ombudspersons that individuals whose minority is questioned are treated as adults during the assessment procedure. Italy states that medical age assessment is sometimes conducted in cases where there can hardly be any doubt about the young person’s claim to be a child, and that there have been instances of multiple age assessments for children who moved from Italy to other European countries.

**In Poland, the maximum period that an unaccompanied minor has been detained is 194 days.**

<sup>73</sup> ENOC Statement on children on the move, 2013.

<sup>74</sup> Ibid.

## Detention

In the vast majority of countries there is the legal possibility to place children in migration detention. In some countries, this can only be done on the grounds of age dispute. In other countries, families with children and unaccompanied children may also be detained at the border upon irregular entry, although this can normally be avoided by applying for asylum, as is the case in Latvia. It is also quite common that children who are not granted international protection are placed in detention prior to departure. Children are usually detained for a few hours to a few days.

Some signals from ombudspersons are particularly disturbing. In Poland, unaccompanied children who do not apply for or are not granted asylum may be subject to detention when they reach the age of 15. They are detained for an average period of 60 days, with known extremes of as much as 194 days. Estonia also reports that children have been detained for several months at a time. In Catalonia, if a young person is deemed to be over 18 in an age assessment, this may lead to placement in migration detention. As the age assessment procedure is not sufficiently developed in most countries, there is a general risk that children are treated as adults, including placement in detention when this would not have been permitted if they were deemed to be a minor.

## Provision of basic needs: Housing

Accommodation can be called adequate when it is safe and secure, well-served (water, sanitation, waste management, fuel) and conveniently located near hospitals, schools, etc. Privacy and room for study and leisure become more important when children and families stay in a facility for longer than a few days.

Asylum seeking families are housed in a variety of facilities. The types of accommodation differ to a great extent, both between countries and within the same country. Most countries that receive large numbers of refugees are now operating emergency shelters in addition to the regular centres. Asylum seekers may also be accommodated in small-scale facilities, which is the case in Belgium and the UK. Finally, migrants may for various reasons be placed in detention centres.

Unaccompanied children may be placed in regular and emergency centres for asylum seekers, detention centres, foster care, residential care, supported lodgings in a family house or semi-independent accommodations. Although place-

ment in foster care and other small-scale lodgings would probably be the most desirable for many unaccompanied children, placement in residential care and regular shelters appears to happen more frequently.

Most countries rate the overall quality of housing to be fair, for both children in families and unaccompanied children. However, there are large differences between types of accommodation and even individual facilities. Regular centres generally offer shared cooking facilities, private rooms for families, and common areas for relaxation and study. Normally, regular asylum centres offer adequate opportunities for children to relax and play as well. Facilities in those shelters could be rated as good. A point of concern raised by some ombudspersons is that these centres are often situated outside the local community, far away from schools, hospitals and other facilities. Specialized facilities for unaccompanied children usually offer decent facilities and support for these children, although the quality may differ greatly. Reported concerns include the lack of small-scale and family-like facilities and insufficient monitoring of private fostering arrangements.

**One of the emergency shelters in Belgium is located in an active military basis.**

There are more serious concerns about the situation in emergency facilities. Often, many families sleep on camp beds in large rooms, deprived of any privacy. The majority of these centres do not offer facilities for children to relax and play and few activities for children to participate in. This type of accommodation can be adequate for very limited periods of time, but the reality is that it is common for families to stay there for weeks. In Sweden, which receives most unaccompanied children in both relative and absolute terms, many children are housed in emergency shelters that were designed for a maximum time period of 48 hours. As the country struggles to increase its housing capacity at the rate the influx is growing, unaccompanied children have to stay there for a few weeks to even months. One of the emergency shelters in Belgium is located in an active military basis. With military exercises being carried out daily, this is not exactly a place where children coming from war zones can recover from stress and trauma.

Next to 'regular' emergency shelters, some countries now operate provisional shelters, with even fewer facilities. In Belgium, families waiting to be registered can get a bed in a provisional shelter facility that offers 1000 beds. As – for sev-

eral weeks – the demand for beds has been twice as big, NGOs and individual citizens have offered the remaining 1000 people a place to sleep. There have been cases of children sleeping outside. In the Netherlands, in the second half of 2015 newly arrived families have been hosted in provisional shelters set up by municipalities, mainly sports halls. These shelters are available for 72 hours, after which families are transferred to the next shelter. Many children have had to move seven to eight times within two months, some even eleven times. Occasionally, unaccompanied children have been placed in these provisional shelters as well. These moves are very detrimental for children who come from unstable situations. The government has expressed its desire to end this practice; however, as normal emergency shelters still lack capacity, provisional shelters are still in operation in 2016. In Greece, there are several provisional camps set up by NGOs and volunteers, which are often overcrowded and offer minimal facilities.

Poland, Lithuania, Catalonia and Latvia consider the quality of housing to be good. This may be partially explained by their relatively low influx of immigrants. However, Estonia, which receives relatively few immigrants as well, considers the quality of housing in detention to be poor. The facilities are too narrow and not child-friendly and there is no staff member whose responsibility is to look after unaccompanied children.

### **Provision of basic needs: Nutrition and clothing**

Most countries do not report major problems about clothing and nutrition. In Sweden, in November 2015 children were lacking winter clothing in several emergency shelters. Children receive regular meals with fair to good nutritional value. In regular centres for asylum seekers, residents can usually prepare their own meals in shared cooking facilities. Residents usually prefer this over receiving prepared meals. An essential requirement is that the daily allowance is adequate. In Latvia, asylum seekers receive only €2.15 a day for food and hygiene products and other living expenses, in addition to a food package. As the subsistence wage in Latvia is around €8 per day, this allowance is clearly insufficient. The Latvian office therefore considers nutrition to be poor. Children residing in reception centres upon registration in Greece are dependent on their families and NGOs for nutrition and are therefore at risk of receiving inadequate nutrition.

Clothing may be provided by NGOs, volunteers or government agencies. In many countries, local initiatives were set up by enthusiastic volunteers to collect clothes for refugees. In some cases, companies donate clothes as well.

### Access to health services and services for children with disabilities

All participating countries have investigated access to physical and psychological health services and whether special services for children with disabilities are in place.

Nine ombudspersons rate access to physical health services as good or even very good. Children have legal and effective access to healthcare, usually including secondary care, independent of their or their parents' legal status. Countries that gave the rating 'good' do report a few concerns. As individuals above the age of 18 who do not have legal residence status generally do not have access to non-emergency healthcare, young people lose access to most health facilities when they turn 18. In Estonia, there is a lack of interpreting services in migrant detention centres. Often, use is made of Google Translate or other detainees or professionals working at the centre. This raises clear concerns about medically relevant misunderstandings and patient privacy.

Catalonia and the Netherlands judge access to physical health services to be fair; Greece judges it to be poor to fair and Sweden rates it as poor for unaccompanied children in emergency shelters<sup>75</sup>. In Catalonia, there is a lack of knowledge about specific health issues for refugees and intercultural communication. In the Netherlands, there is a national system for primary care for asylum seekers, but provisional emergency shelters set up by municipalities are exempt from this system. It is doubtful whether residents of such shelters, including children, receive appropriate care. In Greece, children who do not have a residence permit or who have not applied for asylum, are required to pay for their treatment, but treatment is usually not denied. The complexity, bureaucracy and delays characterising immigration procedures, combined with the extent of informal employment, are the major obstacles to immigrants' access to healthcare, as a large share remains uninsured. In Sweden, healthcare for children in emergency shelters is problematic. Many children reported different health problems, both urgent issues, long term illnesses as well as a permanent need for medicines that they had run out of. Few had received care since coming to Sweden. The children were – wrongly – told that they are not entitled to healthcare until their final placement.

<sup>75</sup> Children in regular shelters in Sweden have fair to good access to physical health services.



Problems with access to psychological health services appear to be more widespread. More than half of the ombudspersons mentioned significant problems. In Flanders, the demand for screening of psychological vulnerability and psychological help for children is much greater than the available capacity. It is also worrisome that instead of skilled psychologists, the management of an asylum centre has the final word in whether psychological counselling is indicated. In the UK, mental health services are underfunded and overstretched, resulting in long waiting lists. In Estonia, children in detention receive no psychological health services, while some children would like to receive help. In Catalonia, knowledge about the specific needs of children on the move is lacking.

Perhaps even more importantly, many newly arrived children find themselves in situations that are detrimental to their psychological health. Insecurity about the future, placement in centres that are not well adapted to their needs, a lack of activities during the day, a lack of privacy and interviews being carried out in ways that are not child-sensitive; all of these factors contribute to poor psychological health. While certainly not all children coming from war zones need extensive psychological treatment, they all benefit from a stable and structured environment. The ongoing stress that children may endure in their destination countries is therefore problematic.

**The information about children with disabilities is alarmingly incomplete.**

Most countries report that centres for asylum seekers are adapted to the requirements of people with movement disabilities. A number of countries further state that children with disabilities are legally entitled to special services. We cannot assess at this point whether in practice there are sufficient services available for disabled children on the move to participate in all aspects of daily life. Both the ombudspersons as well as other organisations have little information about the situation of these children, which is certainly alarming<sup>76</sup>.

### **Access to and quality of education**

In general, the majority of countries assess access to education for children on the move to be good. The legal right of children to receive education has been laid down in regulation. Most children go to school, independent of their legal status. However, the situation is different for children who have recently ar-

<sup>76</sup> Information provided by ombudspersons in country reports and by advisors from Unicef.

rived in their country of destination. Especially in countries that received many children in the past year, immediate enrolment in schools is far from guaranteed. In Belgium, the Federal Agency for the Reception of Asylum seekers appears to have issued an instruction not to enrol children in a school if they reside in a temporary location for a short period of time, which can still amount to two months or longer. In the meantime, in once case the Flemish Ministry of Education has organized school classes inside such a transit centre. However in another case about 50 children were still not enrolled in a school after 3 months despite the readiness of a nearby school to enrol them. In the French speaking part of Belgium the demand for education for newly arriving immigrant children exceeds the current capacity of reception classes for non-French speaking newcomers. In the Netherlands, children do not go to school in provisional shelters organised by municipalities. Children in emergency shelters have to wait for weeks or sometimes even a few months before they can go to school. Schools and municipalities that are not experienced with education for newly-entered children, face many practical and bureaucratic challenges to get education organized. Because asylum seekers have to move many times from shelter to shelter, continuity of education is a big problem in the Netherlands as well.

Sweden does not offer education for children in emergency shelters, besides a few hours a week for a language course in some shelters. In the last concluding observations to Sweden from the Committee on the Rights of the Child in 2015, the Committee advised Sweden to “amend its legislation to ensure that children considered as being “in transit” are provided with full access to education”<sup>77</sup>. Children on the move have the right to education within a month after arrival in the municipality they are to reside in during the asylum process. Many municipalities have difficulties in meeting this requirement. In the UK, local authorities with larger numbers of unaccompanied children in their care have difficulties finding enough school places as well.

In Estonia, the situation in detention facilities is alarming. Children in detention do not go to school, nor do they have access to other training or educational services. This used to be the case in Poland as well. The Ombudsman for Children has long advocated that child migrants in detention should have access to educational programmes. In 2014, a provision was included in the new Act on Foreigners which provided for the right to education for these children.

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<sup>77</sup> CRC/C/SWE/CO/4 Concluding observations on the fifth periodic report of Sweden adopted by the Committee at its 68th session (12 – 30 January 2015), Committee on the Rights of the Child, 4 February 2015 paragraph 51.

**Children in migration detention in Estonia do not go to school.**

Both Greece and Italy stress that access to education is problematic for children who are still on their way to their destination country. When children arrive in their country of destination, they have usually been deprived of education for at least the duration of their journey, often weeks to months. Due to armed conflict or a general lack of education facilities in their home country and countries that they have temporarily resided in, there is an education gap of years for many of these children.

Ensuring good quality education for children on the move is quite challenging for a number of reasons. Children do not speak the language, come from different origins, and have different educational levels, even if they are of the same age. The high influx could further complicate the quality of education. Nevertheless, practically all countries rate the quality of education for children on the move as fair or good.

Granting all this, there is room for improvement. The high influx of immigrant children in a number of countries could compromise the quality of education, as it is difficult to find enough experienced teachers. Another concern that applies to several countries is that emergency shelters appear to not have rooms that are suitable for study, nor other facilities such as computers. Interestingly, while some countries state that language is a barrier for high-quality education, others do not agree. They state that, with proper educational methods, it has been demonstrated that it is not necessary for teachers to speak the same language as a child

**Information on the rights of asylum seekers is aimed at adults, not at the children accompanying them.**

**The right to information and the right to be heard**

In its 2013 statement on children on the move, ENOC emphasized that children on the move should, “from their arrival, be provided with specific and comprehensive information on their rights in a language they can understand”. Depending on their age, children on the move should also be consulted about matters that impact their lives and have easy access to professionals in case they

have remarks or complaints. Finally, it is important that professionals working with these children receive adequate training in communicating with them.

Most countries report that information on the rights of asylum seekers is aimed at adults; written information is usually not child-friendly. Parents are expected to transfer the information to their children. Older children may sometimes be informed about their rights, but certainly not in all cases. For this reason, most countries consider the access to information to be just adequate or insufficient. There are some issues complicating communication with adult migrants as well. Interpreting services are available for official proceedings and may also be requested for other matters, but staff at centres usually make use of unofficial interpreters such as residents who speak some English or staff members who speak Arabic to communicate about everyday affairs. A very disturbing signal is reported by the office of Estonia. Most of the interviewed persons that lived in the detention centre, both children and adults, indicated that during their detention and afterwards the police did not inform them about their rights, including the right to apply for asylum, how to apply for legal aid and how to submit an appeal.

Unaccompanied children should be informed about their rights by their legal guardian or other professionals who are assigned to take them in their care. We cannot conclude from the country reports how often this is done and whether the information, if provided, is communicated in a way that the child can understand. There are some concerns that are worth mentioning. In Catalonia, none of the children who were under the protection of the Administration in 2014 and very few in 2015 asked for international protection, while some of them came from countries that are known as source countries of refugees. This raises questions about how these children are informed. In England, Belgium, the Netherlands, Greece and Sweden, the ombudspersons state that the high influx of unaccompanied children on the move has a negative effect on the quality of the information provided. In Sweden, it became clear during field visits that most children had no information about how long they would stay in the emergency shelter, what would happen next and who would take care of them.

In most countries, children could go to an official with remarks and complaints. In Malta and Lithuania, children are assigned social workers that help and coach them, to whom they can also turn with complaints. This is also the case for children on the move in Belgium. However, if they would have a complaint about the social worker, it is unclear whom these children can go to. As unaccompanied children have a legal guardian in Belgium, they have better opportunities to file complaints compared to other children. In the UK, the complaints system

also works better for unaccompanied children than for other children. There is a complaint system operated by UK Visas and Immigration but this is rarely ever used by children. In Sweden, there is a complaints system, but children are not aware of its existence. In a number of countries, children could also submit their complaints to the ombudspersons. However, both Greece's and the Netherlands' ombudspersons for children state that children on the move rarely make use of this possibility. The ombudsman for children in Greece therefore often visits shelters and centres to speak with children living there.

Four ombudspersons state that professionals working with children on the move have received adequate training in practically all cases. The majority of ombudspersons state that training is 'sometimes' adequate. In many countries, professionals working with children in centres for asylum seekers have a degree in social work or a similar degree and are therefore trained in working with children. This is practically always the case for professionals working in centres for unaccompanied children. However, they do not necessarily have training in dealing with children from different cultural backgrounds, children with trauma or unaccompanied and separated children. Professionals within the police, admissions organisation and courts do not always receive adequate training child friendly communication. A final concern is that the high influx of immigrant children in some countries undermines the quality of training of professionals.

### **2.3. Europe's failure to protect and assist children on the move**

In this chapter, we have illustrated that children on the move are subject to many safety risks, including illness, death, trafficking, separation from parents, extortion by smugglers and (sexual) exploitation and abuse. The fact that children on the move are extremely vulnerable to so many and such severe risks proves that Europe is failing to protect children on the move within its territories. The safety situation for children in their destination countries is not as severe. However, trafficking and exploitation are real threats for these children. It is not uncommon that children who are in need of care and protection go missing from the system. Other serious concerns are the lack of a legal guardianship system in a number of countries, the inadequate methods for age assessment and the fact that many children are still being placed in migration detentions, sometimes for several months. Newly arrived children are initially being housed in emergency shelters in several participating countries. In most cases, these shelters are not equipped to accommodate people and especially

children for longer than a few days, but the reality is that many children stay there for weeks or months. While access to physical healthcare appears to be covered, children are less likely to receive psychological care should they need it. However, failure to remove harmful stressors from their environment, such as poor living conditions, are even more problematic. While access to and quality of education is secured for most children on the move in their destination countries, newly arrived children have to wait too long before they can go to school.

The right to information and the right to be heard are clearly not sufficiently protected. We emphasize that securing these rights is important for the fulfilment of practically every other right children on the move should enjoy. A child that is left in the dark about what will happen to him or her next, will not be able to prosper or make informed choices. As policy makers, it is equally important to be informed about what children want. We know that children go missing from the system, but we do not always know why, where they want to go and what they want to achieve, which makes it difficult to protect them. Securing these rights is therefore vital for the protection of and assistance to children on the move.

### 3. THE EUROPEAN FRAMEWORK AND EUROPEAN RESPONSE

#### Chapter Summary

- ▶ From the perspective of child rights, the implementation of the EU asylum instruments is lacking. EU institutions and agencies, as well as the Member States, therefore need to intensify their efforts (including training of all personnel involved with children on the move) to ensure the full implementation of the protection rights guaranteed in both the EU instruments and international human rights law. A new EU Agenda on children on the move is needed.
- ▶ The EU and the Member States have had numerous discussions on how to handle the increase of migration flows to Europe in 2015. There is, however, a total lack of focus on children and a child rights perspective – children are only a footnote in the EU's actions to handle the situation.
- ▶ EU Member States have made many commitments, but the efforts to put them into effect remain few and far between.

- ▶ EU countries have fallen short especially in providing financial and practical assistance to struggling Member States and third countries and in setting up an effective relocation scheme.
- ▶ Many European countries have started a ‘race to the bottom’ in terms of stricter migration laws to keep migrants out of their territories. In the long run, this could interfere with the right to seek international protection and the application of human rights safeguards to the situation of all migrant children.

This chapter provides a brief analysis of the EU legal framework regarding asylum and migration, from a child rights perspective. More information about the international and European legislative framework and actions is available in Appendix 2.

This chapter also reviews the commitment, actions and initiatives taken by the EU institutions and the Member States to respond to the increase of refugees to Europe in 2015. It examines, where possible, to what extent the commitments have been implemented and analyses the responses and its implementation from a child rights perspective.

**Member States have pledged only €575 million of €2,8 billion that was agreed upon to increase assistance to the Middle-East and the Horn of Africa.**

With regard to the refugee situation in the Middle East and Africa it should be mentioned that the Commission and EU Member States have agreed to offer increased assistance to countries in the Middle-East and the Horn of Africa, mainly through financial support.<sup>78</sup>

At the informal meeting of the European Council on 23 September 2015, it was decided that the European Commission would increase its resources devoted to the refugee crisis by €1.7 billion. The Member States would fund another €2.8 billion for the UNHCR, World Food Programme and other relevant organisations (€500 million), the EU Regional Trust

Fund for Syria (€500 million) and the Emergency Trust Fund for Africa (€1.8 billion). In mid-January 2016, Member States have pledged only €575 million,

<sup>78</sup> ECHO Fact Sheet Syria Crisis and European Commission fact sheet on EU SUPPORT to Lebanon and Jordan since the onset of Syria crisis.

a mere fifth of what they were supposed to deliver<sup>79</sup>. Since this report focuses on the situation in Europe, we will not go into further detail on this. It can be concluded from these figures though that the EU is not meeting commitments designed to mitigate the refugee crisis.

### 3.1. The EU asylum and migration policies

Over the years, the European Union has developed a Common European Asylum System (CEAS), ensuring common minimum standards for people seeking international protection in EU Member States. The system includes legislation on who qualifies for protection, access to a fair and efficient asylum procedure, reception conditions and rules on which EU state is responsible for reviewing the asylum application and establishing an asylum fingerprint database (EU-RODAC)<sup>80</sup>. Several other instruments from the EU are also of relevance for children on the move, in particular the Directive for family reunification.

The instruments within CEAS take into consideration international and European human rights standards such as the UN Convention on the Rights of the Child, the Universal Declaration of Human Rights, the Convention on the Status of Refugees, the European Convention on Human Rights and Fundamental Freedoms and the European Union Charter of Fundamental Rights.

There is still room for improvement from a child rights perspective in many of the legal instruments (e.g. regulations on detention and family reunification, exempting unaccompanied children from the Dublin regulation and increased cross border cooperation) and there are areas of concern that need to be addressed in EU legislation, for example the possibilities of legal avenues into the EU for people in need of international protection and revising the Dublin regulation for greater solidarity among Member States.

The European Court of Justice has incorporated a child rights perspective in its judgements. Most important for children on the move is the judgement from 2013 exempting unaccompanied children from the Dublin regulation, regarding the regulations on first asylum country, stipulating that the state where the child is physically present is responsible for reviewing the asylum claim if no family member can be traced in another EU Member State<sup>81</sup>.

<sup>79</sup> Compilation of Member States financial pledges, viewed on 22 January 2015.

<sup>80</sup> Information from DG Migration and Home Affairs.

<sup>81</sup> CJEU C-648/11 *The Queen, on the application of MA and Others v. Secretary of State for the Home Department*, 6 June 2013



The main concern is, however, that the provisions set up for the protection of children on the move are not implemented in practice by the Member States. Many of the interviewees for this study highlighted the lack of best-interest assessments as a major concern and raised the issue that professionals conducting these assessments need training<sup>82</sup>. Initiatives have been taken by the European Commission and different EU agencies<sup>83</sup> on this, but these need to be intensified and all professionals coming into contact with children on the move must receive training on the best-interest assessment, identification of children at risk, in particular those at risk of falling victim to trafficking, and ensuring the child's right to receive information and be heard.

The Commission adopted an Action Plan on Unaccompanied Minors (2010-2014)<sup>84</sup> in 2010, which is based on ten principles to help guide EU institutions and Member States in their future approach towards unaccompanied children. To assist the Commission in implementing the action plan an expert group on unaccompanied children in the migration process was set up in 2011<sup>85</sup>. The action plan ceased to apply at the end of 2014 and has not yet been followed up by a new plan. An evaluation is due in early 2016.

Unaccompanied children have also been the focus in much of the work of the European Parliament. It adopted a resolution in 2013, identifying priority areas for action<sup>86</sup>. Currently the European Parliament is involved in revising the Dublin Regulation to bring it in line with the 2013 Court decision on exempting unaccompanied children from it<sup>87</sup>.

### **“Invisible children” in the European actions**

Children on the move in Europe who are accompanied by their parents/guardians are also protected by the legislative framework in the EU. However, in the discussions at EU level, as well as in different actions taken by the Commission and agencies, these children are forgotten<sup>88</sup> – as if, just because they have

<sup>82</sup> Information from interviews with advisors at the European Commission, Frontex, Unicef, UNHCR, OHCHR, IOM, Save the Children.

<sup>83</sup> For example EASO and Frontex.

<sup>84</sup> COM(2010)213 final Action Plan on Unaccompanied Minors (2010 – 2014)

<sup>85</sup> Register of Commission expert groups.

<sup>86</sup> P7\_TA(2013)0387 European Parliament resolution of 12 September 2013 on the situation of unaccompanied minors in the EU (2012/2263(INI)).

<sup>87</sup> Press release from the European Parliament.

<sup>88</sup> Based on information from interviews with the European Commission, Save the Children, UNICEF.

a guardian, they do not have a need for protection, assistance or attention. There is a risk that the special needs of a child arriving with his/her parents are not identified by the authorities since they leave it to the parents to ensure that the child gets the assistance needed. The parents have the main obligation to secure the child's right to protection and support. However, the parents might not know the child's rights to assistance in the country of destination, or could be traumatized and unable to identify that the child has special needs. It is necessary to have all decision makers and officials, at all levels, from the school up to EU level, focus more on these children, ensuring that their rights are fulfilled.

**Children accompanying their parents, children not applying for asylum and stateless children receive very little attention in EU discussions and policies.**

There is also a lack of focus on children entering the EU not applying for asylum. There are no available statistics on them; therefore we do not know how many there are. However, many states report on children, mainly from northern African countries, coming to the EU to find better education or job opportunities. Some of these children do not apply for asylum, even if they know they are eligible for it, but try to find different ways of making a living and caring for themselves. Many of these children are at risk of falling victim to various forms of exploitation and trafficking<sup>89</sup>.

Another group of children that needs more attention from the EU and its Member States is the increasing number of stateless children entering the EU<sup>90</sup>. In some countries, including Syria, where most refugees come from, the citizenship of a new-born child is based on the father. Due to the war, a lot of children of Syrian mothers are born outside of Syria, in refugee camps, as well as on the journey to/through Europe. It is often difficult for the mothers to prove the fatherhood – maybe the father has already left to seek asylum in Europe, is living in another refugee camp or has been killed – and therefore the child is left without citizenship<sup>91</sup>. According to the UNCRC, every child has the right to his/her nationality, and states shall ensure that this right is fulfilled<sup>92</sup>. In December

<sup>89</sup> Policies, practices and data on unaccompanied minors in the EU Member States and Norway Synthesis Report: May 2015 European Migration Network.

<sup>90</sup> Information from interviews with advisors at Terre des Hommes and OHCHR.

<sup>91</sup> Information from the European Network on Statelessness.

<sup>92</sup> Article 8 UNCRC.

2015, the Council of the EU adopted conclusions on statelessness, where it invited the Commission to launch exchanges of good practices between the Member States, and Member States to appoint contact points for such a platform<sup>93</sup>.

## 3.2. The European response to the increased migration flows

During 2015 the European Union, its Member States, other countries in the region and different actors have had numerous discussions and taken some initiatives to handle the influx of migrants to and the flows of migrants through Europe. Many of these actions raise high concerns from a child rights perspective, something that will be examined below. More information about what the different initiatives and actions entail is available in Appendix 3.

### European Agenda for Migration

The European Agenda for Migration<sup>94</sup> is the main response plan for the European Union. It was published by the European Commission in May 2015 and sets out short- and long- term actions to better manage migration. It includes actions to save lives at sea, set up a relocation system and increase the resettlement of refugees via UNHCR.

**There is only one action specifically targeting children in the European Agenda on Migration. It is placed in a footnote.**

Although at least one in four of all asylum applicants in the EU in 2014 were children<sup>95</sup>, the European Agenda on Migration only mentions children twice<sup>96</sup>. The only action specifically targeting children is placed in a footnote<sup>97</sup> and focuses on a limited group of migrant children entering the EU – unaccompanied and missing children. The agenda is not based on a human rights perspective and actions to reduce the risks children face on their journey to and through Europe are lacking. The lack of child focus is also concerning, bearing in mind

<sup>93</sup> Press release European Council.

<sup>94</sup> COM(2015) 240 final A European agenda on migration.

<sup>95</sup> Table “Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded)” (migr\_asyappctza) First time applicant.

<sup>96</sup> COM(2015) 240 final A European agenda on migration Pages 12 and 16.

<sup>97</sup> COM(2015) 240 final A European agenda on migration Footnote 28.

that Frontex, in its risk analysis for 2015, highlighted children as a particularly vulnerable group and stressed the need for developing specific mechanisms and procedures to tackle the needs of children at all EU external borders<sup>98</sup>.

To implement the Agenda several actions have been agreed upon, however a child rights perspective, or even the inclusion of the word child in the documents, is missing entirely. The relocation<sup>99</sup> and resettlement<sup>100</sup> schemes agreed to by the Member States are highly relevant for children and children should be prioritised in their implementation. It is worrying that the Member States are not living up to their commitments in these cases – of the 160,000 refugees that the Member States decided to relocate as per their agreement of September 2015, mainly from Italy and Greece, only 331 had actually been relocated on 19 January 2016<sup>101</sup>.

**On 19 January 2016, of the 160,000 refugees that would be relocated, only 331 had actually been relocated..**

The action plans agreed to with Turkey<sup>102</sup> and the Western Balkans countries<sup>103</sup> are also lacking a child rights perspective, and do not include any specific actions with regard to children. When implementing the action plan in Turkey, it is highly relevant that attention is paid to child refugees, in particular to ensure that their right to education while in Turkey is fulfilled and that basic child protection needs are met. It could even be argued that the action plan is in violation of article 2 of the UNCRC, considering it only focuses on refugees from Syria, leaving all other refugees residing in Turkey without the support from the EU.

As for the agreement with the Western Balkans countries it is a concern that no specific actions for the protection of children are included, such as ensuring child-specific areas in transit centres, ensuring basic needs are provided at these shelters for children (somewhere warm to sleep, food, hot water for showering, dry clothes), child-friendly spaces, identifying children at risk, reducing the risks of family separation, etc. This is particularly worrying taking

<sup>98</sup> Frontex Annual Risk Analysis 2015, 2015.

<sup>99</sup> Council Decision (EU) 2015/1523 and Council Decision (EU) 2015/1601.

<sup>100</sup> Council Conclusions 11130/15.

<sup>101</sup> State of play Member States' support to relocation mechanism viewed on 19 January 2016.

<sup>102</sup> European Commission press release.

<sup>103</sup> Leaders' Meeting on refugee flows along the Western Balkans Route – Leaders' Statement.

into consideration that, according to UNHCR, at least 28% of migrants passing through on the Western Balkans route are children.

Countries that are overwhelmed by a crisis may trigger the EU Civil Protection Mechanism to mobilise various types of practical assistance<sup>104</sup>. Thus far, Serbia, Croatia, Greece and Slovenia are calling on this support. It is problematic that too few Member States have responded to these calls, resulting in a severe lack of resources to assist migrants en route<sup>105</sup>.

The EU has also begun to set up Hotspots in Italy and Greece, to improve the reception of incoming migrants and to facilitate the relocation scheme. Five hotspot areas have been identified by the Greek authorities and six by the authorities in Italy, but as of 15 December 2015, in both countries only one hotspot is up and running – yet another sign that the EU is struggling to fulfil its commitments<sup>106</sup>. According to officials within the European Commission, the Hotspots, when running properly, should have a child focus and ensure the rights of the child<sup>107</sup>. However, how child rights are fulfilled in the Hotspots is raised as a concern by many actors<sup>108</sup>. The Hotspots have been set up and started their activities without ensuring that child-friendly spaces are in place, that staff is adequately trained in dealing with children and that the relocation system is working. Many actors have highlighted as a serious concern the potential risk that people may be stuck in the Hotspots for a very long time, or even indefinitely, in detention-like facilities<sup>109</sup>.

**The Hotspots have started their activities without ensuring that child-friendly spaces are in place, that staff has training in meeting children and that the relocation system is working.**

<sup>104</sup> EU Civil Protection Mechanism.

<sup>105</sup> Accepted Member States' Support to Civil Protection Mechanism for Serbia, Slovenia, Croatia and Greece, 21 January 2016.

<sup>106</sup> COM(2015) 678 final Communication from the Commission to the European Parliament and the Council Progress Report on the Implementation of the hotspots in Greece; COM(2015) 679 final Communication from the Commission to the European Parliament and the Council Progress Report on the Implementation of the hotspots in Italy.

<sup>107</sup> Based on an interview with an official within the European Commission, responsible for the Hotspots.

<sup>108</sup> Information from interviews with advisors at Save the Children, UNICEF and OHCHR in particular.

<sup>109</sup> Based on interviews with advisors from UNICEF, Save the Children, OHCHR and Terre des Hommes.

The Commission is also earmarking funds specifically for child protection activities for organisations working with children on the move to and through Europe. In December 2015, a decision was taken to provide funding for emergency assistance within the framework of the Asylum, Migration and Integration Fund, which states: “Child protection principles will inform all activities relating to children and UNHCR and activities will be carried out in accordance with child safeguarding policies.”<sup>110</sup>

The Commission also plans to support the main international organisations and one child rights NGO to protect children in migration on EU territory<sup>111</sup>.

Worth mentioning is also that during the winter of 2016, the Commission will hold an internal high level discussion on children on the move<sup>112</sup>.

The European Parliament has had discussions on the migration crisis during autumn 2015 (see more in Appendix 3). Some focus has been on securing the human rights perspective, but not as much on children’s rights in particular. The Inter-group on children’s rights also had a number of discussions about children on the move throughout the year and, together with UNICEF, organized a meeting on enhancing the respect for children’s rights in the EU Agenda on Migration, which took place on 15 January 2016. A “Palermo call for action” was adopted, including ten priorities for the protection of the rights of refugee and migrant children within hotspots, identification points and other measures introduced by the EU Agenda on migration<sup>113</sup>.

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<sup>110</sup> C(2015) 9534 final Annex 1 to the Commission Implementing Decision Amending the work programme for 2016 and the financing for the emergency assistance within the framework of the Asylum, Migration and Integration Fund page 2.

<sup>111</sup> Information provided by the Child Rights Coordinator within the European Commission during an interview on 19 January 2016.

<sup>112</sup> Information provided by an official within the European Commission on 7 January 2016.

<sup>113</sup> Palermo call for action.

**Table 2 A.** failure to act: EU Member States' commitments and results

|  | <b>Commitment (date)</b>   | <b>Result (date)</b>                          |
|--|--|---|
| <b>Financial pledges<sup>114</sup></b> | €2.8 billion to increase assistance to the Middle-East and the Horn of Africa<br>(23 September 2015) | €575 million<br>(22 January 2016)             |
| <b>Relocation<sup>115</sup></b>        | 160,000 refugees<br>(22 September 2015)  | 331 refugees<br>(19 January 2016)             |
| <b>Hotspots<sup>116</sup></b>          | 5 in Greece, six in Italy<br>(29 September 2015)   | 1 in Greece, 1 in Italy<br>(15 December 2015) |

### 3.3. Actions by European governments – a race to the bottom

Many of the states in Europe are now changing their legislation and taking different actions in order to handle the increase of the migration flow and putting pressure on other states to take responsibility for the asylum seekers.

Among EU Member States, Hungary was the first to put up a fence at its border with Serbia<sup>117</sup>, and later on at the border with Croatia, making it almost impossible for refugees to enter the country<sup>118</sup>. Hungary also made it a criminal offence to enter the country illegally. Slovenia has built a fence on its border to Croatia, in an attempt to stop the refugees<sup>119</sup> and Austria has begun to put up a fence on its border to Slovenia, in an attempt to channel the refugees, not stop them<sup>120</sup>. Even if the fences in themselves do not deny the refugee the right to apply for asylum, they make it difficult to enter the state. Countries on the Western Balkans route have also started to restrict the flow by only allowing Syrians, Afghans and Iraqis to continue on the route, returning all other nationalities to the last transit country<sup>121</sup>.

**Hungary made it a criminal offence to enter the country irregularly.**

<sup>114</sup> Financial pledges.

<sup>115</sup> State of Play Member States' Support to Emergency Relocation Mechanism

<sup>116</sup> COM(2015) 678 final Communication from the Commission to the European Parliament and the Council Progress Report on the Implementation of the hotspots in Greece; COM(2015) 679 final Communication from the Commission

<sup>117</sup> Article from Wall Street Journal 15 October 2015.

<sup>118</sup> Article from Reuters 4 September 2015.

<sup>119</sup> Article from the Telegraph about Slovenia 11 November 2015.

<sup>120</sup> Article from The Telegraph about Austria 8 December 2015.

<sup>121</sup> UNICEF Refugee and migrant crisis in Europe Regional Humanitarian Situation Report # 4, 24 November 2015.

Other countries take different measures to prevent asylum seekers from coming. Sweden, which has been accepting the highest number of refugees per capita in the EU several years, as well as the highest number of unaccompanied children in actual numbers of all EU Member States, announced in November 2015 that it is in need of respite in accepting refugees. The Swedish government will therefore introduce a temporary Aliens Act, which only complies with the minimum requirements of international and EU law<sup>122</sup>. Of particular concern, from a child rights perspective, in this proposal is the restrictions in the possibilities for family reunification, including tougher maintenance requirements, as well as the introduction of mandatory medical age assessments. ID checks have also been introduced on all public transportation to Sweden as of 4 January 2016, including sanctions for those carriers not ensuring that all passengers have identity papers. Children travelling with their families are exempted from the ID requirement. However, unaccompanied children are not. And most unaccompanied children entering Sweden do not have ID papers with them. Most unaccompanied children coming to Sweden are from Afghanistan. Out of the 25,000 unaccompanied children from Afghanistan entering Sweden in 2015, only 18 could provide proof of identity<sup>123</sup>. Thus, the introduction of ID checks will be an effective way to decrease the number of unaccompanied children entering Sweden.

Following the announcement by the Swedish government, both Denmark and Norway announced tougher immigration laws. The Danish government has presented a bill to parliament which will allow the state to confiscate assets refugees bring with them to pay for their stay in Denmark. It provides the Danish authorities with the power to search clothing and luggage of asylum seekers<sup>124</sup>. It also presents several restrictions in the asylum regulations, including limited possibilities for family reunification<sup>125</sup>. Norway will also introduce stricter rules for asylum seekers, including lowering the financial support for people living in reception centres and limiting the possibilities for family reunification<sup>126</sup>.

**It seems as if European countries are in a contest to win the title of 'least willing to accept asylum seekers'.**

<sup>122</sup> Information from the Swedish Government.

<sup>123</sup> Information from Swedish Radio 23 December.

<sup>124</sup> Information from the Danish Government.

<sup>125</sup> Information from the Danish Government.

<sup>126</sup> Information from the Norwegian Government.



Other countries are taking other actions, and several EU Member States are opposing the joint agreements on relocation and are highly unwilling to accept asylum seekers in their country. Most recently Austria made a decision to reduce number of refugees with 50%<sup>127</sup>. On 6 January 2016 EU Migration Commissioner Dimitris Avramopoulos hosted an emergency meeting with Sweden, Denmark and Germany, following the introduction of Swedish ID controls on the border to Denmark and the Danish spot checks at the border to Germany<sup>128</sup>.

All in all, it seems as if European countries are in a contest to win the title of 'least willing to accept asylum seekers', introducing border controls and ID checks, pushing refugees down to southern Europe.

One concern with all the actions taken at the moment is that international obligations are forgotten. The restrictions on family reunification many states consider could be in violation with articles 9 and 10 of the UNCRC. The introduction of mandatory medical age assessments can also be questioned from a child rights perspective, bearing in mind General Comment no. 6 from the UN Committee on the Rights of the Child, stating that age assessment shall be "*conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity*"<sup>129</sup>.

The Danish proposal for a new, more restrictive asylum and immigration act have made the Council of Europe Commission for Human Rights raise strong concerns on how this is applicable with Denmark's human rights obligations, in particular as far as the European Convention on Human Rights is concerned. The Commissioner is particularly concerned about the possibilities to increase the use of detention, the restrictions in family reunification and the possibility to seize assets from asylum seekers to cover their subsistence needs<sup>130</sup>.

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<sup>127</sup> Information on 20 January 2016 from DW

<sup>128</sup> Information from EurActive.com.

<sup>129</sup> UN Committee on the Rights of the Child General Comment no 6 Treatment of unaccompanied and separated children outside their country of origin page 11.

<sup>130</sup> Letter from the Council of Europe Commissioner for Human Rights.

The strong rhetoric from different leaders in EU Member States<sup>131</sup> also poses a risk in that it could fuel intolerance, racism and xenophobia in Europe, which is a threat to children, in particular children with a foreign background<sup>132</sup>.

## ■ 4. CONCLUSIONS AND RECOMMENDATIONS

### ■ 4.1. Conclusions

As an identifiable group, children need extra protection and support, something the international community has recognized by adopting, and subsequently ratifying, the UN Convention on the Rights of the Child.

Children on the move are a particularly vulnerable group, and are at risk of various severe fundamental rights violations. It is therefore of utmost importance that when faced with children on the move, signatory states make use of all tools and resources available to them to ensure that these children are protected and taken care of. Particular attention should go to unaccompanied children, who do not have the basic protection of travelling with an adult who can see to the child's protection needs.

Based on the information compiled for this report, we can conclude that children on the move in Europe are at risk of unacceptable safety risks, including trafficking, violence, illness, becoming stateless, separation from their parents and even death. Even after arriving in a destination country, children may still face various risks, including the risk of being placed in detention. Several countries report that unaccompanied children go missing from the centres they live in and face the risk of trafficking and exploitation. Some states do not have a comprehensive system to ensure that unaccompanied children are assigned a legal guardian.

While most destination countries fulfil basic needs such as proper nutrition and clothing and access to physical health care appears to be covered, other rights violations are a daily occurrence in Europe. The best interest of the child

<sup>131</sup> See eg the ad campaign from the Hungarian government, linking refugees to terrorists and the announcement of the Czech president that the refugee influx is an "organised invasion" as well as the statement from the president of the European Council, Donald Tusk, on detaining all refugees for 18 months.

<sup>132</sup> See e.g. Committee on the Rights of the Child Concluding Observations on the combined third and fourth periodic reports of Poland, CRC/C/POL/CO/3-4 October 2015, paragraph 16.

is not assessed nor considered a primary consideration in actions and decisions regarding children on the move, children are not being heard, children do not receive information about what is happening to them, children are deprived of their right to education for far too long, and children have problem in exercising their right to healthcare and rehabilitation, in particular psychological support.

Despite information provided by organisations working on the route through Europe, very few efforts have been made by the states concerned or the European Union to address these issues and implement effective measures to tackle them, and ensure that all children in Europe are protected from all forms of violence and abuse as well as having all their rights, as set out in the UNCRC, respected. Of particular concern is that the European Agenda for Migration, adopted by the Commission in May 2015, basically has no child or child rights perspective. The one action focusing on children concerns unaccompanied and missing children only and, strikingly, is in a footnote.

The actions taken by individual states to decrease the migration flows are also a concern from a child rights perspective. Of particular concern are the restrictions of the possibilities for family reunification that many states have announced. Up until now, since many migrants consider it too dangerous for children, many parents have chosen not to cross the Mediterranean with their children. Instead, one of the parents (usually the father) leaves for Europe to try to get a residence permit and then apply for family reunification. Whilst 2015 showed an increase of children on the move in Europe already, the restrictions of family reunification possibilities will most likely lead to even more children accompanying with their parents. Many actors now warn the European community for more tragic deaths of children on the Mediterranean Sea.

So far the EU has been fairly quiet with regard to the introduction of restrictive laws by member states, except in the case of Hungary, which received a number of questions from the Commission about the introduction of tougher refugee laws<sup>133</sup>. It would be of interest if the Commission and/or the European Court of Justice would review the new legislative proposals from the member states from a human rights perspective, and in particular a child rights perspective, taking into consideration not only EU law, but also the UNCRC.

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<sup>133</sup> Ref. Ares(2015)4109816 – 06/10/2015 and article in EU observer on 13 October 2015.

## 4.2. A call for action

Children on the move to and through Europe today face unacceptable safety risks and concerns, and European leaders must address them now. Children on the move are children first and foremost, and have the same rights to protection and security as all other children residing in European countries. To address the risks children face when travelling to and through Europe, we urge the different actors, including states, regional bodies, UN agencies and non-governmental organisations, to step up to the plate and take responsibility for its international commitments towards children. This needs to be done by all actors involved, including:

- ▶ The EU, by setting legal standards, developing policies and providing funding opportunities;
- ▶ The Council of Europe, by standing up for the human rights perspective and reminding its member states of its obligations;
- ▶ All countries in Europe, by ensuring a child rights perspective in all its actions, ensuring that a comprehensive protection system for these children is in place and increasing, rather than limiting, the possibilities for legal entry into its territory to apply for international protection;
- ▶ The member states of the EU, by showing solidarity and humanity, sharing the responsibility of hosting asylum seekers and ensuring that their applications are reviewed fairly;
- ▶ All professionals meeting children on the move, by ensuring children are seen and heard, are provided with age-appropriate information in a language and format they can understand, and that their own asylum claims are considered.

All states and the European Union should ensure that the rights set out in the UNCRC are fulfilled for all children on the move, and in particular that:

- ▶ No child is discriminated against on the grounds of his/her race, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status;
- ▶ The best interest of the child is assessed and seen as a primary consideration in each and every action or decision regarding a child on the move;
- ▶ The child's right to survival and development is secured, in particular through rescue operations at sea and child protection systems along the route;
- ▶ The child's right to be heard and having his/her opinions be given due weight in accordance with the child's age and maturity in each and every action and decision regarding him/her.

- ▶ The child's right to his/her family is guaranteed and that family reunification for children is dealt with in a positive, humane and expeditious manner, as stipulated in article 10 of the UNCRC.

### 4.3. Recommendations

In order to secure children's rights as set out in the UNCRC, we appeal to the all actors involved to implement the following recommendations:

#### **The European Commission, The European Council and the European Parliament should:**

- ▶ Adopt a comprehensive **EU action plan** on children in migration covering all children on the move, including children who are accompanied by their guardians or other relatives, unaccompanied or separated children, children who do not apply for asylum, children with disabilities, stateless children, and child victims of trafficking. The Action Plan should include preventive measures, measures to protect children travelling to and through Europe and measures to protect children in the destination country and have a clear monitoring and evaluation plan.

#### *Recommendations to prevent risks for children while travelling to Europe*

- ▶ Ensure that the **legal opportunities for children entering the EU to seek international protection are used**<sup>134</sup>. This includes, for example, increasing resettlement quotas, issuing humanitarian visas and expanding possibilities for family reunification. It is particularly alarming that many EU states are taking steps to restrict possibilities for family reunification, thereby closing the main legal entry point for refugee children. In the long term, new ways for refugee children to legally enter the EU should be examined.
- ▶ Ensure a **child rights perspective and child-focused activities are made an integral part of humanitarian assistance to third countries facilitating aid to refugees**, in particular the aid provided by the EU to Turkey in accordance with the action plan agreed to on 15 October and 29 November 2015. This should include ensuring the right to education for all children, establish child-friendly spaces in refugee camps and having child protection systems in place. In all its foreign policy and development aid, the EU and member states should ensure a child rights approach in addressing the root causes for child migration.

<sup>134</sup> See more information in the FRA Toolbox on legal entry channels to the EU for persons in need of international protection, published in 2015.

*Recommendations to prevent risks for children when arriving at the shores in Europe:*

- ▶ Develop **minimum standards for emergency reception** at its external borders and set up a flexible system for European humanitarian response at its borders.
- ▶ Assist Member States to ensure organized reception at landing sites, immediately at the shores.
- ▶ Ensure that the rights of the child, in particular **the right to protection** form a guiding principle when setting up the **Hotspots in Italy and Greece**. Although it is important that the Hotspots are set up swiftly and that their capacity is increased, they should not start operating before having child-friendly spaces in place, all personnel working at the Hotspot have received training in child protection, and ensuring that the relocation system is functioning.

*Recommendations to prevent risks for children while travelling through Europe*

- ▶ **Prioritize children in the implementation of the relocation scheme** agreed to on 14 and 22 September 2015. 160.000 individuals applying for international protection need to be relocated, mainly from Italy and Greece to other member states. Children should be prioritized in the relocation scheme set up by the European Commission in order to prevent the risks children face while en route through Europe. This should include both unaccompanied children and children with their families. A permanent relocation scheme should be set up, where children are a prioritized group.
- ▶ Develop **minimum standards for transit centres** and improve conditions in these centres on the route through Europe by means of support from to Member States as well as Western Balkan states who are not EU Member States (among other measures).

*Recommendations to facilitate better regulation and policy making for children on the move:*

- ▶ Adopt a **new EU strategy on the rights of the child**, to ensure that children's rights are taken into consideration in all actions by the European Union, covering both internal and external affairs.
- ▶ Collect **comprehensive data on children on the move** at the European level. The data shall be disaggregated based on age, gender, whether a child is unaccompanied or accompanied, and whether the child has applied for international protection or not. Data on children victims of trafficking and children who depart from the reception centres in destination countries,

be it voluntary or forced, shall also be collected and shared between the countries and regions.

- ▶ Develop **collaboration between child protection systems** in the different countries on the route through Europe, so that information about children at risk can be shared safely and quickly.

#### **National and regional governments should:**

- ▶ Adopt **comprehensive national action plans on children in migration** covering all children on the move, including children who are accompanied by their guardians or other relatives, unaccompanied or separated children, children who do not apply for asylum, children with disabilities, stateless children, children victims of trafficking. The Action Plan shall include measures for all stages of a child's stay in the country – the first reception, when the child is transiting through the country, and, for children seeking asylum, during the asylum process and what happens after a decision on the application has been made, be it positive or negative for the child, including the possibility to appeal against decisions.
- ▶ Without delay, **assign legal guardians to unaccompanied children**. The guardian should have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child's legal, social, health, psychological, material and educational needs are adequately met, as specified in General Comment number 6 from the UN Committee on the Rights of the Child. In case systems for legal guardians for unaccompanied children are not in place, develop a legal framework for this as soon as possible.
- ▶ **Put an end to detention for children based on legal status**. Detention is only acceptable as a measure of last resort, should be done as briefly as possible and only from a child protection perspective, for example when the child is at risk of falling victim to trafficking and/or exploitation and all other measures to protect the child have been exhausted. Adopt legislation on detention in line with General Comment number 6 from the UN Committee on the Rights of the Child. Ensure that the facilities where children are placed in detention are child-friendly and that their right to education and to leisure activities is fulfilled. Children should never be placed with adults other than their own family members.
- ▶ **Improve conditions in reception, transit and (emergency) asylum centres**. For reception and transit centres, this should include ensuring that centres are winterized, e.g. are heated, have warm water, and that blankets and warm clothing are provided. Basic sanitation must be in place, including separate toilets and showers for men and women. Child-friendly spaces

should be set up and for those staying overnight, there should be separate sleeping areas for men and women and children. Personnel should receive training on identifying children at risk of trafficking or exploitation or who are otherwise vulnerable, and what steps to take to ensure their protection. In asylum centres that host children for longer times, privacy and room for relaxation and study should also be provided.

- ▶ Ensure that **procedures used for age assessments are in line with the requirements stipulated in General Comment number 6** from the UN Committee on the Rights of the Child: age assessments shall not only take into account the physical appearance of the individual, but also his or her psychological maturity. The assessment shall also be conducted in a multi-disciplinary, scientific, safe, child and gender-sensitive and fair manner; avoiding any risk of violation of the physical or psychological integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such.
- ▶ Ensure that **basic rights are fulfilled for each child**, including the right to information, and the right to be heard about decisions concerning his/her life the right to education, the right to healthcare and the right to family life.

## ■ REFERENCES

### International and regional conventions and instruments

- ▶ Universal Declaration of Human Rights, 1948
- ▶ Convention and protocol relating to the status of refugees, 1951 and 1967
- ▶ UN Convention on the Rights of the Child, 1989
- ▶ UN Convention against transnational organized crime, 2000
- ▶ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000
- ▶ General Comment no 6 Treatment of unaccompanied and separated children outside their country of origin, 2005, UN Committee on the Rights of the Child
- ▶ Committee on the Rights of the Child Concluding observations on the fifth periodic report of Sweden CRC/C/SWE/CO/4, 4 February 2015
- ▶ Committee on the Rights of the Child Concluding Observations on the combined third and fourth periodic reports of Poland, CRC/C/POL/CO/3-4 October 2015



- ▶ General comment no 12 – The right of the child to be heard, 2009, UN Committee on the Rights of the Child
- ▶ General comment no 14 – on the right of the child to have his or her best interests taken as a primary consideration, 2013, UN Committee on the Rights of the Child
- ▶ European Convention on Human Rights and Fundamental Freedoms, 1950
- ▶ Council of Europe Convention on Action against Trafficking in Human Beings, 2005

### **European Union instruments and documents**

- ▶ Consolidated version of the Treaty on European Union, 2009
- ▶ European Union Charter of Fundamental Rights, 2000
- ▶ Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement
- ▶ Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985
- ▶ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof
- ▶ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification
- ▶ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification Return Directive
- ▶ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
- ▶ Regulation (EU) 439/2010 of 19 May 2010 establishing a European Asylum Support Office
- ▶ Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third- country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)
- ▶ Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

- ▶ Regulation (EU) No 603/2013 of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large- scale IT systems in the area of freedom, security and justice (recast)
- ▶ Regulation (EU) No 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third- country national or a stateless person (recast)
- ▶ Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)
- ▶ Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)
- ▶ C(2015) 3765 final Annex 1 to the Commission Implementing Decision Annual Work Programme for 2015 for support to Union Actions under the Internal Security Fund – Police cooperation and crime prevention, 8 June 2015
- ▶ Conclusions of the Representatives of the Governments of the Member States meeting within the Council on resettling through multilateral and national schemes 20 000 persons in clear need of international protection, 22 July 2015
- ▶ C(2015) 5385 final Annex 1 to the Commission Implementing Decision concerning the adoption of the work programme for 2015 and the financing for Union actions within the framework of the Asylum, Migration and Integration Fund, 3 August 2015
- ▶ Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece
- ▶ Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece
- ▶ C(2015) 9490 Commission Recommendation of 15.12.2015 for a voluntary humanitarian admission scheme with Turkey

- ▶ C(2015) 9534 final Annex 1 to the Commission Implementing Decision Amending the work programme for 2016 and the financing for the emergency assistance within the framework of the Asylum, Migration and Integration Fund, 15 December 2015
- ▶ P7\_TA(2013)0387 European Parliament resolution of 12 September 2013 on the situation of unaccompanied minors in the EU (2012/2263(INI))
- ▶ P8\_TA-PROV(2015)0176 European Parliament resolution of 29 April 2015 on the latest tragedies in the Mediterranean and EU migration and asylum policies (2015/2660(RSP))
- ▶ Humanitarian visas: option or obligation? Study for the LIBE Committee, European Parliament, 2014
- ▶ COM(2010)213 Final Action Plan on Unaccompanied Minors (2010 – 2014)
- ▶ COM(2011) 60 final An EU Agenda for the Rights of the Child
- ▶ COM(2012) 286 final The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016
- ▶ COM(2015) 240 final A European agenda on migration
- ▶ COM(2015) 453 final EU Action Plan on return
- ▶ C(2015) 6250 final Commission Recommendation of 1.10.2015 establishing a common “Return Handbook” to be used by Member States’ competent authorities when carrying out return related tasks
- ▶ COM(2015) 678 final Communication from the Commission to the European Parliament and the Council Progress Report on the Implementation of the hotspots in Greece
- ▶ COM(2015) 679 final Communication from the Commission to the European Parliament and the Council Progress Report on the Implementation of the hotspots in Italy
- ▶ 30 April 2015 9th European Forum on the rights of the child – Coordination and cooperation in integrated child protection systems – Reflection paper, European Commission, 2015
- ▶ Policies, practices and data on unaccompanied minors in the EU Member States and Norway Synthesis Report: May 2015 European Migration Network, 2015
- ▶ Annual Risk Analysis 2015, Frontex 2015
- ▶ VEGA Handbook: Children at airports, Frontex, 2015
- ▶ Age assessment practice in Europe, EASO, 2013
- ▶ Asylum Quarterly Report 2015 Eurostat, 2015
- ▶ Legal entry channels to the EU for persons in need of international protection: a toolbox, European Union Agency for Fundamental Rights 2015
- ▶ Intelligence Notification 16/2014 Child trafficking for exploitation in forced criminal activities and forced begging, Europol, 2014

### **Judgement from the European Union Court of Justice**

- ▶ CJEU C-648/11 The Queen, on the application of MA and Others v. Secretary of State for the Home Department, 6 June 2013

### **Council of Europe**

- ▶ Information Document SG/Inf(2015)33 14 September 2015 Migration challenges for Europe: need for collective action, Council of Europe, 2015

### **European Network of Ombudspersons for Children**

- ▶ Position Statement on 'Children on the move', ENOC 2013
- ▶ Joint Statement on 'Urgent help required for Syrian children in refugee camps to avoid humanitarian catastrophe', ENOC 2013
- ▶ Statement on 'Children on the move', ENOC 2015

### **UN Agencies**

- ▶ Safe and Sound – what states can do to ensure respect for the best interests of unaccompanied and separated children in Europe, Unicef and UNHCR, 2014
- ▶ Winterization Plan for the Refugee Crisis in Europe November 2015 – February 2016, UNHCR, 2015
- ▶ Regional Humanitarian Situation Report # 4, 24 November 2015 Refugee and migrant crisis in Europe, Unicef, 2015
- ▶ Data Brief: Migration of Children to Europe 30 November 2015, IOM and UNICEF, 2015
- ▶ Regional Humanitarian Situation Report #7 11 January 2016: Refugee and migrant crisis in Europe, Unicef, 2016

### **Interviews**

Interviews were carried out with advisors/officers from the following institutions, agencies and organisations:

- ▶ European Commission
  - ▶ Child Rights Coordination Unit
  - ▶ Office of the EU Anti-Trafficking Coordinator
  - ▶ Unit C2 – Hotspots sector
  - ▶ Unit C1 – Irregular Migration and Return Policy
- ▶ Frontex
- ▶ Fundamental Rights Agency
- ▶ Member of the European Parliament
- ▶ Council of Europe
- ▶ IOM (Geneva office)

- ▶ OHCHR (Geneva office)
- ▶ UNHCR (Geneva and Brussels offices)
- ▶ Unicef (Geneva and Brussels offices)
- ▶ ICRC
- ▶ Save the Children (Geneva and Brussels offices)
- ▶ SOS Children's Villages International
- ▶ Terre des Hommes (Geneva office)

## APPENDIX 1. REPORTING FORM TASKFORCE CHILDREN ON THE MOVE

This reporting form was prepared by the Netherlands. As a minimum requirement, participating ombudspersons have visited a facility for asylum seeking children and have consulted with a local aid or advocacy organization. Most participating ombudspersons have largely exceeded this requirement.

### General information

|   |   |   |   |
|---|---|---|---|
| <i>Country/region</i><br>Click here to enter text | <i>Contact person</i><br>Click here to enter text | <i>Telephone number</i><br>Click here to enter text | <i>E-mail address</i><br>Click here to enter text |
|---|---|---|---|

### Activities conducted

#### 1. Visit to asylum shelter

|   |   |
|---|---|
| <i>Date of visit</i><br>Click here to select a date | <i>Short description of facility</i><br><i>e.g. number of refugees, number of children, type of accommodation (regular or emergency), services provided</i><br>Click here to enter text |
|---|---|

#### 2. Consultation with advocacy/aid organisation

|  |   |   |
|--|---|---|
| <i>Date of consultation</i><br>Click here to select a date | <i>Organisation</i><br>Click here to enter text | <i>Organisation's main activities/expertise</i><br>Click here to enter text |
|--|---|---|

#### 3. Other information sources

If applicable: insert a short descriptions of other information sources that your office has used to come to conclusions about the situation of children on the move in your country. For example, incoming signals at the ombuds hotline.

## SITUATION FOR CHILDREN ON THE MOVE

### 1. Nutrition, clothing and housing

CRC Article 6 – Right to life and development, CRC Article 22 – Refugee children, CRC Article 27 – Right to an adequate standard of living

When parents lack the skills or resources to provide their children with adequate nutrition, clothing and housing, it is the responsibility of the State to step in. Adequate accommodation is safe, well-serviced (water, sanitation, waste management and fuel), secure, healthy and conveniently located near hospitals, schools etc.

|  |  |
|--|--|
| <i>Nutrition: overall judgement</i><br>Choose... | <i>Further explanation</i><br>Click here to enter text |
| <i>Clothing: overall judgement</i><br>Choose...  | <i>Further explanation</i><br>Click here to enter text |
| <i>Housing: overall judgement</i><br>Choose...   | <i>Further explanation</i><br>Click here to enter text |

## 2. Protection from violence

CRC Article 19 – Protection from all forms of violence, CRC Article 32 – Child labour, CRC Article 34 – Sexual exploitation, CRC Article 35 – Abduction, sale and trafficking, CRC Article 36 – Other forms of exploitation, CRC Article 37 – Detention and punishment

ENOC 2013 statement: ‘Right to protection from physical and mental violence, abuse and neglect, as well as from all forms of sexual and all other forms of exploitation, must be carefully taken into account when protecting “children on the move”’

|   |  |
|---|--|
| <i>Safety of Children on the move: Overall judgement</i><br>Choose... | <i>Further explanation (please list most pressing safety concerns)</i><br>Click here to enter text |
|---|--|

## 3. Access to appropriate information

CRC Article 17 – Access to appropriate information, CRC Article 42 – Knowledge of rights

ENOC 2013 statement: ‘From their arrival, all children should be provided with specific and comprehensive information on their rights in language they can understand, as provided in international and national legislative provisions.’

|                                       |  |
|---------------------------------------|--|
| <i>Overall judgement</i><br>Choose... | <i>Further explanation</i><br>Click here to enter text |
|---------------------------------------|--|

## 4. Access to health services and social security

CRC Article 24: Right to health and health services, CRC Article 17 – Access to appropriate information, CRC Article 26 – Social security, CRC Article 23 – Children with disabilities

|   |  |
|---|--|
| <i>Physical health services: Overall judgement</i><br>Choose... | <i>Further explanation</i><br>Click here to enter text |
|---|--|

|  |  |
|--|--|
| <i>Psychological health services: Overall judgement</i><br>Choose...                   | <i>Further explanation</i><br>Click here to enter text |
| <i>Information provided about health services: Overall judgement</i><br>Choose...      | <i>Further explanation</i><br>Click here to enter text |
| <i>Access to social security: Overall judgement judgement</i><br>Choose...             | <i>Further explanation</i><br>Click here to enter text |
| <i>Special services for children with disabilities: Overall judgement</i><br>Choose... | <i>Further explanation</i><br>Click here to enter text |

## 5. Access to education

CRC Article 28: Right to education, Article 29 – The aims of education

All children have the right to education, including children with an asylum status and children seeking asylum. Education services for these children should be tailored to their specific needs.

|  |  |
|--|--|
| <i>Access to education: Overall judgement</i><br>Choose...                           | <i>Further explanation</i><br>Click here to enter text |
| <i>Quality of education for children on the move: Overall judgement</i><br>Choose... | <i>Further explanation</i><br>Click here to enter text |

## 6. Detention

CRC Article 37: Detention and punishment

CRC Article 37(b): ‘The arrest, detention and imprisonment of a child (...) shall be used only as a measure of last resort and for the shortest appropriate period of time.’

ENOC 2013 statement: ‘As a principle, ENOC reaffirms its firm opposition to any form of detention of children, be they accompanied or not, and whatever procedure they are subject to (whether asylum or return to their home country on the first port of entry in Europe.)’



|  |
|--|
| <p><i>Are families with children ever placed in detention (before, during or after the asylum procedure)?</i></p> <p><input type="checkbox"/> Yes<br/><input type="checkbox"/> No</p>  |
| <p><i>Are unaccompanied minors ever placed in detention?</i></p> <p><input type="checkbox"/> Yes<br/><input type="checkbox"/> No</p>   |
| <p><i>Can you give an estimation on how often children are being placed in detention?<br/>Does this occur regularly?</i></p> <p>Click here to enter text</p>   |
| <p><i>What is the average period of time, and what is the maximum period of time (that you heard of) that a child was ever placed in detention?</i></p> <p><i>Average:</i> Click here to enter text<br/><i>Maximum:</i> Click here to enter text</p> |
| <p><i>Further explanation:</i></p> <p>Click here to enter text</p>   |

## 7. Right to leisure, play and culture

CRC Article 31 Right to leisure, play and culture

ENOC 2013 statement: ‘ “Children on the move” are children first.’

Children on the move, including those living in shelters and emergency shelters, should be able to relax, play and join in cultural activities.

|   |   |
|---|---|
| <p><i>Possibilities for children in regular shelters to relax and play</i></p> <p>Choose...</p>                         | <p><i>Further explanation</i></p> <p>Click here to enter text</p> |
| <p><i>Possibilities for children in emergency shelters to relax and play</i></p> <p>Choose...</p>                       | <p><i>Further explanation</i></p> <p>Click here to enter text</p> |
| <p><i>Possibilities for children to join in cultural activities, inside or outside the shelter</i></p> <p>Choose...</p> | <p><i>Further explanation</i></p> <p>Click here to enter text</p> |

## 8. Right to be heard

CRC Article 12: Right to be heard/right to participation

|   |  |
|---|--|
| <p><i>Are children consulted about matters that impact their daily lives, such as moves to other shelters and the services provided at the shelter?</i><br/>Choose...</p> | <p><i>Further explanation</i><br/>Click here to enter text</p> |
| <p><i>Is there an official children can go to with remarks or complaints, and do children know about this?</i><br/>Choose...</p>  | <p><i>Further explanation</i><br/>Click here to enter text</p> |
| <p><i>Do professionals who work with these children receive adequate training in communicating with them?</i><br/>Choose...</p>   | <p><i>Further explanation</i><br/>Click here to enter text</p> |

## 9. Age assessment

ENOC 2013 statement: ‘Age assessment should be made in the child’s best interest, with the primary aim to ensure that the child is granted the rights and protection he/she is entitled to. (...) When documentary evidence is not sufficient, and in cases of serious doubt about the age of the child, further examination may be conducted as a measure of last resort. (...) Until the age assessment is completed, each person claiming to be a child should be considered and treated as a child.’

*Please describe the standard or most common procedure for age assessment in your country or region.*  
Click here to enter text

## 10. Unaccompanied children

CRC Article 20 – Children deprived of family environment, CRC Article 22 – Refugee children  
CRC Article 10 – Family reunification

ENOC 2013 statement: ‘Immediately after the arrival of any unaccompanied/separated child, a skilled independent guardian should be appointed to support, advise and protect him/her until he/she is reunited with his/her family or receives an appropriate care placement.’

ENOC 2013 statement: ‘Unaccompanied and separated children should never be refused entry to a country in accordance with the non-refoulement obligations deriving from international human rights, humanitarian and refugee law.’

|  |  |
|--|--|
| <p><i>Are unaccompanied minors ever refused entry to your country?</i></p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>  | <p><i>Further explanation</i><br/>Click here to enter text</p> |
| <p><i>What is the housing situation of unaccompanied children seeking asylum? (multiple answers possible)</i></p> <p><input type="checkbox"/> Foster care</p> <p><input type="checkbox"/> Shelters designated for this group</p> <p><input type="checkbox"/> Youth care institutions</p> <p><input type="checkbox"/> Shelters designated for families</p> <p><input type="checkbox"/> Regular shelters</p> <p><input type="checkbox"/> Emergency shelters</p> <p><input type="checkbox"/> Other</p>        | <p><i>Further explanation</i><br/>Click here to enter text</p> |
| <p><i>What is the housing situation of unaccompanied children with an asylum status? (multiple answers possible)</i></p> <p><input type="checkbox"/> Foster care</p> <p><input type="checkbox"/> Shelters designated for this group</p> <p><input type="checkbox"/> Youth care institutions</p> <p><input type="checkbox"/> Shelters designated for families</p> <p><input type="checkbox"/> Regular shelters</p> <p><input type="checkbox"/> Emergency shelters</p> <p><input type="checkbox"/> Other</p> | <p><i>Further explanation</i><br/>Click here to enter text</p> |
| <p><i>Do all unaccompanied children have a skilled independent guardian who supports, advises and protects them?</i></p> <p>Choose...</p>  |  |
| <p><i>Do professionals who work with these children receive adequate training in communicating and working with them?</i></p> <p>Choose...</p>   | <p><i>Further explanation</i><br/>Click here to enter text</p> |

### Most pressing issues

|   |                          |
|---|--------------------------|
| <p><i>Please list a maximum of three issues that are currently the most critical for the situation of children on the move in your country or region.</i></p> |                          |
| 1.  | Click here to enter text |
| 2.  | Click here to enter text |
| 3.  | Click here to enter text |

## Best practices

*Please list a maximum of three best practices that positively influence the situation of children on the move in your country or region*

|           |                          |
|-----------|--------------------------|
| <b>1.</b> | Click here to enter text |
| <b>2.</b> | Click here to enter text |
| <b>3.</b> | Click here to enter text |

## APPENDIX 2. LEGAL FRAMEWORK: MIGRATION, INTERNATIONAL PROTECTION AND CHILDREN'S RIGHTS

In this appendix we present the most relevant international and European instruments with regard to children on the move, as well as a number of initiatives of the Commission and relevant EU institutions.

### Key international and European human rights instruments concerning children on the move

The guiding human rights instrument regarding children is the UN Convention on the Rights of the Child (UNCRC), adopted by the UN General Assembly on 20 November 1989 and ratified by all states in the world except for the USA. The Convention sets out the basic rights for all children on a signatory state's territory, all of which are relevant to children on the move. The four general principles<sup>135</sup> of the UNCRC is of particular importance to adhere to, including article 2 ensuring that the rights set out in the UNCRC apply to all children within the borders of a State Party without discrimination on any ground, including migration status or lack thereof. However, the UNCRC also makes specific provisions for this group of children – article 22 ensures the rights of children seeking refugee status or is considered a refugee; Article 10 sets out that State Parties shall consider requests for family reunification in a positive, humane and expeditious manner where a child is separated from his/her parent/s. Article 37 states that deprivation of a child's liberty shall only be used as a measure of last resort and for the shortest possible time. As regards unaccompanied and separated children, articles 19 and 20 are also particularly relevant, ensuring that they receive special protection and assistance from the State (article 20) and while in such care, protection from violence and abuse (article 19). Article 35, protecting children from trafficking, as well as Optional Protocol number 2 to the UNCRC on the sale of children, child prostitution and child pornography are also of high relevance for children on the move. The Committee on the Rights of the Child has published a General Comment on unaccompanied and separated children<sup>136</sup> describing how the rights of these children shall be ensured by the states, including issues related to family reunification, age assessment and detention. Other General Comments of particular interest for children on the

<sup>135</sup> Article 2 – non-discrimination, article 3 – best interest of the child, article 6 – the child's right to survival and development and article 12 – the child's right to be heard

<sup>136</sup> General comment no 6 – Treatment of Unaccompanied and Separated Children Outside Their Country of Origin (2005)

move are the General Comment on the right to be heard<sup>137</sup> and the one on the assessment of the best interest of the child<sup>138</sup>.

The right to seek asylum from persecution is established in article 14 of the Universal Declaration of Human Rights as well as in article 18 of the EU Charter of Fundamental Rights.

The guiding international instrument as regards refugees is the 1951 Convention on the Status of Refugees and the 1967 Protocol (hereafter referred to as the Refugee Convention). In Europe, this Convention has been ratified by all EU Member States, and by all but two<sup>139</sup> of the Council of Europe Member States and Belarus.

The Refugee Convention sets out a definition of a refugee as a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion and is unable or, owing to such fear, unwilling to avail himself/herself of the protection of that country<sup>140</sup>.

To ensure that the people coming to Europe to seeking refuge have their core human rights protected, the Refugee Convention should be read together with the European Convention on Human Rights and Fundamental Freedoms (European Convention), as well as the UN Convention on the Rights of the Child (UNCRC)<sup>141</sup>. In the fight against organized crime, and trafficking in particular, consideration should also be taken to the UN Convention against transnational organized crime and its supplementary protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol)<sup>142</sup>, as well as the Council of Europe Convention on Actions against Trafficking in Human Beings<sup>143</sup>.

<sup>137</sup> General comment no 12 – The right of the child to be heard (2009)

<sup>138</sup> General comment no 14 – on the right of the child to have his or her best interests taken as a primary consideration (2013)

<sup>139</sup> Andorra and San Marino.

<sup>140</sup> Article 1 Geneva Convention.

<sup>141</sup> Both conventions are binding for all Council of Europe Member States, the UNCRC is also binding for Belarus.

<sup>142</sup> Ratified by all Council of Europe Member States, the EU and Belarus, however the Palermo Protocol is not ratified by Andorra.

<sup>143</sup> Ratified by all Council of Europe Member States but five (Liechtenstein and Turkey has signed the convention, but not ratified it, Czech Republic, Monaco and Russia has neither signed nor ratified) and Belarus.

The EU institutions and Member States should also take into consideration other EU instruments establishing respect for human rights and fundamental freedoms in all its actions. Most importantly is the Treaty of the European Union, which entered into force on 1 December 2009. In article 3, establishing the objectives of the European Union, it is stated that the Union “[...] shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.”<sup>144</sup> It also states that the Union, in its relations with the wider world, shall “[...] uphold and promote its values and interests [...] the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.”<sup>145</sup>

The Lisbon Treaty also made the European Union Charter of Fundamental Rights binding for the Member States<sup>146</sup> and institutions, and should be applied when the Member States implement EU law.

Of particular relevance is article 24, establishing the rights of children to be heard, to have their best interests taken as a primary consideration in all actions concerning them and to have contact with both parents.

It is also worth noting that the principle that the best interest of the child should be a primary consideration in all decisions and actions affecting them has been incorporated into the vast majority of EU legislation and policy in the field of migration and asylum, based on article 3 of the UNCRC.

### **The European Asylum and Migration Legislative Framework**

Since 1999 the European Union has been working to create the Common European Asylum System (CEAS)<sup>147</sup>, gradually improving the legislative framework. As of 2015 a recast of EU asylum legislation is in force, a package of relevant legislation in relation to persons seeking international protection in the EU. The package is based on three pillars: harmonising standards of protection by further aligning the EU States’ asylum legislation; effective and well-supported practical cooperation; increased solidarity and a sense of responsibility among EU States, and between the EU and non-EU countries. All of the instruments include regulations guaranteeing that the best interests of the child shall be

<sup>144</sup> Art 3.3 second paragraph Treaty of Lisbon.

<sup>145</sup> Art 3.5 Treaty of Lisbon.

<sup>146</sup> Except for the United Kingdom and Poland.

<sup>147</sup> Information from DG Migration and Home Affairs and fact sheet.

a primary consideration when applying the instrument, and also set up indicators on how the assessment of best interests shall be carried out<sup>148</sup>, including ensuring that the views of the child are taken into consideration according to their age and maturity.

The CEAS legislative framework consists of:

- ▶ Qualification Directive (Directive 2011/95/EU) – this directive sets up common grounds for the Member States to grant international protection, and includes specific provisions for children;
  - The directive includes several child-specific regulations, including taking into account child-specific forms of persecution, access to education and health care (including treatment for mental disorders) with specific provisions in relation to unaccompanied children, including the right to be heard, the right to a guardian/representative, living conditions, requirements on persons working with them to have training, and family tracing.
- ▶ Procedures Directive (Directive 2013/32/EU) – this directive establishes common standards of safeguards and guarantees to access a fair and efficient asylum procedure throughout the EU Member States, including the right to apply for asylum at the border of a state;
  - The directive includes several child-related provisions, e.g. that the child shall be heard by a specially trained person and in a child-appropriate manner, several guarantees for unaccompanied children, including the right to a legal representative, right to information, circumstances in which medical examinations may be used to assess a child’s age, and that it is possible to prioritise the examination of applications from children.
- ▶ Reception Conditions Directive (Directive 2013/33/EU) – this directive establishes common standards of living conditions for asylum applicants;
  - The directive includes regulations for children in detention (last resort, shortest period of time, separate from adults etc.), access to education, specific provisions for both minors (adequate standard of living, leisure activities, rehabilitation, etc.) and unaccompanied minors (guardian, placement, family tracing, trained staff, etc.) and right to health care.
- ▶ Dublin Regulation (Regulation (EU) No 604/2013) – establishes the Member State responsible for the examination of the asylum application
  - The regulation contains a few child-specific provisions, in particular the need for a representative for unaccompanied minors and training of staff.
  - It should be noted that according to a decision by the European Union Court of Justice in 2013, unaccompanied children are exempted from the

<sup>148</sup> The indicators for assessment are not included in the Eurodac regulation.



Dublin regulation when no family member can be traced in any of the other Member States. In those cases the state in which the child is physically present is responsible for examining the claim for asylum<sup>149</sup>. Based on this decision, the Dublin regulation has been up for revision, and there discussions are currently ongoing between the European Parliament and the Council on how this should be formulated in a revised regulation<sup>150</sup>.

- ▶ Eurodac Regulation (Regulation (EU) No 603/2013) – establishes an EU asylum fingerprint database
  - This regulation contains few child-specific regulations. However, it does set out that the safeguards established in the UNCRC shall be ensured in the procedures and that information shall be provided in an age-appropriate manner.

Apart from these directives there are several other legal instrument relevant to the asylum and migration process in the EU, notably:

- ▶ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof<sup>151</sup>.
  - This directive contains a few child-specific regulations, in particular as regards unaccompanied children (right to legal guardian, placement) and the right to education.
- ▶ Return Directive (Directive 2008/115/EC) – establishes clear, transparent and fair common rules for the return and removal of the irregularly staying migrant, the use of coercive measures, detention and re-entry, while fully respecting the human rights and fundamental freedoms of the persons concerned.
  - The return directive takes into account the special needs of children in the return process – it states that a child attending school can be a reason for extending the period of voluntary return, it sets up requirements for detention of children and their families, ensures the right to basic education in the period before return is enforced, and have specific provisions for unaccompanied children.

<sup>149</sup> CJEU C-648/11 *The Queen, on the application of MA and Others v. Secretary of State for the Home Department*, 6 June 2013.

<sup>150</sup> Based on information from Cecilia Wikström, member of the European Parliament and rapporteur for the Dublin Regulation.

<sup>151</sup> This directive needs to be triggered by the Council to be in force, something that has yet not happened.

- ▶ Family Reunification Directive (Directive 2003/86/EC) – establishes common rules for exercising the right to family reunification
  - The directive ensures the right for children to be reunited with parents who have been granted international protection in a member state. It also sets up the regulations for the possibilities for unaccompanied children to reunite with their parents.
- ▶ Trafficking Directive (Directive 2011/36/EU) – covers actions in different areas such as criminal law provisions, prosecution of offenders, victim support and victims’ rights in criminal proceedings
  - The directive has a victim-centred approach and establishes specific safeguards and procedures in relation to child victims.

All of these instruments establish the best interest of the child as a primary consideration in decisions taken.

A complete compilation of EU legislation relevant to unaccompanied children, most of them also relevant to all children on the move, is available in the EU reference document on law and policy<sup>152</sup> compiled in the context of the Connect Project, which was aimed at identifying and promoting good practices on reception and protection, focusing on the roles and responsibilities of actors engaging in the situation of these children, based on national mappings carried out in Italy, the Netherlands, Sweden and the UK<sup>153</sup>.

### **Implementation – Actions of the European Commission**

The European Commission, and in particular the Directorate General of Migration and Home Affairs, is developing the EU migration policy. The aim is to create an EU-wide set of rules for legal migration and to address irregular migration and trafficking in human beings. It also works to implement the Common European Asylum System<sup>154</sup>.

Over the years, the Commission has taken many initiatives to strengthen the asylum and migration instruments and policies within the European Union, often ensuring a child rights perspective, with particular reference to the best interest of the child.

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<sup>152</sup> Reference document on EU law and policies

<sup>153</sup> Information on Connect Project

<sup>154</sup> Information from DG Migration and Home Affairs 14 January 2016

Of special interest with respect to children was the Action Plan on Unaccompanied Minors (2010-2014)<sup>155</sup>, adopted by the Commission in 2010. It proposes an EU approach based on three main strands of action: prevention of unsafe migration and trafficking; reception and procedural guarantees in the EU; identification of durable solutions. It is based on ten principles to help guide EU institutions and Member States in their future approach towards unaccompanied children. To assist the Commission in implementing the action plan, an expert group on unaccompanied children in the migration process was set up in 2011<sup>156</sup>.

To ensure that the rights of the child are included in EU policies and actions, the Commission set up a coordination unit within DG Justice<sup>157</sup>. In 2011 the Commission adopted an EU Agenda for the Rights of the Child<sup>158</sup>, setting out 11 actions the Commission would take up to the end of 2014, to ensure the rights of the child, including supporting the exchange of best practices and the improvement of training for guardians, public authorities and other actors who are in close contact with unaccompanied children<sup>159</sup>. The Commission also chairs the European Forum on the Rights of the Child<sup>160</sup>, a multi-stakeholder forum that convenes annually to discuss different issues related to children's rights. The last three<sup>161</sup> forums focused on child protection systems, which includes the protection of children on the move in Europe. For the 9th Forum, which took place in Brussels in June 2015, a reflection paper<sup>162</sup> setting out ten principles for integrated child protection systems was published.

In September 2015, the Commission published a Communication setting up an Action Plan on Return<sup>163</sup>, in order to enforce the Return Directive. In October, the Commission issued a recommendation<sup>164</sup> establishing a common "Return

<sup>155</sup> COM(2010)213 final Action Plan on Unaccompanied Minors (2010 – 2014)

<sup>156</sup> Register of Commission expert groups.

<sup>157</sup> Information from DG Justice.

<sup>158</sup> COM(2011) 60 final An EU Agenda for the Rights of the Child.

<sup>159</sup> Information from DG Justice.

<sup>160</sup> Information from DG Justice.

<sup>161</sup> Information from DG Justice 2012, 2013 and 2015.

<sup>162</sup> 30 April 2015 9th European Forum on the rights of the child – Coordination and cooperation in integrated child protection systems – Reflection paper.

<sup>163</sup> COM(2015) 453 final EU Action Plan on return.

<sup>164</sup> C(2015) 6250 final Commission Recommendation of 1.10.2015 establishing a common "Return Handbook" to be used by Member States' competent authorities when carrying out return related tasks.

Handbook”<sup>165</sup> to be used by Member States’ competent authorities when carrying out return-related tasks. The Return Handbook has a clear child rights focus. It has a specific section<sup>166</sup> dedicated to the return of unaccompanied children, focusing on ensuring a sustainable solution in the home country for the child, and establishing the best interest of the child as a key consideration. The handbook refers to General Comment no 14 on the right of the child to have his or her best interests taken as a primary consideration from the UN committee on the Rights of the Child, and to the joint UNHCR-UNICEF Guidelines on the determination of the best interests of the child<sup>167</sup>. It also provides guidelines on the circumstances in which children with families and unaccompanied children can be placed in detention, and how detention centres accommodating children should be equipped<sup>168</sup>. It is now up to the Member States to ensure that the return directive is put into practice, using the handbook, and the Commission will follow up the implementation through consultations with Member States. The Commission is also working on developing readmission agreements with third countries, to facilitate return; however these agreements are of a general nature, without a child perspective.<sup>169</sup>

One of the main responsibilities of the Commission is to provide funding for Member States and organisations through different funds and initiatives<sup>170</sup>. Some of them are of particular interest for children on the move:

- ▶ The Asylum, Migration and Integration Fund (AMIF) is open to both state bodies, NGOs, research organisations and other relevant actors within the EU Member States<sup>171</sup>. AMIF is aimed at promoting the efficient management of migration flows and the implementation, strengthening and development of a common Union approach to asylum and immigration<sup>172</sup>. The work programme for 2015, which the funds should contribute to, includes e.g. preventing and combating trafficking in human beings<sup>173</sup>. In the 2016

<sup>165</sup> Return Handbook.

<sup>166</sup> The EU Return Handbook Chapter 10.

<sup>167</sup> Unicef and UNHCR “Safe and Sound – what states can do to ensure respect for the best interests of unaccompanied and separated children in Europe”, October 2014.

<sup>168</sup> The EU Return Handbook Chapter 16.

<sup>169</sup> Information provided by a representative of the unit for irregular migration and return policy within DG Home, European Commission.

<sup>170</sup> Information from DG Migration and Home Affairs 15 January 2016.

<sup>171</sup> Except Denmark.

<sup>172</sup> Information from DG Migration and Home Affairs 15 January 2016.

<sup>173</sup> C(2015) 5385 final Annex 1 to the Commission Implementing Decision concerning the adoption of the work programme for 2015 and the financing for Union actions within the framework of the Asylum, Migration and Integration Fund.

work programme for emergency assistance, it is stated that child protection principles will inform all activities related to children and that activities will be carried out with child safeguarding principles<sup>174</sup>.

- ▶ The Internal Security Fund (ISF) – Police aims at combating cross-border, serious and organised crime and its work programme for 2015 included actions to prevent and combat trafficking in human beings, as well as protecting the victims thereof. A specific focus was on child protection systems for child victims of trafficking<sup>175</sup>.
- ▶ The European Refugee Fund support EU Member States' efforts in receiving refugees and displaced persons and in guaranteeing access to consistent, fair and effective asylum procedures<sup>176</sup>.

The Commission is also working to prevent and protect victims of human trafficking. In 2012 the EU Strategy towards the Eradication of Trafficking in Human Beings 2012- 2016<sup>177</sup> was adopted, setting out five priorities for the EU to focus on:

- ▶ Identifying, protecting and assisting victims of trafficking
- ▶ Stepping up the prevention of trafficking in human beings
- ▶ Increased prosecution of traffickers
- ▶ Enhanced coordination and cooperation among key actors and policy coherence
- ▶ Increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings.

The Strategy has a child-focused and a child rights perspective, setting several actions towards the protection of child victims, and identifying unaccompanied children as a particularly vulnerable group at risk of becoming victims of trafficking.

Several initiatives have also been taken, in particular by specialized agencies (see below), to provide training and capacity building for professionals working with refugees, e.g. in border control, police, in the asylum process, related

<sup>174</sup> C(2015) 9534 final Annex 1 to the Commission Implementing Decision Amending the work programme for 2016 and the financing for the emergency assistance within the framework of the Asylum, Migration and Integration Fund.

<sup>175</sup> C(2015) 3765 final Annex 1 to the Commission Implementing Decision Annual Work Programme for 2015 for support to Union Actions under the Internal Security Fund – Police cooperation and crime prevention.

<sup>176</sup> Information from DG Migration and Home Affairs.

<sup>177</sup> COM(2012) 286 final The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016.

to aspects including identifying unaccompanied minors, preventing trafficking and determining the best interest of the child. The same applies to developing research and guidance on migration and asylum issues.

### **Role of the European Parliament in EU Asylum and Migration Legislation and Actions**

The main role of the European Parliament is the co-decision power it has with the European Council on the community asylum and migration legislation as well as the budget for the European Union<sup>178</sup>.

Over the years, the European Parliament has been very active in the field of migration and asylum, in issuing reports and organising discussions. These have often had a human rights perspective and include backing up funding proposals from the European Commission, discussing solidarity among EU Member States in relocating refugees, increasing resettlement of refugees and voicing concerns about detention and reception conditions for asylum seekers<sup>179</sup>.

As regards unaccompanied children, the European Parliament adopted a resolution in 2013 on the situation of unaccompanied children in Europe. It identifies priority areas for action, including cooperation with third countries, and called on Member States and the European Commission to take a number of measures, including strategic guidelines on the best interests and common minimum standards as well as a handbook<sup>180</sup> of EU measures<sup>181</sup>.

The European Parliament is also involved in revising the Dublin regulation with regard to where unaccompanied minors should have their asylum application processed, following the above-mentioned judgement<sup>182</sup> from the European Union Court of Justice in June 2013. The position of the European Parliament Civil Liberties Committee is that the member state hosting the minor should be responsible for processing the asylum application, so as to avoid unnecessary transfers of children and ensure a swift decision on the application, in line with the overriding principle of the child's best interest. The only possible exception

<sup>178</sup> Information from the European Parliament.

<sup>179</sup> Information from the European Parliament.

<sup>180</sup> The result is the Connect project referred to above,

<sup>181</sup> P7\_TA(2013)0387 European Parliament resolution of 12 September 2013 on the situation of unaccompanied minors in the EU (2012/2263(INI)).

<sup>182</sup> CJEU C-648/11 The Queen, on the application of MA and Others v. Secretary of State for the Home Department, 6 June 2013.

to this principle should be if an individual assessment shows that it would be in the best interest of the child to go to another country<sup>183</sup>.

In 2014 an intergroup on children's rights was established by the European Parliament, gathering members of the European Parliament from different countries, political groups and committees<sup>184</sup>. The Intergroup tries to ensure a child rights perspective in all the work of the Parliament. The inter-group has discussed several child rights issues during the first year following its establishment, of relevance here in particular the situation of unaccompanied children and trafficking in children<sup>185</sup>.

## EU Agencies in the field of asylum and migration

### The European Asylum Support Office (EASO)

In order to facilitate the management of the common European Asylum system, the European Asylum Support Office (EASO) was set up in 2010<sup>186</sup>, being fully operational in 2011. EASO<sup>187</sup>:

- ▶ Acts as a centre of expertise on asylum;
- ▶ Contributes to the development of the Common European Asylum System by facilitating, coordinating and strengthening practical cooperation among Member States on the many aspects of asylum;
- ▶ Helps Member States fulfil their European and international obligations to give protection to people in need;
- ▶ Provides practical and technical support to Member States and the European Commission;
- ▶ Provides operational support to Member States with specific needs and to Member States whose asylum and reception systems are under particular pressure;
- ▶ Provides evidence-based input for EU policy-making and legislation in all areas having a direct or indirect impact on asylum.

Since its start, EASO has focused on vulnerable groups, and in particular on children, including unaccompanied children. It provides support and develop practical co-operation on issues related to children. EASO has focused on the-

<sup>183</sup> Information from the European Parliament.

<sup>184</sup> List of members.

<sup>185</sup> Information provided by Anna Maria Corazza Bildt, member of the European Parliament for Sweden, co-chair of the intergroup on children's rights.

<sup>186</sup> Regulation (EU) 439/2010

<sup>187</sup> Information about EASO.

matic issues such as age assessment, family tracing, the best interest of the child and trafficking of children. It incorporates aspects related to children in all its activities<sup>188</sup>.

In 2013, EASO published a handbook on age assessment practices in Europe<sup>189</sup>, setting out guidelines on how to conduct the age assessment process, in particular focusing on medical age assessment. In its annual meeting on unaccompanied children, discussions were held on other methods, and the handbook will most likely be updated with psychosocial methods as well<sup>190</sup>.

## Frontex

To facilitate and improve the application of existing and future EU measures relating to the management of external borders, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX<sup>191</sup>) was set up in 2004<sup>192</sup>. Frontex promotes, coordinates and develops European border management in line with the EU fundamental rights charter applying the concept of Integrated Border Management. Its main activities are<sup>193</sup>:

- ▶ Joint operations
- ▶ Training
- ▶ Risk analysis
- ▶ Research
- ▶ Providing a rapid response capability
- ▶ Assisting Member States in joint return operations
- ▶ Information systems and information sharing environment

Frontex has published a guide to border guards on how to identify children at risk at airports<sup>194</sup>.

In its risk analysis for 2015 Frontex highlighted children as a particularly vulnerable group and highlighted the need to develop specific mechanisms and procedures to tackle the needs of children at all EU external borders<sup>195</sup>.

<sup>188</sup> EASO about vulnerable groups 16 January 2016.

<sup>189</sup> EASO Age assessment practice in Europe, December 2013.

<sup>190</sup> Information provided by an official from the European Commission.

<sup>191</sup> Information from Frontex.

<sup>192</sup> Council Regulation (EC) No 2007/2004.

<sup>193</sup> Information from Frontex.

<sup>194</sup> Frontex VEGA Handbook: Children at airports, 2015.

<sup>195</sup> Frontex Annual Risk Analysis 2015, 2015.



## The EU Agency for Fundamental Rights (FRA)

The EU Agency for Fundamental Rights (FRA) was established in 2007 and its main purpose is to provide independent, evidence-based assistance and expertise on fundamental rights to EU institutions and Member States. It has three main working methods<sup>196</sup>:

- ▶ Large scale surveys
- ▶ Comparative legal or social research
- ▶ Handbooks for legal practitioners

The main tasks<sup>197</sup> of the FRA is:

- ▶ collecting and analysing information and data;
- ▶ providing assistance and expertise;
- ▶ communicating and raising rights awareness.

Since its start, migration and asylum, as well as the rights of the child have been priority areas within its multiannual work plans<sup>198</sup>.

In relation to children on the move, the following FRA publications are of particular interest. All FRA publications in relation to migration and asylum can be found on its website<sup>199</sup>:

- ▶ 2009 – Child Trafficking in the EU – Challenges, perspectives and good practices
- ▶ 2010 – Separated, asylum-seeking children in European Union Member States
- ▶ 2011 – The fundamental rights of migrants in an irregular situation in the European Union
- ▶ 2013 – EU solidarity and Frontex: fundamental rights challenges
- ▶ 2014 – Guardianship for children deprived of parental care
- ▶ 2014 – Fundamental Rights Conference 2014 “Fundamental rights and migration to the EU” : Conference conclusions
- ▶ 2014 – Handbook on European law relating to asylum, borders and immigration
- ▶ 2015 – Legal entry channels to the EU for persons in need of international protection: a toolbox
- ▶ 2015 – Guardianship systems for children deprived of parental care in the European Union

<sup>196</sup> Information from FRA.

<sup>197</sup> Information from FRA.

<sup>198</sup> Information from FRA.

<sup>199</sup> Information from FRA.

- ▶ 2015 – Alternatives to detention for asylum seekers and people in return procedures

In 2015, the FRA also concluded a mapping of child protection systems in the EU, based on a question from the European Commission<sup>200</sup>.

### **Europol**

The European Union’s law enforcement agency (Europol) has as its main objective to help achieve a safer Europe for the benefit of all EU citizens<sup>201</sup>. It plays a crucial role in the EU actions to prevent and combat trafficking in human beings, through supporting high-level human trafficking investigations, providing on-the-spot operational support through mobile offices, and giving access to its criminal databases and analytical tools<sup>202</sup>. In 2014, Europol published a specific Intelligence Notification on Child trafficking for exploitation in forced criminal activities and forced begging<sup>203</sup>.

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<sup>200</sup> Information from FRA.

<sup>201</sup> Information from Europol.

<sup>202</sup> Information from Europol.

<sup>203</sup> Europol Intelligence Notification 16/2014 Child trafficking for exploitation in forced criminal activities and forced begging.

## APPENDIX 3. SUMMARY OF THE EUROPEAN RESPONSE TO THE REFUGEE SITUATION

### Search and Rescue

Even before the huge influx of refugees into the EU in 2015, the EU had already taken a number of actions with regard to the situation in the Mediterranean, in particular as regards search and rescue operations. Following a tragic drowning off Lampedusa in October 2013, in which 300 people died, the Italian government launched Operation Mare Nostrum (OMN) with the objective to prevent people smuggling, to rescue refugees at sea and manage the sea borders<sup>204</sup>.

Mare Nostrum was cancelled in November 2014 and replaced by Operation Triton, managed by Frontex<sup>205</sup>. Triton was expanded in May 2015, following the increasing number of migrants crossing the Mediterranean, being one of the first EU actions put in place in the current refugee situation<sup>206</sup>.

### European Agenda on Migration

As one of the first responses to the refugee situation in the Mediterranean, the European Commission published a European Agenda on Migration<sup>207</sup> on 13 May 2015. It contains proposals for both immediate action as well as more long-term actions to manage migration better.

The immediate actions needed, as identified by the Commission, are:

- ▶ Saving lives at sea – this includes the expansion of Triton
- ▶ Targeting criminal smuggling networks
- ▶ Responding to high-volumes of arrivals within the EU: Relocation
- ▶ A common approach to granting protection to displaced people in need of protection: Resettlement – this included an appeal to the Member States for the comprehensive use of other legal avenues available to people in need of protection, including private/non-governmental sponsorships and humanitarian permits, and family reunification clauses
- ▶ Working in partnership with third countries to tackle migration upstream
- ▶ Using the EU's tools to help frontline Member States

<sup>204</sup> Information from the Italian Government and Information from the European Commission.

<sup>205</sup> Information from Frontex.

<sup>206</sup> Information from Frontex.

<sup>207</sup> COM(2015) 240 final A European agenda on migration.

To better manage the migration in the long term, the Commission proposes four pillars:

- 1) Reducing the incentives for irregular migration, which includes:
  - a) a. addressing the root causes of irregular and forced displacement in third countries
  - b) fight against smugglers and traffickers
  - c) return
- 2) Border management – saving lives and securing external borders
- 3) Europe’s duty to protect: a strong common asylum policy, which includes:
  - a) a coherent implementation of the Common European Asylum System
  - b) Dublin system – greater responsibility sharing across Member States
- 4) A new policy on legal migration, which includes:
  - a) Well managed regular migration and visa policy
  - b. Effective integration
  - b) Maximising the development benefits for countries of origin

Even though at least one in four of all asylum applicants in the EU in 2014 were children<sup>208</sup>, the European Agenda on Migration only mentions children twice<sup>209</sup>. The only action specifically targeting children is placed in a footnote<sup>210</sup> and focuses on a limited group of migrant children entering the EU – unaccompanied and missing children.

### Council decisions and actions after the European Agenda on Migration

#### Relocation

Following the proposals in the Agenda, the Council agreed, on 14 September, to relocate 40.000 people in clear need of international protection from Greece

<sup>208</sup> Table “Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded)” (migr\_asyappctza) First time applicant.

<sup>209</sup> COM(2015) 240 final A European agenda on migration pages 12 and 16.

<sup>210</sup> COM(2015) 240 final A European agenda on migration Footnote 28.

and Italy to other Member States<sup>211</sup>. A new decision, taken on 22 September, increased this number by another 120.000 relocations<sup>212</sup>. Up to 19 January 2016, only 331 persons had been relocated from Greece and Italy, out of the 160.000 agreed to<sup>213</sup>.

The relocation agreement states that the best interest of the child must be a primary consideration when implementing the decision. However, there are no references that children, unaccompanied or accompanied, should be prioritized in the relocation, nor are there any other child-specific agreements. There is also no reference to the child's right to receive information about the relocation process, nor the child's right to be heard and have his/her views taken into consideration in the relocation decision, as stated in article 12 of the UNCRC and article 24 of the EU Charter of Fundamental Rights.

### Resettlement

On 22 July, the Member States, in their council conclusions, agreed to resettle 20.000 people in clear need of international protection through multilateral and national schemes<sup>214</sup>. There is no information available on the implementation of this scheme.

There is no reference to children in these conclusions, and no reference to a best interest assessment or taking into consideration the child's views in the resettlement procedure, as should be the case in accordance with articles 3 and 12 of the UNCRC, as well as article 24 of the EU Charter of Fundamental Rights.

### EU-Turkey joint action plan

On 15 October 2015, the Council, the European Commission and the government of Turkey agreed to an action plan<sup>215</sup> with the aim of increasing the cooperation between the EU and Turkey in migration management, with specific focus on supporting those in need from Syria. The action plan contains two parts:

<sup>211</sup> Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece.

<sup>212</sup> Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.

<sup>213</sup> State of Play Member States' Support to Emergency Relocation Mechanism as of 19 January 2016.

<sup>214</sup> Council Conclusions 11130/15 on resettling through multilateral and national schemes 20 000 persons in clear need of international protection.

<sup>215</sup> Information on the action plan.

- 1) Supporting Syrians under temporary protection and their Turkish hosting communities
- 2) Strengthening cooperation to prevent irregular migration

On 29 November 2015 a new meeting<sup>216</sup> was held, where, among other things, the following was agreed upon:<sup>217</sup>

- ▶ The EU will support Turkey with 3 billion euros to support the Syrian refugees living in Turkey. The support will be facilitated through “the Refugee Facility for Turkey”, established by the Commission
- ▶ Turkey will step up its border control, in order to prevent migrants not in need of international protection entering the EU

On 15 December 2015, the Commission adopted a recommendation for a voluntary humanitarian admission scheme with Turkey<sup>218</sup>, through which Member States can accept – on a voluntary basis – Syrian refugees residing in Turkey relocating to their respective territories. There is no child focus in this recommendation.

There is no information about the implementation of these decisions yet. However, the Commission is working with Turkey to ensure the agreements are carried out swiftly and effectively<sup>219</sup>.

### **Meeting with the leaders of the Western Balkans Route**

In order to manage the migration flows through the Western Balkans to northern Europe, the heads of state or heads of government of Albania, Austria, Bulgaria, Croatia, the Former Yugoslav Republic of Macedonia, Germany, Greece, Hungary, Romania, Serbia and Slovenia met on 25 October on the invitation of the President of the European Commission and in the presence of the President of the European Parliament, the President of the European Council, the current and incoming Presidencies of the Council of the EU as well as the United Nations High Commissioner for Refugees (UNHCR).

<sup>216</sup> See summit statement.

<sup>217</sup> <http://www.consilium.europa.eu/en/press/press-releases/2015/11/29-eu-turkey-meeting-statement/>.

<sup>218</sup> C(2015) 9490 Commission Recommendation of 15.12.2015 for a voluntary humanitarian admission scheme with Turkey.

<sup>219</sup> Information from PubAffairs Bruxelles.

The leaders agreed to a statement<sup>220</sup>, including operational actions in the context of three main challenges:

- ▶ Providing shelter
- ▶ Managing migration flows together
- ▶ Border management

Some of the actions decided on have been implemented. However, much remains to be done to achieve, for example, improvement and expansion of longer-term reception capacities, the required number of reception places in Greece, reduction of bottlenecks leading to people being stranded at borders, dialogue improvement and co-operation between countries<sup>221</sup>.

#### *Valetta Summit on Migration 11-12 November 2014*

On 11 and 12 November 2015, heads of state and heads of government from Europe and Africa met to discuss migration between the two continents. A political declaration<sup>222</sup> was agreed upon and an action plan<sup>223</sup> was issued. The action plan covers four areas of joint concern:

- 1) Development benefits of migration and addressing root causes of irregular migration and forced displacement
- 2) Legal migration and mobility
- 3) Protection and asylum
- 4) Prevention of and fight against irregular migration, migrant smuggling and trafficking in human beings

The outcome documents of the Valetta Summit are somewhat better than the other instruments in that it contains provisions focusing on children and ensuring a child rights perspective. It highlights the need to support resilience, in particular to support the most vulnerable, in particular women and children, support regional initiatives on children at risk and pay special attention to unaccompanied minors taking into account the best interest of the child.

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<sup>220</sup> Leaders statement.

<sup>221</sup> State of Play Report.

<sup>222</sup> Information on Valletta Summit.

<sup>223</sup> Information on Valletta Summit.

## Actions to implement the European Agenda on Migration

Following the adoption of the European Agenda on Migration, as well as the following decisions by the Council, the Commission and different EU agencies have taken several actions to implement them. Actions of particular interest to children on the move are highlighted below. For a complete description of the actions taken to follow up the Agenda, visit the Commission website<sup>224</sup> and its press release<sup>225</sup> on updates.

### Hotspots

One of the first initiatives of the Commission in order to implement the Agenda on Migration was to start setting up the Hotspots in Greece and Italy. The Hotspot approach is a collaboration between The European Asylum Support Office (EASO), EU Border Agency (Frontex), EU Police Cooperation Agency (Europol) and EU Judicial Cooperation Agency (Eurojust), together with the relevant authorities in the member state<sup>226</sup>.

A Hotspot is a first-line reception centre where migrants are taken for registration, identification, fingerprinting and debriefing of asylum seekers. Those requesting asylum will immediately enter an asylum procedure where EASO support teams will help to process asylum applications as quickly as possible. For those who are not in need of protection, Frontex will help Member States by coordinating the return of irregular migrants. Europol and Eurojust will assist the host member state with investigations to dismantle smuggling and trafficking networks. The Hotspot approach will also contribute to the implementation of the temporary relocation schemes<sup>227</sup>.

In Greece, five hotspot areas have been identified by the Greek authorities, but as of 15 December 2015 only one is up and running (Moria, in Lesbos)<sup>228</sup>.

In Italy six hotspots areas have been identified, but here also only one (Lampedusa) is operating as of 15 December 2015<sup>229</sup>.

<sup>224</sup> Information from DG Migration and Home Affairs.

<sup>225</sup> Press Release from the European Commission.

<sup>226</sup> Information from DG Migration and Home Affairs.

<sup>227</sup> Information from DG Migration and Home Affairs.

<sup>228</sup> COM(2015) 678 final Communication from the Commission to the European Parliament and the Council Progress Report on the Implementation of the hotspots in Greece.

<sup>229</sup> COM(2015) 679 final Communication from the Commission to the European Parliament and the Council Progress Report on the Implementation of the hotspots in Italy.



## European Parliament

In April 2015, the Parliament adopted a resolution in response to the latest tragedy on the Mediterranean, calling for more search and rescue capacity, guaranteeing fundamental rights and for the Commission to set up a European Agenda on Migration<sup>230</sup>.

During 2015, the European Parliament has discussed several of the actions taken by the Council and the Commission to handle the refugee situation in Europe<sup>231</sup>. It has also had discussions on the situation focusing on the human rights perspective and in particular on the use of detention<sup>232</sup>.

Since 2015, the European Parliament has started an intergroup on children's rights with members of the European Parliament from different countries, political groups and committees<sup>233</sup>. Over the past year there have been a number of intergroup discussions about children on the move, specifically highlighting trafficking of children as a concern.

Other issues highlighted were girls as a particularly vulnerable group among children arriving and the risk children face of falling victim to violence and sexual abuse. The intergroup also invited the rapporteur on children and migration from the European Parliament to a discussion<sup>234</sup>.

### Actions by other actors:

#### The Council of Europe

The Council of Europe is the continent's leading human rights organization, with 47 Member States, including the 28 EU Member States. The main instrument guiding the Member States is the European Convention on Human rights, aiming to protect human rights, democracy and the rule of law, the guiding principles of all Council of Europe activities. The implementation of the Convention is monitored by the European Court of Human Rights<sup>235</sup>.

<sup>230</sup> P8\_TA-PROV(2015)0176 European Parliament resolution of 29 April 2015 on the latest tragedies in the Mediterranean and EU migration and asylum policies (2015/2660(RSP)).

<sup>231</sup> Information from the European Parliament.

<sup>232</sup> Information from the European Parliament.

<sup>233</sup> List of members.

<sup>234</sup> Information provided by Anna Maria Corazza Bildt, member of the European Parliament for Sweden, co-chair of the intergroup on children's rights.

<sup>235</sup> Information from the Council of Europe.

The Council of Europe has taken a number of actions in 2015 to reiterate the human rights approach in migration policies and actions, and urged its Member States not to lose sight of these basic values. The initiatives include:

- ▶ A guideline from Secretary General Thorbjorn Jagland on the treatment of migrants and asylum seekers, including their reception and temporary living conditions, to ensure respect for their human rights, was issued in September<sup>236</sup>
- ▶ The Council of Europe will examine how it can use its monitoring powers to find out how human rights are respected in the actions taken by Member States<sup>237</sup>
- ▶ The Council of Europe has had discussions with the European Union on human rights of refugees and migrants<sup>238</sup>
- ▶ The Council of Europe has decided to appoint a special representative on Migration and Refugees, who will collect and analyse information on the human rights situation of migrants and refugees in Europe<sup>239</sup>
- ▶ The next Council of Europe strategy on the rights of the child, to be adopted in early 2016, will partly focus on migrant children<sup>240</sup>. At the last meeting of the Committee of Experts on the Council of Europe Strategy for the Rights of the Child 2016-2019 (DECS-ENF) an exchange on children's rights in the context of current migration challenges was held<sup>241</sup> based on an information document on migration challenges for Europe<sup>242</sup>.

The Secretary General has also issued concerns about, for example, the new migration laws in Hungary<sup>243</sup>, underlining the need for a human rights approach in the refugee crisis, and in particular the risk of discrimination and xenophobia<sup>244</sup> and that migrants have the same human rights as everyone else<sup>245</sup>.

The Commissioner for Human Rights has on several occasions raised concerns about the way states handle the influx of migrants, including several opinion

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<sup>236</sup> Information from the Council of Europe.

<sup>237</sup> Information from the Council of Europe.

<sup>238</sup> Information from the Council of Europe.

<sup>239</sup> Information from the Council of Europe.

<sup>240</sup> Information from the Council of Europe.

<sup>241</sup> Information from the Council of Europe.

<sup>242</sup> SG/Inf(2015)33 Information Document Migration challenges for Europe: need for collective action.

<sup>243</sup> Information from the Council of Europe.

<sup>244</sup> Information from the Council of Europe.

<sup>245</sup> Information from the Council of Europe.

articles published in various newspapers in Europe and the United States<sup>246</sup>. Most recently, he highlighted the new Danish asylum legislation from a human rights perspective<sup>247</sup>, that there is a risk for human rights violations for asylum seekers returned to Hungary<sup>248</sup> and that the migration and asylum policies of European countries have been disastrous<sup>249</sup>.

The Parliamentary Assembly of the Council of Europe has urged Member States to take a holistic and rights-based approach to migration through transit countries<sup>250</sup> and called on the EU to reform the Dublin system<sup>251</sup>. The European migration and refugee crisis will also be at the centre of its discussion during its first session for 2016, on 25-29 January.<sup>252</sup>

## UNHCR

During 2015, UNHCR has taken a new role in Europe – being operational in the various places in Europe where migrants pass through, taking up the responsibilities European countries are supposed to be capable of fulfilling without international assistance. UNHCR has assisted Greece in the reception of refugees and set up transit camps along the Western Balkans route, providing refugees with basic needs like shelter<sup>253</sup>.

UNHCR has also been engaged by the European Commission to assist in setting up 20.000 of the 50.000 new reception places agreed to at the Western Balkans Leaders Meeting on 25 October 2015<sup>254</sup>.

One of the main tasks of UNHCR is to ensure centres along the route are suitable for winter. In an appeal in November 2015<sup>255</sup>, UNHCR declared how much funding was needed to ensure this. According to sources within UNHCR, the situation on 17 December 2015 was such that in Serbia 45% of available accommodation had been winterized, with the progress of winterization activities

<sup>246</sup> Information from the Council of Europe.

<sup>247</sup> Information from the Council of Europe.

<sup>248</sup> Information from the Council of Europe.

<sup>249</sup> Information from the Council of Europe.

<sup>250</sup> Information from the Council of Europe.

<sup>251</sup> Information from the Council of Europe.

<sup>252</sup> Information from the Council of Europe.

<sup>253</sup> Information from interview with advisors at UNHCR

<sup>254</sup> Information from UNHCR

<sup>255</sup> UNHCR Winterization Plan for the Refugee Crisis in Europe November 2015 – February 2016.

reaching 30% in the Former Yugoslav Republic of Macedonia, 36% in Slovenia, and only 22% in Croatia<sup>256</sup>.

## APPENDICES

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<sup>256</sup> Provided by e-mail to the Ombudsman for children in the Netherlands by a representative of UNHCR.