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**A PRACTICAL VIEW ON THE**  
**(NON)FUNCTIONING ANTI-**  
**DISCRIMINATION LAW FROM THE**  
**POINT OF VIEW OF FOREIGNERS**

**S**towarzyszenie  
**I**nterwencji  
**P**rawnej

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## Introduction

This paper summarises the results of a study evaluating the functioning of anti-discrimination law when it comes to foreigners<sup>1</sup>. The study was conducted in 2013, two and a half years after the Law of 3 December 2010 implementing certain EU regulations concerning equal treatment law (Dz.U. [Official Journal of Laws], No. 254/2010, item 1700) had been implemented. The act is further referred to as “the implementing act”. It was introduced due to considerable pressure from the European Union, regardless of the numerous objections to its contents<sup>2</sup>. At the time when the act was adopted, two infringement procedures against Poland were under way at the Court of Justice (further referred to as the ECJ) instituted by the European Commission (further referred to as the Commission). The procedures were instituted due to the lengthy process of implementing EU anti-discrimination law into the Polish legal order, thus lack of harmonisation of Polish law with the EU legal system. The cases concerned Polish legislation’s non-conformity with EU rules prohibiting race and ethnic origin discrimination and gender discrimination in the access to goods and services. Another case instituted by the Commission concerned non-communication of national legislation transposing EU rules on gender equality in employment. Following the adoption of the implementing act, the Commission dropped the two cases at the ECJ in March 2011, recognizing that the anti-discrimination laws in Poland, in effect since the beginning 2011, sufficiently implement the EU directives. The Commission has also dropped the third infringement procedure, which had not reached the judicial state at the ECJ<sup>3</sup>. The lasting inconsistency of the Polish law with the EU regulations and the lengthy process of implementing the EU anti-discrimination laws before 2011 entailed the risk of incurring high financial penalties. The latter additionally explains the considerable pressure during the implementing act enactment process.

Even though the act is an important step towards the development of anti-discrimination law in Poland, it simultaneously is an example of poor implementation of EU directives<sup>4</sup>. Nevertheless, the act is binding and should be monitored. Especially when it comes to foreigners who, due to their distinctness (e.g. when it comes to their culture, religion, language, nationality or race), might experience unequal treatment not even being aware of it. This is an attempt to find an answer whether the new act, two years after it was introduced, has brought changes in terms of preventing discrimination of foreigners, what kind of changes these are and what steps should be undertaken to ensure equal treatment of foreigners.

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<sup>1</sup> Considering the specificity of the study and the source of funding, the research focuses on third-country nationals, who will be referred to as foreigners or migrants. Even though anti-discrimination law and discrimination issues are not limited to third-country nationals, the idiosyncratic position of this group under the law governing the entrance, employment and stay of foreigners in Poland justified focusing the research on the migrants from outside of the EU. The topic of the Roma people, including the Roma people who came to Poland from Romania, was often mentioned in the conducted interviews. However, even though it is an important issue when it comes to preventing discrimination, it was not presented in this paper due to its specificity and the legal status of the arrivals from Romania.

<sup>2</sup> See the opinions of the Coalition for Equal Opportunities formed by about 50 non-governmental organizations due to the unsatisfactory implementation progress of anti-discrimination law in Poland at <http://www.ptpa.org.pl/koalicja> (accessed on 30.11.2013).

<sup>3</sup> E.g. <http://rownetraktowanie.gov.pl/aktualnosci/komisja-europejska-konczy-trzy-postepowania-przeciwko-polsce-dzieki-przyjeciu-nowych> (accessed on 01.12.2013).

<sup>4</sup> An opinion of one of the interviewed experts – a lawyer (36/IN). The quotes of the individual interviewees are marked by an interview identification code. The codes consist of an ordinal number and a symbol: OP – stands for non-governmental organizations, IP – for public institutions and IN – for others (usually interviewees fulfilling different functions).

The paper presents results of qualitative research consisting of expert interviews<sup>5</sup> and analysis of chosen secondary sources<sup>6</sup>. The analysis of secondary sources allowed to identify some important issues in this area: awareness of discrimination, legal consciousness, possibility to enforce the law, access to information about the phenomenon of discrimination and anti-discrimination law, active prevention of discrimination and attitude towards resorting to legal means. The conclusions presented further in the paper mainly concerned these mentioned issues. The paper's summary presents main conclusions and recommendations identified when analysing the experts' opinions and documents on the functioning of the implementing act.

## 1. The origin, objective and context of the research

### 1.1. The origin and context of the research

Until recently there had been no comprehensive anti-discrimination law in Poland. Protection from discrimination was mainly provided under labour law<sup>7</sup> and criminal law<sup>8</sup> and essentially it was not possible to exert one's rights when it came to discrimination in the access to goods and services or social services. To a certain degree protection from discrimination was provided under civil law, which guarantees the protection of personal rights<sup>9</sup>. The situation changed when the Law of 3 December 2010 implementing certain EU regulations concerning equal treatment law came into force. The act has been in effect since 1 January 2011.

<sup>5</sup> The author wishes to thank all the experts and representatives of public institutions and non-governmental organizations for their willingness and time to share their opinions and trust, as well as everyone who supported the research process facilitating the information exchange and making the needed materials available. Particular acknowledgements go to Rafał Matczak, who has conducted part of the empirical research and Witold Klaus – for his support, trust and patience.

<sup>6</sup> The chosen secondary sources included public, published documents (reports, expert evaluations, opinions, legal positions, interventions) concerning creation, introduction and functioning of the discussed act.

<sup>7</sup> Under labour law (Kodeks pracy [the Labour Code], Dz.U. No. 21/1998, item 94, as amended) all forms of discrimination (direct and indirect) such as gender, racial, nationality or ethnic discrimination are forbidden in employment (art. 18 3a). The list of the legally protected characteristics is non-exhaustive. Sexual harassment (art. 18 3a § 6) and harassment (art. 18 3a § 5) are also forbidden. The principle of equal treatment in employment is also violated when an employer treats an employee differently on one or more above mentioned grounds unless the employer proves that this was due to objective reasons (art. 18 3b). The employees have the right to equal remuneration for the same work or for work of an identical value (art. 18 3c § 1). Should an employer violate the principle of equal treatment in employment against an employee, the employee has the right to compensation of at least the amount of the minimum remuneration for work (art. 18 3d). The fact that the employee has exercised his rights due to a violation of the principle of equal treatment in employment may not constitute grounds for the termination of an employment relationship by an employer (art. 18 3e). Additionally, under the Act of 20 April 2004 on employment promotion and labour market institutions (Dz.U. No. 99/2004, item 1001) it is forbidden to publish discriminatory job offers (art. 36 § 5). See [http://poradnik.interwencjaprawna.pl/prawo\\_pa.htm](http://poradnik.interwencjaprawna.pl/prawo_pa.htm) (accessed on 02.12.2013).

<sup>8</sup> Under the Criminal Code (Dz.U. No. 88/1997, item 553, as amended) the crime of racial discrimination (art. 119), incitement of hatred on the basis of racial, ethnic or religious differences and insulting a person for these reasons are prosecuted (art. 256 i 257).

<sup>9</sup> Under the Civil Code (Dz.U. No. 16/1964, item 93, as amended) persons who have been victims of discrimination may pursue their claims under article 23 on infringement of personal rights and claim damages or compensation for the damage (art. 24). A person who is guilty of causing damage to another person is obliged to compensate for this damage (art. 415). In December 2010, before the implementing act came into force, Adam G., a Roma living in Poznań, was requested to leave a club together with his colleagues and a week later he was not let in at all due to his descent. In March 2011 Adam G., together with the Helsinki Foundation for Human Rights, filed a suit for the infringement of personal rights in the Regional Court in Poznań. The first-instance court dismissed the claim. The second-instance Court of Appeal ruled that the personal rights of Adam G. had been infringed and ordered the owner to publish a written apology in the local press and on the club's website. Additionally, the court ruled that the club owner pays PLN 10 000 to the Wielkopolskie Cultural and Educational Association of the Polish Roma. Even though the second-instance judgement was issued in May 2012, when the implementing act was already in force, the case of Adam G. was examined under the civil law. See <http://www.hfhrpol.waw.pl/dyskryminacja/litygacja/dyskryminacja-pochodzenie-narodowe-i-etniczne/sprawa-adama-g-2> (accessed on 02.12.2013).

When it was drafted and passed representatives of non-governmental organizations suggested<sup>10</sup> that it was not comprehensive and its interpretation might prove problematic due to the numerous exemptions. Additionally, the act introduces various levels of protection and undue hierarchy of legally protected characteristics, thus fails to fully become an equality or an anti-discrimination act.

The necessity to amend the discussed act was expressed nearly from the moment it was introduced. A deputies' bill on amending the act was introduced in November 2012, inspired mainly by the opinions of the Coalition for Equal Opportunities (Koalicja na rzecz Równych Szans)<sup>11</sup>. The first reading took place in June 2013 and in October 2013 the bill was presented to an extraordinary commission at the Sejm Committee for Justice and Human Rights<sup>12</sup>. The opinions prepared during the parliamentary works included positive evaluations of only few recommended changes, e.g. introduction of the possibility to claim non-pecuniary damages (under the law in force one can only claim compensation for damage and the damage caused by unequal treatment is often immeasurable) and propounded extension of the statute of limitations<sup>13</sup>. The experts appointed by the Bureau of Research have not found justification for the majority of the proposed changes<sup>14</sup>. In reply to the opinions presented by the experts in legislation of the Chancellery of the Sejm, the Polish Society of Anti-Discrimination Law (Polskie Towarzystwo Prawa Antydyskryminacyjnego) has put a question about the scope of the act's protection to the European Commission<sup>15</sup> and commissioned preparing an independent legal opinion<sup>16</sup>.

What is important – the bodies that the implementing act has made responsible for the application of the principle of equal treatment, i.e. the Human Rights Defender (“the Defender”) and the Government Plenipotentiary for Equal Treatment (“the Plenipotentiary”), had reservations about the quality of the act and its application. In the middle of 2012 the Human Rights Defender turned to the Government Plenipotentiary for Equal Treatment with a proposal to undertake steps to amend the implementing act, which, according to the information received by the Defender, is considered unconstitutional by some experts, dysfunctional and includes imperfect regulations. As a result there is a small number of court cases filed under the new law, which at the same time proves *that the act does very little to ensure effective legal pro-*

<sup>10</sup> See the remarks to the draft bill, e.g. Opinion of the Koalicja na rzecz Równych Szans available among others at [http://www.interwencjaprawna.pl/docs/19\\_06\\_2010\\_stanowisko\\_koalicji.pdf](http://www.interwencjaprawna.pl/docs/19_06_2010_stanowisko_koalicji.pdf) (accessed on 28.04.2013).

<sup>11</sup> See <http://www.ptpa.org.pl/koalicja> (accessed on 27.04.2013).

<sup>12</sup> See the course of the legislation process: <http://www.sejm.gov.pl/sejm7.nsf/PrzebiegProc.xsp?id=4C12B53EB4CAC3A8C1257AFC003AA7EB> (accessed on 13.11.2013).

<sup>13</sup> The interviewed experts have also indicated the need to extend the statute of limitations (from the current 3 years after becoming aware of the violation of the principle of equal treatment and 5 years after the occurrence of the violation of the principle of equal treatment to 10 years in line with civil law). They highlighted that the amendment is necessary due to the characteristics of discrimination and low awareness of the aggrieved – discrimination is often discovered during other proceedings, considerable time after the occurrence had passed.

<sup>14</sup> Lipski J., *Opinia prawna i merytoryczna do poselskiego projektu ustawy o zmianie ustawy o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania oraz niektórych innych ustaw*, ZP, No. 2 (38). Biuro Analiz Sejmowych, Warsaw 2013, pp. 159–173. See other opinions by the experts in legislation: <http://orka.sejm.gov.pl/rexdomk7.nsf/Opdodr?OpenPage&nr=1051> (accessed on 13.11.2013).

<sup>15</sup> See the Commission's reply: <http://www.ptpa.org.pl/aktualnosci/2013-11-19-odpowiedz-ke-na-pytanie-ptpa-ws-ustawy-antydyskryminacyjnej&nid=407> (accessed on 21.11.2013).

<sup>16</sup> See the legal opinion by professor Robert Grzeszczak: [http://www.ptpa.org.pl/public/files/Grzeszczak\\_opinia%20prawna%20dla%20PTPA%20\(1\).pdf](http://www.ptpa.org.pl/public/files/Grzeszczak_opinia%20prawna%20dla%20PTPA%20(1).pdf) (accessed on 21.11.2013).

*tection of discrimination victims.* Another important point worth mentioning is the fact that there was no additional funding<sup>17</sup> available in the first year after the act came into force (and therefore in the first year when the Defender acted as the equality body), which further hindered protection under the act. However, there are some activities which, according to the experts, do not require additional funding, but rather commitment.

In reply to the mentioned query, the Office of the Plenipotentiary shared the Defender's reservations about the act and announced preparation of a revision. By the middle of 2013 the revision was ready, but it was not introduced to the Sejm as a government bill<sup>18</sup>, since the Office of the Plenipotentiary does not enjoy legislative initiative. In 2013, two years after the implementing act came into force, the Cabinet's standing committee adopted the "National Program of Activities for Equal Treatment (for the years 2013-2016)"<sup>19</sup>. Public consultations were launched in parallel with the preparation of the document, but their result was not universally recognised. Representatives of organizations supporting foreigners stress that the Office of the Plenipotentiary does not fully recognize the role of foreigners in the planned activities, which results in a low number of activities directed at preventing discrimination of foreigners. Such activities were proposed in the draft of the "National Program of Activities for Equal Treatment (for the years 2013-2016)" prepared in the project "Equal treatment as a standard of good governance" implemented by the Plenipotentiary, Jagiellonian University and Warsaw School of Economics<sup>20</sup>. In interviews the Plenipotentiary assures that the anti-discrimination policy captured in the program includes everyone, also foreigners, even if the individual activities are not directly aimed at this group. The few activities planned specifically for foreigners might showcase how this group is perceived when compared to other subjects of this program. The relatively widely covered issue of educating children from different cultural backgrounds, however, was well received (2/OP).

In summary, according to some of the interviewed experts the Law of 3 December 2010 implementing certain EU regulations concerning equal treatment law was introduced "because it had to be introduced" due to the pressure from the EU, regardless of clear evidence for the imperfections of this legal act. The whole act seems imperfect, including its title: *Even the title of this act; we see the reluctance to prepare a proper instrument here and instead we have an instrument with shortcomings that formally allows Poland to decline some responsibility. And the fact that no court case was filed under the new law shows how completely ineffective this instrument is* (5/OP).

Even though the introduction of the act was preceded by public consultations and representatives of non-governmental organisations (mainly members of the Coalition for Equal Opportunities) eagerly took

<sup>17</sup> The query of the Defender to the Plenipotentiary: <http://www.sprawy-generalne.brpo.gov.pl/szczegoly.php?pismo=1647153> (accessed on 14.11.2013).

<sup>18</sup> According to the research results the draft was largely in line with the proposals included in the deputies' bill on amending the act considered by the Sejm in 2013 (7/IP).

<sup>19</sup> More information is available on the website of the Government Plenipotentiary for Equal Treatment: <http://rownetraktowanie.gov.pl/aktualnosci/komitet-staly-rady-ministrow-przyjal-krajowy-program-dzialan-na-rzecz-rownego> (accessed on 14.11.2013).

<sup>20</sup> See <http://www.sieczrownosci.gov.pl/o-projekcie/> (accessed on 02.12.2013).

part in them, majority of the remarks expressed during the consultations were not taken into account. Unfortunately the Parliament has enacted imperfect law which neither guarantees effective protection from discrimination nor gives the victims a possibility to claim non-pecuniary damages. As a consequence, as it has been said earlier, there was an immediate need to amend the newly introduced laws. Additionally, monitoring of the effects of the act's introduction became not only difficult (as there was no separate category created for the violation of rights guaranteed under this act in the statistical reports of the judiciary system<sup>21</sup>), but surprisingly fruitless – the act constituted grounds for very few legal cases filed in Polish courts<sup>22</sup>. The act itself was often described as a dead letter.

The awareness of the new law might essentially be described as low in practically all social circles, including the legal and judicial communities. Only few interviewees evaluated the act positively and remarked that the law that has just had a chance to start functioning cannot be immediately written off. However, it was emphasized that to make sure the act is enforced, social changes should happen and processes of raising awareness in the field of anti-discrimination questions should take place. Majority of the surveyed experts expressed a view that this act is not an effective measure protecting from discrimination. *One may even assume that this is not an easy legal instrument to use, since there are so few court cases based on the act. There is practically no judicial practice in this area and one cannot expect it soon. It also concerns foreigners (7/IP).* All the above matters, especially the reservations about the text of the implementing act and the prepared amendments, provide a significant context of this study.

## 1.2. Objectives and research principles

The objective of the research was seemingly obvious – analysis of the functioning of the implementing act when it comes to third-country nationals, two years after the law was introduced. The objective would have been easy to reach assuming one could state that the act is enforced. However, due to all the limitations mentioned above it was necessary to find out why the act is not enforced when it comes to foreigners (or rather is not enforced at all) and what could be done to strengthen the legal protection of foreigners against discrimination and assure equal treatment. It cannot be stated that the little popular, but important law has become a dead letter two years and a half after its introduction. According to some of the experts, however, this is the appropriate time perspective to evaluate the potential of this legal instrument, activities of the bodies that the act has made responsible for the application of the principle of equal treatment and other actions taken to prevent discrimination of foreigners. Research questions central to both empiri-

<sup>21</sup> Only in 2012 did the Ministry of Justice introduce a separate statistical category for discriminatory acts and unequal treatment, though the way these cases were captured in statistical data still did not allow to define their grounds. In 2011 the Human Rights Defender turned to the Ministry of Justice with a call for keeping statistics of unequal treatment cases and gathering data on the grounds for discrimination (such as gender or age) and the area the case concerned (e.g. employment, access to medical care, education).

<sup>22</sup> The Polish Society of Anti-Discrimination Law carefully monitors the situation by requesting access to statistics twice a year and monitors the unequal treatment cases. Until mid 2013 about 8 court cases had been filed since the introduction of the implementing act and to this date there had been no final and binding decisions made in any of them.

cal study and analysis of available sources were formulated based on the belief coinciding with the above-mentioned expert opinions. The study therefore analysed:

- context and scale in which the implementing act has created grounds for handling foreigners' cases;
- accessibility of information on anti-discrimination law and measures allowing to prevent or punish discriminatory practices;
- awareness in terms of discrimination and anti-discrimination law;
- operations of the bodies responsible for application of the principle of equal treatment and activities of other subjects supporting anti-discrimination endeavours.

The initial analysis of the publicly available materials (reports, statements, published queries and opinions) and the relatively limited literature<sup>23</sup> has brought a conclusion that the implementing act does not function appropriately and does not guarantee effective protection and enforcement of foreigners' rights in terms of equal treatment. This conclusion constituted the main thesis – the analytical axis of the research.

Since there was no possibility to systematically analyse specific, closed cases in which foreigners were victims of unequal treatment, as well as due to a limited number of experts ready to share their opinions about the functioning of the anti-discrimination law in general and particularly when it comes to foreigners, the empirical study has been broadened by the anti-discrimination policies and practice. The grounds for discrimination of foreigners are often race, nationality, ethnic origin and religion. The mere fact of being a foreigner does not constitute a legally protected characteristic. Quite the contrary, citizenship is subject to one of the exclusions of the discussed act. Considering the situation of third-country nationals and actual or potential unequal treatment, one should take into account not only the characteristics that are traditionally associated with foreigners, such as race or nationality, but all the other legally protected characteristics such as gender, age, sexual orientation, world view and other grounds. This group may often experience multiple discrimination – a situation when a person is discriminated on more than one ground, for example when an elderly female Muslim or a disabled refugee is discriminated. The current anti-discrimination act, however, does not include the definition of this form of discrimination.

In-depth interviews with professionally active experts on law, politics and anti-discrimination practices, especially in the context of presence and stay of foreigners in Poland, constituted the main element of the study. The choice of experts was intentional. In line with the study assumptions the invited experts were: representatives of the judiciary, legal community, legal advisers, prosecution, the Office of the Human Rights Defender, the Office of the Government Plenipotentiary for Equal Treatment, coordinators/plenipotentiaries for equal treatment in central, regional and local administration bodies, representatives of non-governmental organisations, relevant Police departments, the Border Guard, the National La-

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<sup>23</sup> See i.a. Wieczorek M., Bogatko K. (ed.), *Prawo antydyskryminacyjne w praktyce polskich sądów powszechnych. Raport z monitoringu* PTPA, Warsaw 2013, [http://www.ptpa.org.pl/public/files/Prawo%20antydyskryminacyjne%20w%20praktyce%20s%C4%85dowej\(1\).pdf](http://www.ptpa.org.pl/public/files/Prawo%20antydyskryminacyjne%20w%20praktyce%20s%C4%85dowej(1).pdf) (accessed on 29.04.2013).

bour Inspectorate and others, usually representing the scientific community. There were a few factors guiding the choice of the invited experts. First of all, it was important whether the institution or organisation they represented was involved in handling the issue of foreigners in Poland in any way. Secondly, it was important whether in a given institution or organisation the matter of equal treatment was fairly well established by, for example, designating individual roles to coordinate the activities in this respect. Thirdly, considering the objective of the study, the key to select experts was a combination of two perspectives – knowledge of the life of the foreigners in Poland and awareness of the principle of equal treatment and anti-discrimination law. The third assumption turned out the most difficult to meet. When establishing the list of the interviewees, the actual or potential interviewees called on few experts (in the whole country), who could jointly express both points of view.

When it comes to meeting these assumptions, the sample essentially complied with them, however, in some fields (the judiciary) only partially. It was caused by the limited research time frames, the level of formalities required when reaching out to institutions and long-term unavailability of potential interviewees. An equally important factor was the belief of the potential interviewees that they lacked competence or were not the right match for the study. When contacted, the potential interviewees often said they did not feel competent to talk about the functioning of anti-discrimination law when it comes to foreigners. This subjective lack of confidence was largely caused by the fact that the key act in this area seemed to function to a limited extent or not at all, which translated into the impossibility to assess the experiences of applying the act or the consequences of its introduction. Additionally, the act was described as difficult to comprehend, hence difficult to apply. All the above caused that the interviewed group was less differentiated than planned, though still going beyond the original assumptions when it comes to the number of experts and their positions.

Altogether 39 opinions of experts were collected and recorded in the form of notes from conversations/interviews or transcripts. The experts represented 9 public institutions and 14 non-governmental organisations. In some cases the organisations or institutions (including the Police and the Border Guard) were represented in the study by more than one person. Some of the interviews were conducted with two persons representing the same area.

The information acquired during interviews with experts might indirectly illustrate the scale of the gathered experience when it comes to applying the implementing act to foreigners' cases. It may also signal the priority of this area and the low awareness often associated with the issue of discrimination. The position of foreigners in Poland in general, especially in the area of anti-discrimination issues, is also not without significance. This group in fact combines all the characteristics that constitute grounds for unequal treatment, i.e. race, ethnic origin, nationality, gender, sexual orientation, age, religion etc. Therefore the objective of the research made it obligatory to find experts with comprehensive knowledge of discrimination, not only specializing in chosen legally protected characteristics. Even though it is well known that usually individual experts, institutions and organisations develop narrow specialisations.

The analysis of publicly available sources was introductory, significant and complementary to the empirical study (interviews with experts). The analysed sources included anti-discrimination law provisions (relevant directives and acts), documents prepared in the course of applying the law (reports by the Defender and the Plenipotentiary) and other important documents. The key documents allowing to prevent discrimination of foreigners were also the subject of interviews with experts, e.g. the national anti-discrimination program, handbooks by the Office of the Human Rights Defender, the National Police Headquarters, the Office of the Government Plenipotentiary for Equal Treatment and papers prepared by non-governmental organisations. The literature dedicated solely to the subject of discrimination of foreigners, though worth noting and providing a significant context of this analysis, was not included in the research, since its main focus was on the legal aspects of discrimination and its prevention.

Wording the subject of the study narrowly – as an analysis of the functioning of the Law of 3 December 2010 implementing certain EU regulations concerning equal treatment law – would have given practically no possibility to discuss the problem in a broader context and the results of the research could have been summarised in one sentence, i.e. the law is not applied in practice. Therefore the subject of the study was reformulated – the question whether and how the implementing act works in practice was accompanied by the question why the law is not applied and, simultaneously, what is the formal and legal context of the risk of unequal treatment of foreigners and methods of preventing the phenomenon.

## **2. Discrimination “landscape”<sup>24</sup> and anti-discrimination measures**

### **2.1. Foreigners' experience of discrimination**

Fairly up-to-date information on the experience of unequal treatment in Poland can be found in the results of a survey held as a part of „Equal treatment as a standard of good governance” project conducted by Jagiellonian University in Krakow and commissioned by the Government Plenipotentiary for Equal Treatment. The survey was conducted in 2011 using the CAPI method<sup>25</sup> and was based on a representative sample of 1 715 adult Polish citizens. It has proved that 40% of the interviewed personally know somebody who has been treated worse in Poland, because of their ethnic or national origin or race. It is slightly more than when it comes to knowing persons who have been treated worse because of their disability, religion or being irreligious (around 1/3 of respondents said they knew such persons). Therefore, the national or eth-

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<sup>24</sup> A few important reports summarising the issue of discrimination in Poland, touching on different aspects, have already been published. When it comes to foreigners the following titles should be highlighted: Klaus W. (ed.), *Sąsiedzi czy intruzi. O dyskryminacji cudzoziemców w Polsce*. Stowarzyszenie Interwencji Prawnej, Warsaw 2010; <http://interwencjaprawna.pl/docs/sasiedzi-czy-intruzi.pdf>; Łotocki Ł., *Integracja i dyskryminacja - krajobraz 2009*. Instytut Spraw Publicznych, Warsaw 2009; Mikulska A. *Rasizm w Polsce. Raport z badań wśród osób, które doświadczyły przemocy ze względu na swoje pochodzenie etniczne, rasowe lub narodowe*. Helsińska Fundacja Praw Człowieka, Warsaw 2010, [http://www.hfhrpol.waw.pl/pliki/HFPC\\_Rasizm\\_w\\_Polsce.pdf](http://www.hfhrpol.waw.pl/pliki/HFPC_Rasizm_w_Polsce.pdf); *Przeciwdziałanie dyskryminacji i ksenofobii wobec uchodźców i marginalizowanych migrantów w Polsce 2009*, Fundacja im. Haliny Nieć, Cracow 2010, <http://pomocprawna.home.pl/dosciagniecie/rapoty/raportfopdykryminacja.pdf>.

<sup>25</sup> CAPI is a Computer Aided Personal Interview.

nic origin constituted grounds for worse treatment of people whom the respondents contacted most often<sup>26</sup>.

When it comes to the attitudes of the surveyed Polish citizens, the survey proved that majority of the society (66%) thinks that it is Poles rather than the immigrants who should get a job first when there is insufficient demand for workers. Substantial part (21%) had no opinion, while 12% did not agree with the statement<sup>27</sup>. Subsequently, such an attitude of Poles towards foreigners on the labour market may indirectly point at the risk of discrimination of foreigners in employment, especially when the unemployment rate rises during the economic crisis. It seems that the discrimination issue with regards to employment, also the work under a non-employment contract, is in some way an important problem in terms of unequal treatment of third-country nationals.

The percentage of people who declared they were treated worse because of their non-Polish origin was an extremely low (0,3%). We must remember, though, that there was a similarly low percentage of respondents declaring their origin to be not only Polish, which prevents us from conducting an in-depth quantitative analysis based on the data<sup>28</sup>. The proportion of non-Polish respondents in the survey is quite natural and reflects the composition of the Polish population. Population that is still perceived as quite homogeneous, regardless of many inclinations towards cultural differentiation resulting from the country's history and geopolitical localization. According to the respondents who talked about their acquaintances, some national or ethnic groups are more prone to be treated worse than others. Roughly half of the respondents have mentioned this issue when it comes to the Black people or the Roma people. What is important, many experts involved in the above mentioned study underlined that the greatest problem in Poland (but not exclusively) is the attitude towards the Roma people, followed by the Black people and the persons easily noticeable due to their significantly different looks than the looks of the rest of the Polish society. Please note, however, these ethnic groups cannot be synonymous with third-country nationals, as both groups may include naturalised Polish citizens and EU citizens. 1/3 or slightly more respondents who talked about their acquaintances claimed that the Jews, the Chechens, the Arabs and the Vietnamese were exposed to worse treatment<sup>29</sup>.

It is worth mentioning that within the sample the distribution of persons who personally knew representatives of individual ethnic groups was uneven, therefore one should carefully compare the individual results expressed in percentage rates. For example only 147 respondents declared they personally knew a Chechen, while as many as 417 respondents personally knew a Vietnamese. Most often the respondents declared personal acquaintance with Russians or Germans, but at the same time rarely noticed worse

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<sup>26</sup> Antosz P. (ed.), J. Górniak, *Równe traktowanie standardem dobrego rządzenia. Raport z badań sondażowych*, Uniwersytet Jagielloński, Cracow 2012, p. 37, [http://rownetraktowanie.gov.pl/sites/default/files/rowne\\_traktowanie\\_standardem\\_dobrego\\_rzadzenia\\_-\\_raport\\_z\\_badan\\_ilosowych\\_ost\\_0.pdf](http://rownetraktowanie.gov.pl/sites/default/files/rowne_traktowanie_standardem_dobrego_rzadzenia_-_raport_z_badan_ilosowych_ost_0.pdf) (accessed on 17.08.2013).

<sup>27</sup> *Ibidem*.

<sup>28</sup> *Ibidem, passim*.

<sup>29</sup> The survey included a question about these groups and additionally the Germans, the Russians and the Roma people.

treatment due to their origin. This might be influenced by a relatively more frequent contact with the representatives of these ethnic or nationality groups<sup>30</sup>. Another point worth highlighting is that the representatives of these nationality groups usually do not stand out among the Polish inhabitants, which in turn might influence the attitudes of the Polish inhabitants. Both nationality groups, however, do not rank high in terms of social liking<sup>31</sup>. According to the study and the opinions of the participating experts, often the stereotypes and prejudice<sup>32</sup> that constitute the grounds for discrimination come into being when one needs to handle something unknown – in this case persons of different cultural origin. *The groups the society might be prejudiced against or rank lower in terms of likeability are more vulnerable [to discrimination] (24/OP).*

Though the number of persons of different than average skin colour in Poland (when compared to e.g. South European countries) is low, a study conducted by Jagiellonski University suggests that 40% of interviewed claim that a problem of worse treatment of people due to their skin colour exists in Poland<sup>33</sup>. The belief of 4 out of 10 statistical Poles that skin colour comprises grounds for discrimination is surprising in the context of a study investigating the attitude of Poles towards the Africans<sup>34</sup>. According to the study only one in ten Poles had a negative attitude towards the Africans, while in 25% of cases the attitude was positive and in 60% of cases neutral. However, the answer to this doubt might be the fact that the Vietnamese or Chinese, i.e. persons of different race than the majority of Polish inhabitants, rank quite high in terms of antipathy of Poles<sup>35</sup>. In the study described in this paper the experts often gave examples of persons of colour living in Poland falling victim to intolerance or unequal treatment. Thus racist behaviours are not only present in the awareness of persons professionally enforcing law or supporting foreigners in asserting their rights, but also in the awareness of an average Pole. Often such cases have broad media coverage, therefore, even if statistically speaking these are not frequent occurrences, they are strongly rooted in the public awareness. Poland or its particular regions are then pictured as completely unprepared for the presence of representatives of different races, widely tolerating acts of racism and xenophobia. According to some of the interviewees this is the case of Białystok or Wrocław.

In the mentioned earlier Jagiellonian University study 25 out of 100 persons declared that discrimination on ethnic grounds is also problematic in Poland. The study showed that among the respondents of other than Polish origin every third person felt they were treated in Poland worse due to their descent (5 out of 16). However, the sample is too little to extend the conclusions to the whole Polish population. The research confirmed discrimination based on ethnic origin or skin colour exists, but there is not enough information to study this question further, as it seems the available statistics do not give an idea of the scale

<sup>30</sup> Antosz P. (ed.), J. Górniak, *Równe traktowanie...*, *op. cit.*, p. 38.

<sup>31</sup> See the CBOS press release from February 2013, *Stosunek Polaków do innych narodów*, [http://www.cbos.pl/SPISKOM.POL/2013/K\\_012\\_13.PDF](http://www.cbos.pl/SPISKOM.POL/2013/K_012_13.PDF) (accessed on 02.12.2013).

<sup>32</sup> See Klaus W., Winiarska A., *Dyskryminacja i nierówne traktowanie jako zjawisko społeczno-kulturowe*, "Studia BAS", No. 2(26) 2011; [http://orka.sejm.gov.pl/WydBAS.nsf/0/B5DB8C31E43CD10EC12578B200480D2B/\\$file/BAS\\_26.pdf](http://orka.sejm.gov.pl/WydBAS.nsf/0/B5DB8C31E43CD10EC12578B200480D2B/$file/BAS_26.pdf) (accessed on 29.07.2013).

<sup>33</sup> Antosz P. (ed.), J. Górniak, *Równe traktowanie...*, *op. cit.*

<sup>34</sup> Średziński P. (ed.), *Badanie opinii publicznej na rzecz integracji obywateli państw afrykańskich w Polsce*, Fundacja „Afryka Inaczej”, Warsaw 2010, <http://afryka.org/badania/raport2010.pdf> (accessed on 02.10.2013).

<sup>35</sup> See the CBOS press release from February 2013, *Stosunek Polaków do innych narodów*, [http://www.cbos.pl/SPISKOM.POL/2013/K\\_012\\_13.PDF](http://www.cbos.pl/SPISKOM.POL/2013/K_012_13.PDF) (accessed on 02.12.2013).

of this issue. Meanwhile, studies of foreigners, especially the foreigners of different race than majority of Poles, explicitly highlight that practically all of the foreigners have experienced unpleasant treatment in various circumstances (school, employment, public places)<sup>36</sup>, which to some degree was also synonymous to unequal treatment. The fact of discrimination or unequal treatment is difficult to establish, especially in legal terms. Many law violations take place in ambiguous circumstances, e.g. between persons under the influence of alcohol, therefore it is difficult to establish the grounds for, for example, acts of aggression. Were these hate crimes? Were they cases of unequal treatment?

Majority of experts noted that a broader context should be taken into account to talk about unequal treatment or to find objective reasons why people are treated differently, which does not necessarily mean they are treated unequally. The principle of equal treatment is particularly important in terms of foreigners: *Equal treatment is not at the centre of the law on foreigners, so foreigners are not able to differentiate when it [unequal treatment] is justified and when it crosses the line set out by the regulations (3/OP)*. Even the Poles, including lawyers, are not able to differentiate these without closely looking into the case and its context or analysing the regulations.

The sole fact of being a foreigner causes that the person is subject to special regulations and is obliged to fulfil certain conditions (e.g. in terms of means of subsistence required when entering Poland or legalising stay), which the Polish citizens are not subject to. The lack of recognition of foreigners by regulations other than the Act on Aliens might be treated as an expression of discrimination: *It's not about the Act on Aliens itself, because this act, due to its role, will differentiate the Poles and others. It's about other acts where unequal treatment means omission, lack of recognition that there are people other than Poles present in Poland with different problems than the Poles; not answering their problems by the legislator is discriminatory (3/OP)*. It seems that the fact that foreigners are not taken into account by many different documents (including internal regulations) is revealed, for example, when the aggrieved person turns to an institution or organisation signalling unequal treatment. For example there were inconsistent provisions discriminating foreigners detected twice in the regulations of the Ministry of National Education. The provisions did not allow foreigners to participate in some initiatives (sports competitions, contests or school enrolment). An intervention allowed to remove these loopholes. However, rectifying such "omissions" requires for them to be signalled, which, as the study shows, is not common.

## 2.2. (Undiagnosed) scale of the phenomenon

What is the scale of discrimination or violation of the principle of equal treatment when it comes to foreigners? The answer is - there is little knowledge about the subject. One cannot formulate any conclusions based on court cases either, as it would have to be stated that foreigners are not discriminated in Poland.

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<sup>36</sup> See e.g. Mikulska A., *Rasizm w Polsce...*

The cases of discrimination or unequal treatment are rarely reported and often not identified as such by the aggrieved persons. It also often happens that cases reported as discrimination in reality are not discrimination cases and the foreigners' claims or complaints are deemed groundless. The experts representing the Border Guard and the Police have remarked, for example, that the few foreigners' complaints concerning the behaviour of the officers towards them were most often (though not always) groundless and the actions perceived by the complainants as discriminative were in fact often elements of standard control procedures<sup>37</sup>. Very often the actions complained about take place in a unique context – at the time of crossing the border or in guarded centres where by default every person is subject to specific procedures. It is worth noting that the small number of foreigners' complaints and usually finding them groundless is determined by the way the complaints may be made and different internal, not always effective, procedures. As a result foreigners may feel discouraged from reporting such cases to the border guard or the police.

As some of the interviewees put it – one wishes discrimination was equally seldom as seldom are discrimination court cases, but the reality is less optimistic. The anti-discrimination law, especially the implementing act, is not well known in Poland (including the legal community), let alone among the foreigners. Another key issue is the fact that in the Polish society, including both the hosts and the guests (migrants or refugees), there is quite low level of awareness of what discrimination is, what forms it takes and what unequal treatment is. It is not about everyone learning the definition, but some sensitivity and understanding, noticing others, identifying acts of discrimination and actual evidence for unequal treatment. Some experts underlined this might be difficult. *Due to the fact that there are some media campaigns, organisations produce some billboards or films on discrimination, people often use this term not knowing what it really means. They think that every situation I feel uncomfortable in is an act of discrimination. You discriminate me, because my coffee was not served right. [...] policemen do not know much about this either. [...] On the one hand it [anti-discrimination law] became widespread and on the other hand a qualitative change did not follow suit. And this feeling that this is about the feminists. That discrimination equals either women or a sexual minority (25/OP).*

The process of everyone learning what discrimination is might take years, regardless how perfect the anti-discrimination law is. Well made and comprehensible law, however, might significantly improve the public awareness. Nevertheless, it has to be emphasized that even if the law is well made, the application will certainly be far from ideal, as the persons enforcing these laws and representing the judiciary come from the very same society. A society with low awareness of the principle of equal treatment. When talking about the police one of the experts said: *We often have to re-educate the policemen. They have their backgrounds. We have to teach them from the very beginning what discrimination is, what the consequences are, how bad it is – we have to “mend” them. They come here with some life experience (14/IP).*

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<sup>37</sup> This question itself could be a subject of a subsequent analysis. There was an attempt to examine the limits of the control procedures after the well-known case of a British citizen, a Sikh, who sued the Border Guard for the violation of personal rights during a control at the airport. See e.g. [http://www.hfhr.pl/wp-content/uploads/2012/02/apelacja\\_s\\_puri.pdf](http://www.hfhr.pl/wp-content/uploads/2012/02/apelacja_s_puri.pdf) (accessed on 14.11.2013).

Well prepared and comprehensible regulations and efficient law enforcement bodies are not sufficient to guarantee that foreigners will not experience discrimination, acts of racism or xenophobia. It all depends from the social attitudes towards foreigners and some degree of propriety, especially when the legal culture is not well developed yet. In a situation when different notions connected with discrimination are not well established in the social awareness (or the awareness of law enforcement bodies), one should hope that a high level of propriety and some sensitivity, being with others, often different than we are, will guarantee the respect for dignity and non-discrimination. What is interesting – this aspect was mentioned by experts (mainly representatives of the Police and the Border Guard, but also some less-critical representatives of non-governmental organisations) who were less prone to criticise the law in force and call for amending it. They rather regretted that the awareness is low, there is some ignorance and tolerance for acts of racism, which facilitate acts of discrimination, hate crimes and unequal treatment. Nevertheless, it is important that since there is anti-discrimination law in Poland (widely defined, not only in the form of the implementing act), individual violent acts should be suitably labelled and punished, while the relevant bodies should have an opportunity to broaden their competences in recognizing discrimination and working with the aggrieved foreigners. Popularisation of anti-discrimination law is not possible if the actual acts of unequal treatment are explained by the lack of preparation or propriety, even though these factors are present in numerous cases on the borderline of discrimination (cases which certainly will not be filed in courts).

On the one hand we might observe situations when discrimination is not identified as such by the aggrieved party (due to the low awareness of discrimination and anti-discrimination law). On the other hand some people, including foreigners, might misinterpret some behaviours or situations, especially in the context of intercultural contacts, and perceive behaviours or intentions of a particular person as discriminatory. It is caused by the unfamiliarity with the cultural code the other party is using, but may also be explained by the fact that when encountering something unknown people rather act incorrectly, which may, but not always, take the form of discrimination. It's worth noting that *discrimination might be an explanation of everything, [...] a foreigner by default is in a less favourable position, for instance does not speak the language and even if he speaks, he speaks with an accent and is somehow picked on – regardless whether this is a person from the east, a person of colour or from Africa. So there are many discriminatory behaviours, but there are not so many strictly defined discrimination cases when it comes to foreigners (4/OP)*. There is one more thing to add, though – there are many behaviours that are related to discrimination, but are not considered discrimination in legal terms and do not constitute grounds for a suit. These will not be recorded in the statistical data of the courts, prosecution or police departments either.

The experience of non-governmental organisations supporting foreigners shows, that this group often experiences treatment, which could generally be described as inappropriate, but not always is synonymous to unequal treatment as defined by the anti-discrimination law. Based on the numerous statements of the Defender about the migrants and discrimination, it can be concluded that this group is particularly

vulnerable to unequal treatment. Foreigners, for example, experience dismissive attitude of officials working for institutions they interact with, are faced with refusals to accept applications, do not receive full information required and cannot hope for communication in a language different than Polish. One always needs to carefully examine the context of such situations to find out, for example, whether refusal to accept application was objectively justified or was based on skin colour, accent or nationality of the applicant.

### 2.3. Anti-discrimination policy

What is the status of anti-discrimination policies and practice in Poland? In 2011 results of the “Migrant Integration Policy Index” (MIPEX III) study were published<sup>38</sup>. One of the main elements of MIPEX is the comparative analysis of anti-discrimination activities. When it comes to Poland, the results captured in the document concerned the situation before the implementing act came into force. Thus the general conclusion is not surprising – according to the study results Poland did not comply with the standards in terms of protection against discrimination. Though some slight improvement was noted. The reason for the weakness of the anti-discrimination operations was, according to the MIPEX III authors, not only the missing legal regulations, but also lack of comprehensive integration policy.

The Polish results in terms of integration significantly differ from the best results in the field. The advancement of the anti-discrimination policy that was noted mainly resulted from the newly created body of the Government Plenipotentiary for Equal Treatment. Polish regulations in terms of discrimination prevention in employment and vocational education have also been appreciated. Nevertheless, only after the implementing act came into force one can talk about the protection from discrimination in employment under a non-employment contract, which is of high significance for the foreigners living in Poland.

On the whole, MIPEX III awarded Poland 44 percentage points in total and 36% in terms of the anti-discrimination measures. One of the most important elements the report called for, when it comes to Poland, was the introduction of equal treatment act (which took place at the beginning of 2011). It also emphasized that Poland is the only country with no independent body ensuring protection against discrimination (Poland stood out among other EU countries). Additionally, the report pointed out that the Office of the Plenipotentiary, which is dependent from the government, does not guarantee effective protection. Especially taking into account the fact that this body does not offer legal aid to (potential) discrimination victims. The draft of the implementing act was evaluated as ensuring only minimum protection<sup>39</sup>.

Since integration policy should always be considered when discussing anti-discrimination policies, it is also worth mentioning that the integration policy has changed since the report was published. The inte-

<sup>38</sup> Huddleston T., Niessen J., Ni Chaoimh E., White E., *Migrant Integration Policy Index III*, British Council, Migration Policy Group, Brussels 2011, [http://www.mipex.eu/sites/default/files/downloads/polska\\_abridged\\_migrant\\_integration\\_policy\\_index\\_mipexiii\\_2011\\_pl.pdf](http://www.mipex.eu/sites/default/files/downloads/polska_abridged_migrant_integration_policy_index_mipexiii_2011_pl.pdf) (accessed on 23.06.2013).

<sup>39</sup> Huddleston T., Niessen J., Chaoimh E. Ni, White E., *Migrant Integration Policy...*, *op. cit.*

gration policy framework was prepared by dedicated teams appointed within, among others, the inter-ministerial Committee on Migration coordinated by the Ministry of Internal Affairs as well as the Working Group on the Integration of Foreigners coordinated by the Ministry of Labour and Social Policy. A team of experts associated with CARITAS Polska has also had a significant contribution to the integration policy debate<sup>40</sup>. Additionally, different communities supporting migrants and researching migration issues called for adoption of the integration policies. As a result of the work of team of consultants and experts the “Polish integration policy – principles and guidelines” was prepared in 2013<sup>41</sup>. In spring and autumn 2013 the document underwent public consultations. Half of the document is dedicated to groups which have been included in integration programmes (including the persons who were granted international protection in Poland). The prevention of foreigners' discrimination was called for when discussing the need of broadly defined integration of foreigners. However, no specific guidelines followed suit. This recommendation is in fact in line with anti-discrimination recommendations included in the “Migration policy of Poland” adopted by the government in July 2012<sup>42</sup>. Probably the document implementing the Migration policy of Poland<sup>43</sup> will include more specific recommendations to prevent foreigners' discrimination. It is worth noting that the detailed guidelines of the Polish anti-discrimination policy are part of the “National Program of Activities for Equal Treatment (for the years 2013-2016)” prepared by the Government Plenipotentiary for Equal Treatment. However, the document is applicable to foreigners *sensu stricto* only to a small degree – with an exception, i.e. the access to culturally sensitive gynecologic care and foreigners' children education.

It is worth mentioning that almost 3 years after the implementing act was introduced, but also shortly after the mentioned earlier MIPEX III report was published, the bodies responsible for the application of the principle of equal treatment (as stipulated by the implementing act), i.e. the Human Rights Defender and the Government Plenipotentiary for Equal Treatment, according to the experts, insufficiently or with delay took steps to promote and enforce the principle of equal treatment. It is also often remarked that the Human Rights Defender is not the most appropriate body to serve as an equality body, as the competences of the Defender do not include violation of the principle of equal treatment in relations between individuals. One of the experts said: *the Defender may deal with matters in vertical relations, not*

<sup>40</sup> These are mainly actions within the “Integration practices” project: <http://praktyki-integracji.pl/zespol-ekspertow> (accessed on 02.12.2013).

<sup>41</sup> The document is available at: <http://www.mpips.gov.pl/bip/projekty-aktow-prawnych/projekty-programow-i-inne/olskapolitykaintegracjicudzoziemcw-zaoeniaiwytuczne/> (accessed on 14.10.2013).

<sup>42</sup> “Polityka migracyjna Polski – stan obecny i postulowane działania” (<http://bip.msw.gov.pl/bip/polityka-migracyjna-po/19529,Polityka-migracyjna-Polski.html>) (accessed on 02.12.2013)) is the Polish migration strategy adopted by the government in July 2012. The document includes over 200 recommendations in following areas: legal immigration, preventing illegal immigration, protection of foreigners in Poland, integration of foreigners, citizenship and repatriation, economic emigration – return migrations, effectiveness of legal and institutional systems, international determinants of Polish migration policy, the links between the migration policy and other Polish policies, monitoring of migration processes. Each recommendation should be developed further in a document implementing the “Migration policy of Poland” and translated into specific, planned actions, including the implementation status and time frames, costs, sources of funding, bodies responsible and cooperating institutions. See “Wdrażanie – nie lada wyzwanie”, Biuletyn Migracyjny No. 42, July 2013: <http://biuletynmigracyjny.uw.edu.pl/42-czerwiec-2013/wdrazanie-nie-lada-wyzwanie> (accessed on 02.12.2013).

<sup>43</sup> Draft of the document was prepared by the inter-ministerial Committee on Migration in autumn 2013, but has not yet been published.

horizontal relations, so the Defender cannot intervene in relations between individuals. And every, so to say, equality body should have such a competence. The Defender does not have the power to impose any sanctions or issue binding decisions, the Defender does not have such powers (4/OP). The Plenipotentiary, however, deals only with systemic problems, such as legal loopholes resulting in discrimination of a certain group. In other cases the Plenipotentiary's actions are limited to issuing statements and the body does not have the powers or competence to solve natural persons' problems; only systemic measures are possible (7/IP).

Aggrieved parties cannot receive legal aid from these bodies. They might, however, receive information (including verbal, written, communicated over the internet or at the websites of these bodies) or more rarely – count on interventions, provided their subject-matter is within the Defender's or the Plenipotentiary's competences. Thus there is no equality body in Poland, that would be obliged to provide information, support or solve problems of all subjects, regardless of their character, provided the grounds for their case (even alleged) is the violation of the principle of equal treatment and discrimination. There is no body similar, for example, to the Bulgarian Commission for Protection against Discrimination<sup>44</sup>, which is a body reacting to current problems in terms of discrimination, solving them and intervening regardless of the character of the parties involved in unequal treatment. This institution may issue an initial decision in a discrimination case before the case is even filed in a court<sup>45</sup>. When the experts were asked whether there should be a new, independent equality body established in Poland, majority answered it should not, but mainly because they did not see any opportunity of establishing a new institution. Apart from that, multiplication of the institutions present seems undesirable. Nevertheless, the current situation, especially in the light of the knowledge about the functioning of equality bodies in other countries, seems unsatisfactory even for those who warn against establishing new institutions or offices. The reason lies not only in the fact that there is no truly independent institution that could play the role of an equality body and that could be addressed by the persons aggrieved by discrimination or unequal treatment. It is also caused by the fact that the bodies currently applying the principle of equality are not always evaluated positively. As some experts said, one expects from the Defender or the Plenipotentiary higher engagement and more intensive, not only reactive, operations. Opinion of some of the interviewees about the Defender's interventions is: *The Defender takes care of the matters that are most self-evident, the ones which can guarantee success and can be won, especially when it comes to court cases. The foreigners cases are not straightforward, they are difficult, there is a high risk of losing them (3/OP); They take cases, when they are 100% sure they will win (6/OP)*. The mentioned earlier element of mandatory nature is missing here, therefore not everyone can be guaranteed with full protection against discrimination.

<sup>44</sup> See "Bułgarski projekt", Policja 997 periodical, No. 83/2012 <http://www.gazeta.policja.pl/997/inne/tylko-sluzba/74902,Bulgarski-projekt-Nr-83-022012.html?search=5510548> (accessed on 14.11.2013).

<sup>45</sup> In every EU country, in fact, there is an independent equality body or some institutions taking care of selected legally protected characteristics. See more, e.g. Wencel K., *Przeciwdziałanie dyskryminacji ze względu na rasę, narodowość i pochodzenie etniczne w wybranych państwach Unii Europejskiej*, "Analizy, Raporty, Ekspertyzy" No. 8/2009, Stowarzyszenie Interwencji Prawnej, Warsaw 2009, <http://interwencjaprawna.pl/docs/ARE-809-dyskryminacja-UE-przepisy.pdf>.

The arguments in favour of a new, separate, independent institution included the potential it could have – the fact it could give the anti-discrimination matters adequate importance and effectively support in asserting rights in cases of violation of the principle of equal treatment: *It would be good if there was a separate equality body with the powers to solve discrimination cases. There would be another good thing about this – when you speak about the awareness of this act, of the regulations, the visibility of such cases also grows* (5/OP).

It is important to note that the introduction of the implementing act did not change the competences of the Defender when it comes to the possibility to intervene in cases of violation of human rights and the principle of equal treatment by the public bodies. The new competences, resulting from the implementing act concerned mainly the analytical and reporting role of the Defender. Even though essentially the actions of the Defender when it comes to foreigners<sup>46</sup> are evaluated very well, the role of the Defender as a body enforcing anti-discrimination policies raises objections. However, there have been changes in the office of the Defender aimed at adopting a more systematic approach to the equal treatment issue (e.g. appointing a team specialising in anti-discrimination law).

In conclusion it should be stated that until the introduction of the implementing act foreigners were protected only in employment and not against discrimination on nationality, ethnic or religious grounds. They were also protected against insults, aggression and hate crimes under the criminal law. Usually the victims, with no possibility to benefit from specialised legal aid, needed to file lawsuits on their own, which, according to the organisations working with foreigners, happens very rarely. They are not acquainted with the Polish legal system well enough to be effectively able to assert their rights in legal cases with no external help. The few court proceedings that were actually instituted often take years. It is caused by the fact that the aggrieved persons are not Polish citizens, so the court case often needs to be examined and solved using different legal means (written interventions, mediations, negotiations) and under different acts.

The conclusions of the MIPEX III report may be considered outdated only partially. In 2011 the implementing act came into force and even though over time one could notice the increased accessibility to the information on equal treatment and discrimination, it did not necessarily result in increased effectiveness of legal measures in this area (court proceedings). The act is an instrument ensuring equal treatment in terms of accessing services, goods, education and medical care. The legislator, however, did not ensure equal access to these and additionally included an exhaustive list of grounds for discrimination in this area. Majority of experts additionally highlighted the inaccessibility of legal aid.

What is important, characteristics such as race, ethnic origin and nationality are mostly protected when it comes to areas where unequal treatment may potentially take place. Thus, based on the character

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<sup>46</sup> Migrants are one of the priorities for the current Human Rights Defender - professor Irena Lipowicz. She often points out that, as far as she is concerned, the migrants – next to the elderly and the disabled – are the group that is most often discriminated in Poland. See Biuletyn RPO No. 80: <http://www.brpo.gov.pl/sites/default/files/Biuletyn%20RPO-Materia%C5%82y%20nr%2080.pdf> (accessed on 22.11.2013).

of these legally protected characteristics, one may risk drawing a conclusion that foreigners indirectly gained a wider scope of protection, but only in terms of discrimination on grounds of race, ethnic origin or nationality. Nevertheless, considering certain aspects of the life of foreigners in Poland (e.g. widespread employment under non-employment contracts, even when the working conditions match the requirements for an employment contact - e.g. in construction sector), one can conclude that the implementing act improves the foreigners' situation in different areas. For example, *if it turns out that the majority of foreigners work under non-employment contracts, one can say the act introduces protection of such employment, protection against discrimination and increases the level of protection of foreigners (5/OP)*. Does it really improve protection if it does not work? It seems the act has the capacity to do so: *If the people were aware of their rights, it would be more significant then... It could be more significant for the persons working under non-employment contracts (1/IP)*. However, the conditions for exposing discrimination and potentially receiving support in claiming damages remain complex when it comes to foreigners (more details will follow).

What is interesting, employment was most often identified as the area of foreigners' life that, if analysed, could give evidence as to how important the enforcement of anti-discrimination laws is. Based on the statistics on the labour court cases in the area of discrimination, one can state that employment is a sphere where there is the highest probability of asserting one's rights. An interesting question is whether this is also the case for foreigners. *When it comes to the Labour Code or employment in general, people are more active [...]. When someone is dismissed, they lose something then, certain money, this is a life crisis and people are determined to enforce the Labour Code principles. [...] But when someone is not let into a go-go bar, when a woman is not allowed in to a go-go bar, then she will agree to have it reported anonymously, she will describe what had happened; but a court case? Not necessarily, because you have to go to court, testify and it is embarrassing. [...] Of course nothing is certain, but I think it is easier to let it go. Unless someone is really determined, so offended, humiliated that they want to have it solved (6/OP)*. One should remember, however, that even though employment is a significant area of potential and actual foreigners' discrimination<sup>47</sup> and even though there are regulations protecting against discrimination in employment under employment and non-employment contacts, foreigners still signal unequal treatment in this area very rarely. It is not caused by the lack of awareness, however, but rather the fear of leaving Poland when there is no work or there are difficulties in finding a new job.

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<sup>47</sup> This matter is also addressed in the "National Program of Activities for Equal Treatment (for the years 2013-2016)".

### 3. A practical view on the (non)functioning anti-discrimination law from the point of view of foreigners

The analysis of the laws and their functioning cannot be conducted separately from the broader context a foreigner's life in Poland – including the scale of immigration, cultural and social capital of the migrants, attitudes and intercultural competencies of the migrants and the host society, characteristics of the Polish labour market and the complementary role of foreigners in its structure. The awareness of the problem in general is also important in the context of discrimination. According to the information presented earlier in this paper, the implementing act is applied to a very little extent. This act, especially when it comes to foreigners, may constitute the grounds for their effective protection, but it is not really enforced. What is the reason? To answer this question one should mention some key issues or doubts the interviewed experts had. What is significant *is that two and a half years after the act was introduced there is virtually no judicial practice. It makes me think (7/IP)*. Looking from the perspective of the advancement in anti-discrimination policy, one may quote an interviewed expert: *the legal sphere seems good, legal culture has largely improved, but it seems that the most important part is lagging behind – the organic part, the part present in the society (14/IP)*. With a reservation that the legal sphere leaves a lot to be desired, one should turn attention to the last factor, which seems to have a lot in common with the answer to the question whether the act is needed and why it is not applied.

#### 3.1. Is the anti-discrimination act needed at all?

The experts have not denied, in fact, the need to introduce an equality act. Quite contrary, they emphasized that Poland needed and still needs genuine anti-discrimination laws, i.e. comprehensive and complete laws ensuring equal protection to all the groups vulnerable to discrimination, so in fact to all groups. There are opinions, however, that the implementing act in fact does not introduce anything new, as the protection it grants has already been granted by the Constitution of the Republic of Poland and international law guaranteeing the protection of the human rights. Besides, according to some experts, the anti-discrimination laws ensuring effective protection were already included in other regulatory acts, especially in the Labour Code and the Criminal Code. The implementing act is only complementary to them and does not change much in practice: *That's a great act, of course, but if it was not present this discrimination could be drawn from other legal regulations (1/IP)*. Such opinions, however, when compared to others were quite infrequent. Majority of experts who knew the act pointed out that an anti-discrimination act is needed in Poland, but were not convinced that the act of 2011 should be significantly changed.

Due to the scope of the protection offered, according to many experts, the introduction of the act had no or little influence on the changes in the offer and accessibility of legal measures protecting against discrimination. Few persons try to apply the articles of this act with courage and determination, provided they are aware their rights were violated and know where to turn for help – which happens rarely. General-

ly speaking, based on the experts' opinion, the act is not applied in practice, since it is difficult to use – it is difficult to comprehend and lacks consistency.

Nevertheless, even according to the experts with negative attitude towards the act, its introduction itself underlines the significance of the problem of discrimination and unequal treatment. Introduction of the act proves that the state treats this issue seriously and intends to take appropriate measures against the persons violating the principle of equal treatment. Similar views were heard among the non-governmental organisations representatives, as well as the representatives of public institutions: *The introduction of the act made the persons managing human resources realise how important equal treatment is when it comes to the recruitment and training processes and employing foreigners, e.g. in terms of access to education or social assistance (27/OP).*

The necessity of anti-discrimination act and independent anti-discrimination body was particularly underlined by the experts for whom discrimination is the main or one of the main fields of activity. Which is not surprising if one takes into account the fact that these experts (mainly from non-governmental organisations) are most experienced in assisting different persons in asserting their rights and revealing unequal treatment. Thus they have a set of quite clearly defined expectations towards the law in Poland and possibilities to enforce it.

Some of the experts emphasized that even though there is virtually no judicial practice in applying/enforcing the implementing act, there were different steps undertaken to foster the awareness among the representatives of public institutions. It seems, however, that the essence of the act is not fully clear, especially for non-lawyers. One of the interviewees said that representatives of the prosecuting authorities try to inform the institutions working with foreigners about the new act, but it seems that not much has changed since its introduction. *What has changed is the unavailability of punishment for racial acts against a person (13/IP).* At the same time there were also opinions expressed, that *the act lacks sanctions for acts of discrimination (31/IP).* Therefore the interpretation of what in fact the act conveys, as it could be observed, is quite differentiated. As a result the benefits of filing a lawsuit under this act and the consequences that will be faced for the violation of the principle of equal treatment are not clear. It seems that only few experts were knowledgeable about the detailed solutions included in the implementing act. Majority of those who directly and indirectly work in the area of discrimination have completely not perceived the implementing act as an important point of reference in their activities.

It was usually the lawyers who strongly and confidently justified their opinions about the act and suggested changes to the regulations. Every one of them, with no exception, could indicate the flaws of the act, but also tried to use it, verify it in practice, even though there were few opportunities to do so. The way the non-governmental organisations lawyers approach this act is visible in this opinion: *We are looking for cases, which could be examined under this act to test it and illustrate its flaws. Besides, we think that if there is an instrument, we cannot simply take offence at the legislator that the instrument is not ideal. We need to, you know, lobby for amendments and at the same time apply everything that can be applied*

(5/OP). The principle of reverse burden of proof was well regarded by the lawyers. It means that whoever accuses of violation of the principle of equal treatment should only make a reasonable case that the principle was violated, while the party accused of discrimination is obliged to prove violation did not take place. However, the application of this principle might raise concerns: *I'm curious myself which principle will be applied, because under the act the reverse burden should be applied. Will all the procedural safeguards be respected? This is something new to me too, so I cannot share my experience, as I have none* (4/OP).

When analysing the opinions of the experts one can conclude that the persons who do not know the act very well often draw their knowledge from incomplete information about its scope, significance, difficulties in applying it and the lawyers' reluctance to apply it. They believe it is at odds with other available measures of protection against discrimination, which, according to them, can be proven by the number of court cases filed under this act. Hearing these signals, the persons who work with foreigners might certainly wonder why the act was introduced at all if there is not enough determination (and probably knowledge) even in the legal community to use it. *If it was a well constructed, comprehensible act with an appropriate title – because everything counts... If it is prepared for people; you prepare acts for people to use them. A foreigner does not stand a chance* (6/OP). It should be clearly stressed, though, that the opinions according to which Poland does not need an anti-discrimination act altogether were few and mainly expressed by persons who do not handle legal matters as part of their professional obligations.

### 3.2. Low legal awareness and complexity of discrimination

Taking into account the fact that only few cases have been identified as violating the regulations of the implementing act, a broader context should also be considered: *In general there are few discrimination cases* (7/IP). And it is not only that few cases are handled by courts, but also by other institutions such as the Office of the Plenipotentiary, the Office of the Defender, the National Labour Inspectorate<sup>48</sup> and non-governmental organisations. Nevertheless, looking at the complaints about discrimination, *there are even fewer complaints about discrimination on the grounds of race, nationality and ethnic origin. [...] And why? It's the legal awareness and the resulting incapability and reluctance to assert your rights, in different ways, that's one thing* (7/IP).

Low awareness has been referred to multiple times as a factor causing that the anti-discrimination law cannot function properly. Often the basic knowledge is not there, i.e. what discrimination is and is not, what groups are most vulnerable (not ignoring the fact that in general everyone may be affected by discrimination). Often there is also a lack of will to broaden the knowledge. The opinion of one of the inter-

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<sup>48</sup> One of the recommendations gathered from the interviews with experts concerned the functioning of the National Labour Inspectorate (further in the paper the Inspectorate). One should think that currently this authority fulfils obligations which bring contradictory effects when it comes to the situation of foreigners. On the one hand the Inspectorate was formed to reveal violations of labour law and discrimination, on the other hand, however, it controls the employment legality. For foreigners it means that contacting the Inspectorate, which could help, is explicitly connected with the risk of facing consequences when some violations of the legality of employment are revealed.

viewees concerning the time just before the implementing act was introduced may well illustrate the fact, that the members of parliament are aware of what anti-discrimination law is, but at the same time they express incomprehensible fear of some minority groups: *The circumstances the act was introduced in, fear that minority groups will want to gain something at the expense of the disabled* (19/OP).

Some of the interviewees said that the reason the implementing act is not applied is the fact that discrimination is a difficult topic, especially for those, who enforce law and have to ground their actions on fairly subjective measures: [Discrimination] *a tricky subject, meaning, not much can be done, because the cases are disputable* (1/IP). Additionally, it should be taken into account that some public institutions – like controlling or prosecuting authorities (such as the Inspectorate or the police), are not competent to act under the implementing act. This means that even if they notice signs of discrimination as understood by the implementing act, they will usually not be able to directly and appropriately react. At the heart of this law, to some degree, is the self identification of the aggrieved persons and taking legal measures.

The main problem is, though, that it is the aggrieved persons who are not aware of discrimination they experience. It may be even more the case of foreigners, whose language and cultural barriers and certain experience from the country of origin might cause that learning their rights in Poland, internalizing them and being able to use the measures protecting these rights will be problematic. A common belief that still often lingers on is that even though everyone is guaranteed with the protection of their rights, the migrants are deprived of it due to their formal and legal situation. There is another and more serious aspect to this – the lack of awareness that human rights are inalienable and everyone is entitled to them, with no exceptions. The key is, therefore, to remember that under Polish law: *Everyone aggrieved by violation of the principle of equal treatment has the right to compensation, everyone means a foreigner too* (15/IP). The low public awareness of anti-discrimination law, especially among foreigners, was highlighted by all the interviewees. The latter is also emphasized by the Human Rights Defender in her speeches<sup>49</sup>.

What should be done to facilitate public awareness? There is no simple answer to this question. Measures should be taken at various levels – from educating and informing, through legal counselling, to social assistance and crime prevention. Additionally, as it has already been emphasized, all the activities raising awareness should be well planned and adjusted to the needs of the potential audience. Repeating slogans that do not carry any meaning for an average person does not make sense. The only thing that could bring results is influencing imagination (by presenting specific examples) and telling people what their rights are and how to assert them step by step (also by legal means). When informing about the implementing act, we should also be presenting *the legal path in court proceedings, what document should be prepared to justify the case, what kind of support and from what institutions one may count on* (25/OP).

The experts have stressed that education should start as early as possible, even in kindergartens. *Above all we should work in schools to make sure that growing up among persons of different nationality,*

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<sup>49</sup> The query of the Defender to the Plenipotentiary: <http://www.sprawy-generalne.brpo.gov.pl/pdf/2011/10/687085/1647153.pdf> (accessed on 14.11.2013).

*race or religion was nothing out of the ordinary. To make sure we shape a fully aware, diversified society – along the lines that “children are the future of our nation” (34/IP). Educating does not only concern children, adolescents and students currently receiving education, but everyone. Especially the persons whose work might involve activities to protect foreigners against discrimination or support them in legal terms. Even though there have been multiple training activities provided for the chosen professional groups (the border guard and the police), it seems they still lack the basic knowledge and understanding of all these slogans connected with discrimination and anti-discrimination law, often recited mindlessly. In the police community, which is often trained in the area of human rights (including anti-discrimination measures), one can often hear, for example, that human rights are a whip used against them, that it is a one-sided approach. They are really surprised. It's incredible – when we tell them “you also have these human rights and you can use them. It's not a whip that will make it impossible for you to fulfil your responsibilities” (25/OP).*

The low legal and public awareness can sometimes be observed in the language used, for example, by persons working with those who are different in some respect than the majority of Polish society: *I sometimes observe a very light-hearted approach to racial, nationality and religious differences – discriminating language that the speaker is not aware of. The speaker uses insulting or inappropriate, dismissive vocabulary believing it is completely neutral (21/OP).* The language, as a matter of fact, could become the object of separate research – based on the conducted interviews and analysed documents.

Majority of the interviewees, especially those working with foreigners directly, highlight that it is difficult to expect foreigners to signal they have experienced unequal treatment or discrimination, because they are usually not aware they were aggrieved by these acts. Sometimes, which also happens, they perceive some behaviours as discriminating, while they are not discriminating in fact. This is why the few experienced social organisations<sup>50</sup> that support foreigners and also are involved in anti-discrimination activities try to “extract” elements that might signal discrimination from what the migrants say and analyse and verify them, even though these might not be defined or correctly defined as discriminating by the migrants themselves. *When providing legal counselling we saw the need to have such specialisation, [...] the need for “extracting”. Very often the elements of discrimination cases were found in our different cases, because it happens very rarely that a foreigner comes and says: “I am discriminated, I have this problem”. It is hidden somewhere between other matters (4/OP).*

Non-governmental organisations additionally monitor the stories covered in the media. What is puzzling is the fact that the aggrieved parties sometimes turn to media not having used other measures first, such as contacting the Defender or non-governmental organisations. Media coverage is sometimes the reason for becoming interested in a case, contacting the aggrieved person and the alleged perpetrators or a reason for an intervention. Since both non-governmental organisations and state bodies responsible

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<sup>50</sup> The interviewed experts mentioned two organisations where they would direct foreigners who need legal aid due to the experience of unequal treatment – the Helsinki Foundation for Human Rights and the Association for Legal Intervention. Very often the Polish Society of Anti-Discrimination Law was also mentioned as a sound source of information and counselling, but not necessarily working with foreigners.

for the application of the principle of equal treatment are insufficiently informed about discrimination cases, it is not surprising media becomes a source of information. *There are some discrimination cases, but it's not that we have many of them and we're lacking enough employees. We rather need to look for cases. Out of ten cases we investigate, one has grounds for an intervention and even fewer qualify for a court case (5/OP).*

Discrimination is a complex phenomenon, especially when it comes to proving the occurrence of unequal treatment. Taking into account the specificity of court proceedings, the necessary preparatory steps before filing a lawsuit, potential costs, the risk of losing and the consequences of a potential failure, it is obvious that the chances for success have to be assessed before deciding if a lawsuit should be filed.

The introduction of this act was not accompanied by any particular information campaign or trainings. The below quote may unveil the circumstances of its preparation and introduction: *I was very disappointed that the act was introduced with no announcement from the authorities that it is there; it is in force and who it applies to. And it was shocking, because in January, when it was introduced, [...] I participated in a training that was provided by public bodies. We received the act with the training materials, with no information that it had been in force for a month, what it means for us here in Poland, what it means for the legislation in Poland – and the training was on discrimination (2/OP).*

When it comes to the access to information, it has been gradually improving recently. At the same time, according to some experts, the information campaigns are not sufficient and were late. *The first step to facilitate the raise of awareness is the adoption of the government strategy for equal treatment (9/OP).* The bodies responsible for application of the principle of equal treatment<sup>51</sup>, as well as a few non-governmental organisations have posted on their websites information about the act, its contents and information about their interventions or anti-discrimination events (conferences, debates). What is important, a large part of the published information concerned the activities aimed at amending the anti-discrimination act. Nevertheless, from the perspective of a person whose rights might have been violated due to discrimination or unequal treatment, especially when it comes to a foreigner who does not speak Polish well, the information available in the internet is not very useful. As it has been said earlier, even sound knowledge of Polish, including legal jargon, does not guarantee comprehension of the act. Moreover, knowledge of and understanding of the act are just the first step to asserting rights in court. Therefore, from this perspective, the information published on websites and in the recently prepared guides<sup>52</sup> is not sufficient, especially from the foreigners' perspective.

<sup>51</sup> *In accordance with the Polish legal system and the Constitution, all departments, central administration and government bodies are responsible for the application of the principle of equal treatment, even though it is the two public bodies mentioned earlier that are the key authorities mentioned in the act. The Plenipotentiary plays essentially a coordinating role and the individual departments are not exempted from applying the principle of equal treatment within the scope of their competence(7/IP).*

<sup>52</sup> In spring 2013 the Office of the Human Rights Defender published a guide "Przeciw dyskryminacji" (Against discrimination) – <http://www.brpo.gov.pl/pl/content/przeciw-dyskryminacji-poradnik-rpo> (accessed on 23.06.2013) and in September 2013 anti-discrimination guide for police officers and employees "Po pierwsze człowiek" (A human being above all); see <http://isp.policja.pl/isp/prawa-czlowieka-w-poli/aktualnosci/4344,dok.html> (accessed on 14.10.2013).

The website of the equality body, i.e. the Human Rights Defender, is in fact a subpage of a website about equal treatment, where one can find, among others, main definitions, law in force, suggested actions as well as decisions in discrimination cases. Unfortunately all the information is available only in Polish. “Against discrimination” guide was also published on this website<sup>53</sup>. An important note – the guide was published quite recently, i.e. at the beginning of 2013. It was a result of an initiative aimed at increasing the awareness in terms of protection against discrimination and encouraging the discriminated persons to inform the Human Rights Defender about such cases. Without the information from the aggrieved parties, the Defender has limited possibilities to enforce systemic actions that would be most desirable and beneficial long-term. What is important, the guide very clearly illustrates the main definitions and principles of the equality act and gives specific examples.

Another initiative worth attention is the anti-discrimination guide addressed mainly for the policemen, titled “Po pierwsze człowiek” (A human being above all)<sup>54</sup>. Similarly to the guide issued by the Human Rights Defender, the guide for the policemen (but potentially useful also for other public service clerks and anyone interested) includes many examples of discriminatory actions, excerpts from the accounts of the aggrieved, principles of communication with the representatives of minority groups. The second mentioned guide is an example of an initiative aimed at improving the quality of service of the law enforcement officials<sup>55</sup>, who work with the representatives of minority groups in a particular context – in a situation when someone's rights were violated and the policeman is in a position of power (14/IP). The preventive role, i.e. prevention of repeat victimisation, is worth highlighting here. These exemplary and recently most visible activities aimed at informing and increasing awareness are quite appealing, but still fairly unavailable to foreigners due to the language barrier.

Increasing the awareness, making information accessible etc. are the activities which should be broadly intensified in professional communities and the society as a whole – episodic trainings or talks are not enough. Sharing authentic cases and stories is certainly important to the process of raising awareness. The experience of non-governmental organisations focused on “soft” anti-discrimination activities<sup>56</sup> shows what shift in perception may be caused by a direct contact with persons of different culture, religion, nationality, ethnic origin or race<sup>57</sup>. Even though this kind of activities is not a direct answer to the call for pro-

<sup>53</sup> See <http://www.brpo.gov.pl/pl/content/przeciw-dyskryminacji-poradnik-rpo> (accessed on 9.08.2013).

<sup>54</sup> See <http://isp.policja.pl/isp/prawa-czlowieka-w-poli/aktualnosci/4344,dok.html> (accessed on 14.10.2013).

<sup>55</sup> Some of the interviewees suggested that regardless of its universality, the guide is mainly used by the police. The second public service important for the foreigners, the Border Guard, does not have any documents available that would have been prepared especially for the employees, even though the specificity of the border guards work calls for such an initiative.

<sup>56</sup> Among the “soft” activities one may name workshops on intercultural communication, film shows, debates, theatre activities and all the forms of presentation and communication which allow to communicate the knowledge about differences and the principle of equal treatment.

<sup>57</sup> Anti-discrimination workshops attended by persons of non-Polish origin were conducted by the “Ocalenie” Foundation – see [http://fundacjaocalenie.org.pl/?page\\_id=2529&paged=2](http://fundacjaocalenie.org.pl/?page_id=2529&paged=2) (accessed on 02.12.2013) and “MultiOcalenie” Foundation – see <http://multiocalenie.org.pl/szkolenia-dla-funkcjonariuszy-strazy-granicznej/> (accessed on 02.12.2013). The workshops were organised not only for border guards (though mainly for them), but also for policemen. Educational activities for the employees of the police and the border guard service were a part of “Afryka Inaczej” Foundation project – see <http://afryka.org/afryka/bardzo-potrzebne-warsztaty-na-poludniu-polski,news/> (accessed on 02.12.2013).

moting the anti-discrimination law and exercising the rights it guarantees, they are worth our attention. They build elementary knowledge about others and give grounds for understanding the phenomenon of discrimination, its consequences and the law ensuring protection against discrimination.

### 3.3. Foreigners' concerns and unwillingness to take legal measures

There is a group of factors that often discourage foreigners from initiating activities they perceive as threatening. Even in situations when they are aware they were discriminated or the principle of equal treatment was violated (which in practice is very rare). If their problem was in employment, for example, they are afraid that taking legal measures might result in inability to continue their work or the need to find a new one, lack of financial means and the necessity to devote a lot of time to asserting their rights. It is often the economic duress that discourages the migrants from asserting their rights. An often expressed opinion, which is disturbing, but illustrates the reality well, is that foreigners take unequal treatment for granted, as yet another cost to bear. *People get used to discrimination to such a degree that they stop fighting against it (23/OP)*. Of course they think this way only in a situation when the working conditions (even given the violation of the principle of equal treatment) are more beneficial than being unemployed or facing the return to their country of origin. One of the reasons why the legal means might be avoided is the foreigners' financial situation and the reluctance to invest time and other means in a court case, when it could mean losing a job or temporary loss of wages. One of the interviewees representing a public institution illustrated the situation well: *If I was discriminated, if I felt discriminated at work, for example, I would think twice before taking any step. I think that when it comes to employment matters, it is all about the fact that before anyone takes any action, they are afraid of losing their job, escalations, maybe this is why we have fewer foreigners' cases in the area of employment (11/IP)*.

Very often the fact of being a migrant, for example an economic migrant, results in a distinct attitude – I will focus on earning wages, regardless whether all the procedures and formalities were met. When problems appear, foreigners try to solve them on their own, with the help of the most trusted persons (and even the persons working for non-governmental organisations are often not trusted enough). They are interested in solving individual problems, not fighting for the common good: *There are numerous cases, when people do not want to be an example, role model who fights for others – because they have their life here and now. And what they are most interested in, is the support that will help them live they want to live most. Court cases will not be helpful. This is why a lot of violent behaviours will never be reported to the police. It's because the persons who experienced it, do not want to report it (23/OP)*. Even though this quote may apply to hate crimes better, the described motives most probably also apply to foreigners who experience discrimination in different areas of their lives. If an economic migrant might receive the desired compensation by other means than the legal measures (for example adjustment of wages to the wages for the same position, respecting the working time or calculating daily allowances in a non-discriminatory way),

they will certainly pursue them. Among the measures foreigners are more willing to take there are more and less formal interventions (such as warnings) from fellow migrants or representatives of non-governmental organisations.

Another thing, potentially discouraging the immigrants from filing their cases, is that *Poland seems to be this very bureaucratic monster. There seem to be so many bureaucratic elements here that a person with little language skills, even though he or she speaks Polish (but you need to know this specific jargon after all), they don't do it, think they cannot cope with this. Considering all the paperwork, documents I will have to present. [...] this view persists, and it also applies to other anti-discrimination matters, that the burden of a court case is always carried by the person who files a lawsuit not the organisation or institution suspected of discrimination, [responsibility is] on this poor person who is grappling with the system (25/OP)*. It seems this area lacks reliable information. People might be afraid, as they are not aware what “going to court” really means. What the costs involved are, what they will have to do, where to file their lawsuit. It is possible that with no legal aid foreigners will not be able to cope with the system, especially if they file a court case for the first time. There is a tremendous gap here – the system is lacking legal advice in general, and even more when it comes to the legal aid and support for foreigners. It still has to be developed in parallel with raising the awareness of the discrimination phenomenon and anti-discrimination law (36/IN).

One more important aspect is the lack of trust towards the administration or public services. Usually this results from the experiences from the country of origin, where the migrants often could not count on the state's support, which is why they never asked for it. They did not see any point in reporting problems to the police, as they did not believe it could change anything. When describing the foreigners', including the refugees, situation one of the interviewees said: *Even if they suffered some harm and they would like to report it, they come to the conclusion that there is no point of reporting anything to the police. [...] But this is because of their experience from the country of origin, not because something wrong has happened in Poland. They came to that conclusion in their country – there is no point of doing it. So they don't (12/IP)*. Usually, however, problems are solved with the help of the members of the community. So it is not true that foreigners leave behind them various difficult experiences and do not try to “seek justice”. They rarely try to find it, however, with the help of the Polish judiciary or even non-court institutions or organisations.

When discrimination cases are not reported and the dominating attitude is to avoid filing complaints or turning to the anti-discrimination law, it is difficult to establish whether the law is effective or requires amendments. It seems that, considering the situation, more activities should be conducted to limit foreigners' concerns about the consequences of reporting discrimination cases to the appropriate bodies and ensure reliable information as to how to report such a case and where to find the necessary support. The belief that legal measures are ineffective and *failure to act are widespread so far. It may also stem from the fact that people do not believe they might win anything, that something might change, but rather think they will be perceived as the persons who – putting it bluntly – wreak havoc and try scheming. And this is my observation: they do not even name it discrimination, but rather a lack of sensitivity. [...] I think many*

*feel helpless; they feel it will not change anything (17/OP). The lack of exemplary cases and signals about the positive outcome of court proceedings does not encourage foreigners to choose legal means as a way to solve their problems, including the discrimination problems. The migrants who live here have their jobs, schools, learn the language; they have their life and want to continue living their life here. They know this will be a very exhausting procedure. The questioning and then the court case, the length of the process – it does not encourage them. Maybe if we had more successes in such cases, we could say: “listen, it does not always end this way” (23/OP).*

Unregulated status of foreigners might be the reason why they do not decide to expose the injustice they might have experienced due to discriminatory behaviours. *If they are in Poland illegally and are discriminated, they do not report it, because any form of contact with the police might result in revealing their illegal stay or illegal employment. [...] there should be a legal regulation that says – when a person reports a criminal offence, they should not be detained and quickly expelled. [...] Only the victims of trafficking in human beings have a special status. This is why they are afraid, afraid of police in general; they fear these contacts (6/OP).*

In conclusion, one should state that the unwillingness to report violation of equal treatment laws results from a few factors - even if these are indirect reports filed when a foreigner in fact seeks help in some other problem. First of all, it may be caused *by a difficult situation of a foreigner. Staying in a foreign country, with no social background, often with not fully regulated legal status, fear of consequences and certain experiences from the country of origin (7/IP).* Second of all, foreigners lack the belief in the effectiveness of legal measures. They are convinced that taking these measures is very costly (necessity to hire a lawyer), time-consuming (questioning, preparing applications or justifications) and involves many complications along the way (e.g. looking for witnesses). What is important *is that foreigners do not feel confident; they are not convinced that someone will defend their rights; they lack audacity to defend themselves, due to the frequent feeling of insecurity. They are afraid that fighting for one's rights might bring harm to the procedure of legalising their stay. It is not only about the illegal immigrants, but also the foreigners who stay in Poland legally (21/OP).* All these factors should be taken into consideration when planning actions to increase the protection of foreigners against discrimination.

### **3.4. Application of the principle of equal treatment**

Many experts talked about the operations of the bodies responsible for application of the principle of equal treatment. Majority of opinions, however, concerned the role of the non-governmental organisations. It seems that the effectiveness of their operations vastly depends on who manages them and holds important positions. Some of the non-governmental organisations activists stressed that the right persons in the right places guarantee effective communication and support in solving problems without any harm to the mission or tasks of the represented institution. The communication between different institutions, the police,

the border guard, voivodship offices, local governments, non-governmental organisations and foreigners' communities may serve as a foundation for information exchange, allows to keep everyone informed about the problems and react accordingly. There is one assumption though – all the participants need to be willing to communicate and everyone should care about using this communication channel as well as possible. However, this happens rarely in fact. Not everywhere in Poland one may see the willingness to communicate, especially when it comes to anti-discrimination activities, which most often are associated with sexual minorities. According to the experts, there are quite a lot of initiatives in Poland to meet in diverse groups and plan specific tasks towards raising the awareness of the phenomenon, but enthusiasm of individuals is not always enough to fulfil them. Another point worth underlining is that the attitude of the head of an institution or an organisation defines the direction of the activities it conducts and how the employees work, how they address – in this case – foreigners, how they react to violation of law.

The important elements of the application of the principle of equal treatment are not only the laws granting competences, but also specific programs and strategies. The mentioned earlier National Program of Activities for Equal Treatment (for the years 2013-2016) prepared by the Government Plenipotentiary for Equal Treatment involves activities for foreigners in three areas: equal treatment in employment and social security, preventing violence and equal treatment in accessing goods and services, education and health care. The last area, as a matter of fact, addressed foreigners or rather female foreigners directly – as one of the tasks of this program was to improve the access to the culturally sensitive gynecologic care. This task was mainly foreseen for foreigners, especially women living in the centres for foreigners, but also for the Roma women to some degree. The program adopted by the Cabinet's standing committee in October 2013, however, does not include many of the recommendations concerning foreigners prepared during the project “Equal treatment as a standard of good governance”<sup>58</sup>. The recommendations that were not included in the program were: ensuring access to political rights for migrants staying in Poland, including the undocumented minors and pregnant women in the group provided with the public medical care free of charge (regardless of their legal status), reduction of peer violence (also when it comes to foreign pupils) and ensuring access to education for children in guarded centres. Many recommendations directly addressed at foreigners prepared by the experts in the “Recommendations for the national program for equal treatment” document were not included in the final version of the Program. It most probably highlights the attitude towards migrants and areas where they are vulnerable to discrimination – in the sphere of the application of the principle of equal treatment.

The experts representing non-governmental organisations expressed different opinions about the role and operations of the main bodies responsible for application of the principle of equal treatment. It seems that sometimes a visit to a city where intolerance is exhibited or a meeting of the Human Rights Defender with a local community might be more significant than taking any formal measures foreseen in

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<sup>58</sup> See [www.siecrownosci.gov.pl](http://www.siecrownosci.gov.pl) (accessed on 14.11.2013).

the scope of the Defender's competencies, such as a general speech or seminars and conferences organised to popularise the principle of equal treatment. The old principle seems to be still valid – raising the importance of the problem or initiating a discussion might be started by engaging authorities, getting them interested in the problem. Nevertheless, due to the scope of competencies and the reservations described at the beginning of this paper, the Defender is not considered an ideal equality body. Mainly due to the fact that the Defender cannot make any decisions in discrimination disputes between natural persons. It should be stated that the Defender supports foreigners a lot, but it is difficult to conclude that the Office of the Defender pursues actions to prevent foreigners' discrimination equally often. Foreigners do not complain about the Defender's work and the few interventions of the Defender were often based on the information from the media. Nevertheless, the reports of the Defender highlight occurrences, which may be outside the implementing act regulations, but are often experienced by foreigners, i.e. acts of racism and hate crimes. The Defender calls for further training of the public services, including the police and the judiciary bodies to effectively prevent such occurrences<sup>59</sup>.

According to the interviewees, the Office of the Defender does not consider foreigners a separate group that should be the subject of a separate anti-discrimination policy. Similarly to the implementing act, the Office of the Defender classifies the cases of unequal treatment by the legally protected characteristics. This institution itself does not have actual experience when it comes to foreigners, even though according to the declarations, this group is also included in the planned activities. The operations of the Office of the Defender in terms of preventing foreigners' discrimination were not evaluated by the representatives of non-governmental organisations. It mainly results from the fact that the majority of interviewees cooperated with the Office of the Defender only when consulting the draft of the National Program of Activities for Equal Treatment (for the years 2013-2016). Usually non-governmental organisations, especially organisations conducting “soft” anti-discrimination activities, did not have any experience working with the Office of the Defender.

On the whole, when it comes to preventing the discrimination of foreigners one may observe that the engagement of the Office of the Human Rights Defender is now more intensive than it used to be, which is not surprising taking into account the priorities of the Defender and the competencies listed in the implementing act. It should also be pointed out that the Defender is often one of the bodies receiving reports or applications prepared by non-governmental organisations in the course of their counselling or intervention operations. And non-governmental organisations are considered very important when it comes to the popularisation of knowledge about discrimination and providing legal aid.

Discrimination is usually the subject of educational activities conducted by non-governmental organisations and less frequently the subject of legal counselling. The latter is not surprising considering the low awareness in terms of discriminatory behaviours and anti-discrimination activities in the society in gen-

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<sup>59</sup> See Biuletyn RPO No. 80: <http://www.brpo.gov.pl/sites/default/files/Biuletyn%20RPO-Materia%C5%82y%20nr%2080.pdf> (accessed on 22.11.2013).

eral and among foreigners in particular: *Even if a foreigner experiences discrimination, they are not fully aware it is discrimination. They think that someone, to put it mildly, was impolite, rude. And they will probably mutter a string of invectives (11/IP)*. This, however, does not absolve public institutions or non-governmental organisations from the responsibility to continue and intensify activities raising awareness.

An important role non-governmental organisations play in terms of anti-discrimination activities is related to various trainings and initiatives aimed at educating about diversity, tolerance, equal treatment and promoting such attitudes. These organisations often prepare different guides or flyers that take into account the competencies of their audience (related to e.g. age or a language barrier). These actions should be considered important, as according to some of the persons working with foreigners, migrants prefer to have certain information in writing, even if they verify it later with many different sources (and eventually act differently than the guides recommend).

The non-governmental organisations also play an important role in making information about anti-discrimination law (or law in general) available to the public. They often are the only source of information in different languages<sup>60</sup> or are able to find translators/interpreters more quickly than a public institution, should there be such a need. Non-governmental organisations of course cannot replace the public institutions in this respect altogether. The presence of an interpreter or information in a language comprehensible for a foreigner is required by law and concerns various procedures the non-governmental organisations are not directly engaged in. Moreover an informal interpreter's support is sometimes not sufficient.

Apart from providing the information in a language comprehensible for foreigners, non-governmental organisations often also share important information encouraging foreigners to inform about violations: *We tell foreigners "If you don't call, don't show where – the police will not do anything about it". It's about the critical mass. If they have one phone call from someone speaking a foreign language per quarter, they will decide there is no point of doing anything in this area, as the problem is too marginal to implement procedures to address it. However, if for three consecutive weeks the telephone operator will not be able to communicate with the callers, they will have someone who speaks English answer the phone (25/OP)*. The last quote clearly highlights the aim of the actions prompting foreigners to assert their rights and report criminal offences. Nevertheless, it should be again emphasized that while certain forms of discrimination and racial or xenophobic behaviours (battery, property damage) are clear not only to foreigners, but also to the prosecuting authorities, many behaviours that may be expressions of discrimination might not be identified as such. Additionally, these behaviours examined under the discussed act might be the subject of a civil lawsuit, which might pose considerable difficulties for many foreigners (as well as for the Poles).

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<sup>60</sup> "Anti-discrimination guide", for example, is a subpage at the website of the Association for Legal Intervention available in Polish, English and Russian. See [http://poradnik.interwencjaprawna.pl/index\\_pa.htm](http://poradnik.interwencjaprawna.pl/index_pa.htm) (accessed on 02.12.2013). Another example is the Migrant Info website prepared by the Polish IOM office, which includes a short section on discrimination and unequal treatment. The information on the website is available in eight languages (Polish, English, French, Armenian, Russian, Ukrainian, Chinese and Vietnamese). See <http://www.migrant.info.pl/strona-glowna.html> (accessed on 02.12.2013).

Non-governmental organisations are quite active in a few other important areas – they attempt to diagnose issues, gather accounts, analyse and publish them. In many situations nothing influences imagination better and has a higher educational potential than specific examples, cases of persons whose rights might have been violated and their result, i.e. an official report or court proceedings. What is important, however, is that these situations should be presented to foreigners as objectively as possible. The non-governmental organisations themselves have many doubts whether the situations foreigners report (usually not considering their situation in terms of unequal treatment) are justified enough to file a court case under the implementing act, what the consequences for the aggrieved person will be and whether a potential loss will not significantly worsen the foreigners' situation. Without the agreement and willingness of the aggrieved party to initiate court proceedings (which in the long term might bring a positive, educational effect), no steps should be undertaken.

Considering that for the sake of the aggrieved party taking legal measures is not always justified, the non-governmental organisations still try to constantly encourage foreigners to share their problems and not to generalise their negative experiences. Activities aimed at changing the belief that reporting problems to the prosecuting authorities or filing court cases have only negative consequences are well worth conducting.

Taking into account the role of the Defender and the Plenipotentiary in applying the principle of equal treatment and the characteristics of the non-governmental sector (such as the localisation of the main organisations providing legal and anti-discrimination counselling), a suggestion worthy attention is the creation of a referral system or a well informed network of organisations that would operate based on information exchange and referring cases between organisations according to their competencies. The system should be based on trust and knowledge as to how to proceed in a given case. Such a system, as well as feedback that could convince the aggrieved persons how important their reports are, is unfortunately missing. The information would also help to prepare certain solutions, such as transferring cases between organisations.

According to the study, the representatives of non-governmental organisations would often prefer to turn to other, more experienced organisations, not to the public institutions. And it is not because they see the need to work solely in the non-governmental sector, but because they are not convinced about the sufficient level of services and interest of the public institutions. However, the organisations do not assume ill will of officials or representatives of the administration and public services. It simply results from the fact that the activists in non-governmental organisations believe that the organisations specialising in anti-discrimination law and legal aid for foreigners are more competent in terms of handling foreigners' problems, especially discriminatory occurrences.

It is also worth remembering that foreigners, having experienced discrimination, will rather turn to non-governmental organisations and the public institutions are aware of this fact. Therefore, there should be a cooperation model prepared not only for the interaction between the organisations themselves, but

also to support them in fulfilling the role of points of contact. They should not, however, assume the responsibilities the state bears. Another important remark is that these organisations need appropriate subject-matter background and financial means to work systematically, on a permanent basis, not from project to project. It is required due to the characteristics of the work with foreign customers. One of the interviewees summarised it best by saying that *the non-governmental organisations have the well-functioning and prepared methods, but the financing should come from the budget. And I think this is the healthiest relationship* (13/IP).

In the light of the above the proposal to create a referral system is worth special attention. There are not many foreigners present in Poland. Additionally, the local communities are diverse in terms of their cultural characteristics across the country. There are cities and towns where the presence of foreigners is more noticeable than in others. When it comes to education, the activities should be directed at everyone. Regardless of their location and frequency of interactions with foreigners. In localisations where intercultural conflicts, intolerance or expressions of unequal treatment, racism, xenophobia or discrimination are more probable, these could be profiled or intensified accordingly. However, in different areas, such as legal counselling or operations of specialised organisations (which entangles costs), it would be justified to focus on localisations where these competencies might be used to their best. Equally important, however, is to make sure the less experienced organisations know where to turn for specialised counselling and which lawyers could help foreigners.

It seems that the few, but very competent, persons are able to have large effect in terms of preventing discrimination of foreigners and initiate a functional and steady cooperative network. The conducted interviews also show that the recognised authorities on legal matters head the institutions that significantly mark their engagement in applying the principle of equal treatment. It worth mentioning though, that little will change if the political and social climate is inappropriate. *The lack of political will is connected with the lack of social pressure to create conditions in which human rights will be respected* [in terms of] *various groups vulnerable to discrimination. At the notion that someone will try to prevent discrimination you can hear this answer in unison – from the employee of social assistance service, who says that Polish children also do not have enough food to eat, to this harmonious patriotic choir...*(35/OP). These often irrational doubts accompanying the discussion on equal treatment and minority groups might effectively hamper the development of anti-discrimination policies, including the policies protecting foreigners.

#### **4. Summary and recommendations**

When summarizing the paper findings and attempting to state what changes have occurred since the introduction of the implementing act, the first impulse would be to say that little has changed. However, giving it a second thought makes it easier to point out a few changes that did occur. At the same time it should be noted these may be treated as a small step towards preparing effective legal instruments to prevent une-

qual treatment of foreigners. To make the anti-discrimination law a commonly used tool, some specific long-term and social processes need to take place: inter-cultural education, raising awareness of discrimination phenomenon as well as development of legal culture. Certainly we may claim **that the introduction of the implementing act has facilitated the increase in significance of the issue of equal treatment. The importance of anti-discrimination law would be even better emphasized by either creating a separate, independent equality body** (the odds are low though, it is not called for by everyone) **or by strengthening the importance of anti-discrimination law in the operations of the Office of the Human Rights Defender – the institution currently acting as an equality body.** The latter would be possible if one of the Defender's deputies was only focused on handling solely the anti-discrimination laws and policies (3/OP).

The other important change is that **the introduction of the implementing act has broadened the catalogue of the legal sources one can refer to when applying to various bodies to protect the rights of victims of unequal treatment.** Protection against discrimination is now not only focused on employment, but also on the access to goods and services, educational system, healthcare, social services and work under non-employment contracts. When it comes to foreigners' rights there is not much to complain about when it comes to this act, as it gives **the most extensive protection against discrimination on the grounds of race, ethnic origin and nationality.** It gives, therefore, the broadest opportunities to react to unequal treatment in cases of discrimination on these grounds. The results of the study show, however, **that this is an unfulfilled potential. Perhaps striving more intensively to eliminate barriers such as fear, aversion, lack of trust, insufficient access to information and lack of legal support and attempting to raise public awareness could result in unleashing this potential over time on a wider scale.** Even though foreigners have potentially gained the widest protection under the implementing act (against discrimination on the grounds of nationality, race and ethnic origin), it seems that in reality, two and a half years after the bill was introduced, there have been very few cases the act could apply to. Moreover these few cases have not been filed to court as a result of the unwillingness of the victims or other circumstances (e.g. effective conciliation).

The opinions presented in this study, relating to anti-discrimination laws in Poland and their significance to foreigners' rights protection system lead to a conclusion that the implementing act, put into force in 2011 after being awaited for couple of years, has not yet become a commonly known and used legal instrument. Significant number of discrimination court cases is nonetheless examined under other laws, especially the labour law and the Criminal Code<sup>61</sup>. This conclusion does not apply only to foreigners though, but to Poles in general. Moreover, there is a general belief that these regulations are imperfect and the requests to amend them are continuously repeated. Therefore, one can claim that the act is simply not working properly, rather than describe its effects. **It is inevitable to fundamentally amend the bill so that it**

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<sup>61</sup> Wiczeorek M., Bogatko K. (ed.), *Anti-discriminatory law...*, op. cit.

**gives the grounds for effective anti-discrimination protection and ensures the possibility to claim damages.**

The organizations with expertise in providing legal advice, including the few with the knowledge and experience in anti-discriminatory law, are almost waiting for the cases that would allow them to test the law in courts. It comes with great difficulties, though, mainly due to **the low awareness of discrimination issues and anti-discrimination law**. This is a general phenomenon, but when it comes to foreigners it also goes with **language and cultural barriers, experiences from country of origin and belief that it is impossible to assert one's rights without detriment to the migration plans**.

Given the context, it seems that one of the key recommendations drawn from this analysis (apart from the need to amend the implementing act) is the necessity to introduce a training programme, educational activities and information campaigns. These should be targeted at the general society, not just the specific professional groups (even though some should be specifically targeted). It is difficult to draw a conclusion from the experts' opinions whether the necessity for trainings is equally distributed in the society. Sometimes the anti-discrimination trainings offer proves uninteresting, for example in schools. From time to time the teachers incorrectly treat the offered trainings as an attempt to promote specific ideas, phenomena or groups, e.g. sexual minorities (17/IP). However, it also happens that it is the teachers who contact organizations specializing in e.g. anti-discrimination activities for support and help in increasing the pupils' awareness. The initiatives targeted at increasing discrimination awareness and preventing it still meet resistance in some localizations or social groups. It leads us to conclusion that deeper changes on the social level will proceed slowly.

**Foreigners – the subject of this study – will only assert their rights after they have learnt them.**

How can this be achieved in a situation when often they come from different cultures, where the human rights protection standards are substantially lower than in Poland? The experiences of the organizations offering trainings to immigrants show the offer was not welcomed enthusiastically. It may result from the described earlier economic duress – the main motive of their actions in Poland. It is clear that migrants are very resistant *when it comes to getting to know discrimination phenomenon and anti-discriminatory activities. To be more precise, such a workshop is not their primary need (23/OP)*. Nevertheless, **it is impossible to guarantee the enforcement of the foreigners' rights without their engagement in learning about these rights**. Otherwise, we will continuously face observing violation of these rights, with discriminated foreigners not identifying them as violations and not aware if and where they could receive support.

Additionally, a conscious, well-educated in diversity issues society is not sufficient to make the law work effectively. **There must be a political will to ensure that the principle of equal treatment is not a mere declaration**. However, as some point out, there is no pressure, no emphasis, and no common will in Poland. *It applies not only to discriminated groups, but also to the groups that get by pretty well (35/OP)*. Since the example comes from the top and at the same time people in high positions may be unaware of and lack knowledge about preventing foreigners' discrimination, one can spare no effort to raise the

awareness in this area. Majority of experts when asked about the necessary actions targeted at increasing the legal protection of foreigners from discrimination, pointed out at raising awareness rather than changes in the law: *In my opinion, the necessity to change applies mainly to promulgation of knowledge and awareness of anti-discrimination notion or equality in general (21/OP)*. The training and education for all is needed – from the judicature to children in kindergartens. As one can conclude from the interviews and information published on websites of the anti-discriminatory bodies, much has been done in this area, but there is still a need for trainings, especially among the officials and judicature<sup>62</sup>. The effects of these actions are not visible everywhere, though.

It would also be important to adjust the training offer to the type of the trained public institution and its tasks. For example, there is no point in training labour inspectors on how to apply the implementing act if their competencies are limited to anti-discrimination provisions of the Labour Code. There is no harm, however, in instructing them how to proceed with the cases of foreigners working based on non-employment contracts. There is also no need to repeat the content of the trainings (unless there is a proof it is necessary) just for the sake of reporting a higher number of training hours spent in training. The experts have specifically indicated that trainers need a high level of attention as to how to deliver the training and what the best, the most useful messages from the point of view of a specific group are. It also seems justified to evaluate such trainings. It does not necessarily have to be yet another evaluation form, but rather an assessment at regular intervals and discussion about the behaviours *below* the required standards of human rights protection and failure to apply the principle of equal treatment.

Apart from the views expressing the need for educational activities and training, there is a general call for reviving the law that seems inactive now: *Maybe this is the greatest need – reviving the law, so that it actually works, especially when it comes to migrants (2/OP)*. This quotation seems like a good summary of some of the experts' opinions, but the call itself cannot be considered separately from the broadly described actions targeted at increasing the awareness and necessity to amend the implementing act.

**When it comes to treating foreigners right, it is important that all the actions targeted at increasing the awareness also cover the fact that the possible victims of rights violations are the people with limited possibilities of fighting for their rights, due to their origin, language skills, cultural or social capital. And this is provided they are aware of their rights at all.** This could as well serve as a subject for another recommendation. As indicated by the experts almost unanimously, it is unreasonable to expect foreigners – third-country nationals with various goals and migration plans – to know the Polish legal system perfectly, to know their rights and how to ensure their protection or compensation when these rights are violated. Therefore, actions should be undertaken to ensure knowledge of equal treatment and anti-

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<sup>62</sup> Owing to the project “Equal treatment as a standard of good governance”, for example, between 2011 and 2013 there have been about 500 civil service clerks trained and equal treatment coordinators have been appointed in public institutions. But the needs are broader. On top of that, even the trained clerks will not be able to fulfil their role appropriately without the opportunity to refresh their knowledge in practice and enhance their competencies.

discrimination laws gets through to a wider audience in an attractive, comprehensible form, with consideration of possible language and cultural barriers.

In conclusion, in the context of an attempt to evaluate the anti-discrimination laws with regards to foreigners, an opinion of one of the respondents should be shared: *No change in law can improve the perception of foreigners in the Polish society, a society relatively hostile to foreigners, especially during the economic crisis. Moreover, I often see the lack of willingness of foreigners themselves to assimilate into the Polish society. They would prefer to recreate a part of their country here into Poland, including the rules from there, without the respect to the laws obligatory here (34/IP)*. In the situation in which all the parties, including foreigners and representatives of Polish authorities, focus on achieving their own goals and tasks and given these goals may be contradictory (migrants' goals do not always comply with the interests of the host country), the application of the principle of equal treatment seems like an abstract concept compared to the daily issues perspective (controls, issues with receiving residents permits etc.).

Therefore, in order to put this concept into reality, it is worth emphasizing *the great role of all the people somehow involved in the issue, so that we do not leave these issues as they are. In other words, while talking about anti-discrimination act, we need to add what the act is really all about. [...] it is necessary to simply explain what we are really talking about (25/OP)*. It is probably the first step to revive the current (non)functioning anti-discrimination law. Of course assuming the act will be amended, becoming a true anti-discrimination act.

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