

# Alternative Report



# Introduction

This alternative report has been developed by a group of Polish non-governmental organisations. It provides information on Poland's non-compliance with provisions of the Convention on the Rights of the Child. The Alternative Report refers directly to the List of Issues prepared and presented to the Polish government by the Committee on the Rights of the Child and to the Polish government's report on implementation by our country of the Convention on the Rights of the Child and the optional protocols submitted to the Committee in 2020.

The document discusses instances of non-compliance with the child's rights until June 2020, i.e. this reports preparation date.

The report draws attention to the fact that a substantial number of the Committee on the Rights of the Child's recommendations never saw implementation. It emphasises lack of crucial elements which are indispensable for an effective policy for the benefit of children, such as: co-ordination mechanism for the benefit of children, monitoring regarding the Convention on the Rights of the Child implementation, budget for children or an efficient, consistent and comprehensive collection system of data relating to all areas of the child's life.

The report does not address all issues related to non-compliance with the Convention on the Rights of the Child in Poland, focusing only on those which are the most vital from the point of view of the child's well-being and aligned with the activities of the organisations which are the authors of the report. The report was prepared by major organisations dealing with topics mentioned in the Committee's List of Issues of 2018. UNICEF Poland took on the coordination of works on the report.

The following organisations have participated in the report preparation:

[Association for Legal Intervention](#)

[ATD Czwarty Świat](#)

[Comenius Foundation for Child Development](#)

[Towards Dialogue Foundation](#)

[Empowering Children Foundation](#)

[The Integration Foundation](#)

[Helsinki Foundation for Human Rights](#)

[La Strada Foundation against Trafficking in Persons and Slavery](#)

[Polish Committee of EAPN](#)

[Polish Foster Care Coalition](#)

[School with Class Foundation](#)

[SOS Children's Villages Poland](#)

[UNICEF Poland](#)

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## Abbreviations

<b>AJDP</b>	Act on Juvenile Delinquency Proceedings
<b>BG</b>	Border Guard
<b>BGH</b>	Border Guard Headquarters
<b>CPC</b>	Civil Procedure Code
<b>CRC</b>	Convention on the Rights of the Child
<b>ECF</b>	Empowering Children Foundation
<b>ECHR</b>	European Court of Human Rights
<b>HFHR</b>	Helsinki Foundation for Human Rights
<b>MFL&amp;SP</b>	Ministry of Family, Labour and Social Policy
<b>MH</b>	Ministry of Health
<b>MIA&amp;A</b>	Ministry of Interior Affairs and Administration
<b>MJ</b>	Ministry of Justice
<b>MNE</b>	Ministry of National Education
<b>OC</b>	Ombudsman for Children
<b>OO</b>	Ombudsman's Office
<b>ST</b>	Statistics Poland

# A. General implementation measures

## 3. Legislation

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There are no uniform standards of child's-rights impact assessment regarding new solutions' influence on the child's rights implementation and their compliance with CRC. Often the process is superficial or subject to casual political objectives and not the child's interest. MJ's approval of the penal code amendments may serve as an example<sup>1</sup>. The proposed amendments, presented as a combat with paedophilia, in fact presume a ban of sex education at educational facilities and up to 3 years in prison for educators for promoting it. The proposal was protested by NGOs, UNICEF and OO<sup>2</sup>.

## 4. Reservations

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Despite the Committee on the Rights of the Child 2015 recommendation, the government has not undertaken any action which could result in interpretative declaration withdrawal concerning articles 12-16 and 24 of CRC.

## 5. Comprehensive policy and strategy

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Despite the Committee on the Rights of the Child 2002 and 2015 recommendations, no uniform strategy nor action plan for children were developed. Child-related issues are dispersed across multiple strategic documents and programmes. Each ministry conducts its own activities. The combination of the above with no monitoring of actions for children and CRC implementation raise serious concerns.

## 6. Coordination

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Regardless of the Committee on the Rights of the Child 2002 and 2015 recommendations, no institutional, cross-sectoral coordination and monitoring mechanism was introduced to monitor implementation of the Convention on the Rights of the Child both at the national and regional levels.

According to the government report "The Ministry of Family, Labour and Social Policy's responsibility for implementation of the Convention consists in assessment whether its provisions are considered in development of new policies, law and programmes"<sup>3</sup>. However, the assessment process has not been standardised and it involves neither social partners nor children. Weakness of these activities may be demonstrated by the fact that projects contradicting the CRC principles receive governmental support.

## 7. Resource allocation

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Despite the Committee's 2015 recommendation, the government has not introduced an identification system regarding financial resources for children's benefit (except for programmes dedicated for them). The system mentioned in the government's report relates to expenses of just one ministry and does not meet transparency requirements. It can be accessed exclusively by the government. There are no aggregated data which would allow assessment of the amounts spent in relation to the results and their change over time. We may only analyse budgets of respective ministries per individual items.

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1 In the Act of 6th June of 1997 – Penal code in Article 200b points 2, 3, 4.

2 <https://www.rpo.gov.pl/pl/content/rpo-o-obywatelskim-projekcie-zakazu-edukacji-seksualnej>.

3 Połączone piąte i szóste sprawozdanie z wykonywania przez Polskę KoPD oraz protokołów fakultatywnych, p. 4.

## 8. Data collection

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Data collected and shared by SP provide a great deal of information on the situation of children, still they do not cover all areas of the child's life.

It is very difficult to obtain data on such substantial issues as health, disability, mental disorders, the migrant and refugee children situation and violence against children as well as juvenile delinquency. SP collects some data on the indicated areas but on one hand they are dispersed across many reports, on the other, oftentimes they treat individual topics in a marginal manner (e.g. children's disability, crime victims' gender and age). At the same time the public entities collecting data e.g. the police, MH or MJ, do not share a part of the statistics, use different methodologies resulting in discrepancies in studies and publish date with a delay. It should be emphasized that it is exceptionally difficult to obtain data regarding children's and youth's opinions on their situation as well as statistics on their physical activity, risky behaviours and social involvement.

There is no single, summary study on the standard and quality of living of children in Poland.

## 9. Dissemination and awareness-raising

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In the core curriculum changed in 2018 the child rights-related content was significantly restricted. Teachers may include these topics in the syllabus, however it is not obligatory. There are no materials to conduct such classes. Non-governmental organisations try to bridge the gap in this respect.

No systematic education nor training on the CRC provisions is conducted among professionals working with children. The child's rights knowledge among teachers, paediatricians, policemen, social workers, etc. is fragmented. Only half the teachers claim the knowledge on child's rights they acquired at the university is sufficient<sup>4</sup>.

### Recommendations

- 1. Obliging all levels of the government administration to perform the child-impact assessment in relation to enacted law and child's rights implementation as well as involvement of social partners in the process.**
- 2. Declaration withdrawal regarding the CRC articles 12-16 and 24.**
- 3. Development of a strategy for children including all areas of the child's life with measurable objectives and a monitoring system. Involvement of social partners and children in the process.**
- 4. Establishment of an institutional high-level, cross-ministry mechanism with a precisely defined scope of actions and competences allowing coordination of CRC implementation.**
- 5. Establishment of a transparent identification system regarding financial resources for children in the state budget.**
- 6. Methodology unification regarding collecting data on children by various public administration units.**
- 7. Development of a cross-cutting, cyclical and based on selected indicators report on conditions and life quality of children in Poland.**
- 8. Conducting systematic child's rights education among children as well as professionals working with children and for their benefit.**

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4 UNICEF Poland, *Prawa dziecka z perspektywy dzieci, rodziców i nauczycieli. Raport z badań* (2019). Available at: <https://www.unicef.pl/Media/Files/UNICEF-Polska-Prawa-dziecka-z-perspektywy-dzieci-rodzicow-i-nauczycieli>.

## B. General principles

### 10. Non-discrimination

In Poland there is no policy document setting the direction of counteracting and preventing discrimination and hate crime.

In line with the binding law the Government Plenipotentiary for Equal Treatment was appointed under the Act of 3rd December 2010 r.<sup>5</sup>, mentioned in the government report. Their responsibilities comprise, among other things, development of the National Action Plan for Equal Treatment. Such programme was carried out in 2013-2016. A new one has not been prepared. The activities conducted by the Plenipotentiary are little known to the public and mainly focused on gender equality. There is no information on initiatives to counteract discrimination of children. In line with the law, religion is taught at school. The Roman Catholic denomination's dominance leads to religious customs and rituals exceeding religion classes and becoming a part of school celebrations. Events constituting elements of religious cult, e.g. confession, the Way of the Cross or retreats are organised at schools. It puts children of other creeds or non-believers in an unequal and uncomfortable position. The child attends religion classes at the parents' request (or their own if they are of age) – it happens that schools illegally force parents of children not attending the classes to submit written statements.

The Penal Code determines several "hate" crimes, however these do not include crimes committed due to such protected characteristics as disability, sexual orientation, gender identity, migrant or refugee status. Expanding the catalogue of hate crime premises was one of the recommendations issued in 2017 by the United Nations Human Rights Council within the Universal Periodic Review. Despite acknowledgment of the recommendation, no works have been initiated in this respect<sup>6</sup>. According to the National Public Prosecutor's Office, in 2014-2017 the number of investigations concerning hate crime was on the rise. The data is not segregated by victims' age – the fact that children fall victims to hate speech or abuse (especially refugees/ migrants) is asserted only by media reports and NGO experiences.

Another problem is discrimination of LGBT persons. The issue of the so-called "LGBT ideology" and threat to the Polish family divided the society. The government not only does not counteract but even allows to spread discriminatory practices such as "LGBT ideology-free zones".

In January 2020 the regions where the Self-Government Family Rights Charter had been adopted or a resolution on "the LGBT ideology-free local government"<sup>7</sup> jointly covered 30% of Poland's territory. On 10th June 2020 the Polish President who was campaigning to be re-elected signed the Family Charter where he announced protection of children from the "LGBT ideology".

Until recently the education gap was bridged by NGO initiated programmes. Currently due to the difficult financial standing of the said organisations, attacks on activists and organisations, negative messages concerning counteracting discrimination or hate crime, which became a part of political battles, it is difficult to conduct this type of activities. Also schools out of fear about the authorities' reaction are apprehensive to address such topics. Concerns and fear also relate to co-operation with non-governmental organisations. In 2017 the provision on the obligation of conducting anti-discrimination activities was removed from the ordinance governing requirements for schools. The equality and anti-discrimination education programmes run by some local governments face negative reactions from education authorities and state media.

To sum up the above, one should state that in Poland since 2016 there has been a regress in the national policy of preventing and counteracting discrimination as well as hate crime.

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5 The Act of 3rd December 2010 on the implementation of certain European Union provisions concerning equal treatment.

6 The letter of the Undersecretary of State at the Ministry of Justice to the Speaker of the Sejm, 02.01.2020: <http://orka2.sejm.gov.pl/INT9.nsf/klucz/ATTBKLD7/%24FILE/i00030-o1.pdf>.

7 [http://www.bip.klwow.akcessnet.net/UserFiles/File/uchwaly2018\\_2013/51.pdf](http://www.bip.klwow.akcessnet.net/UserFiles/File/uchwaly2018_2013/51.pdf); [https://bip.krasnystaw-powiat.pl/wiadomosci/8504/wiadomosc/470743/stanowisko\\_rady\\_powiatu\\_w\\_krasnymstawie\\_\\_z\\_dnia\\_15\\_kwietnia\\_2019](https://bip.krasnystaw-powiat.pl/wiadomosci/8504/wiadomosc/470743/stanowisko_rady_powiatu_w_krasnymstawie__z_dnia_15_kwietnia_2019).

## 11. Best interests of the child

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Social support institutions, courts, administration authorities and legislative bodies at the national and local levels do not attempt to evaluate and monitor how particular actions and decisions have impacted or will impact the child's well-being. There are no instruments helping to assess the child's best interest, enabling to evaluate decisions or facilitating judging the extent to which the child themselves has a right to determine what their best interest is and the adults' role in the process.

Also in case of minor foreigners the practice demonstrates that the child's best interest is not always secured. Proceedings lack relevant procedures on how to do it or clearly defined obligation to perform assessment of the child's best interest by public enforcers. In the proceedings concerning the obligation to return deportation's impact on the child's welfare is not always thoroughly examined<sup>8</sup>. BG rarely employs an expert child psychologist or psychiatrist to assess the return's impact on psychological and physical development of the child. Such a requirement has not been included either in the document prepared by the Border Guard Headquarters with guidelines concerning conduct for the Border Guard<sup>9</sup>. It happened despite the Supreme Administrative Court ruling of 29th August 2018<sup>10</sup> which indicated that examining whether an obligation of a minor foreigner to return violates the child's rights under CRC may require appointing an expert psychologist.

While deciding on detention of children due to migration reasons, in majority of cases their best interest is not adequately secured nor thoroughly examined by the courts taking the decision<sup>11</sup>. Poland has not had a migration policy since 2015 – the new draft migration policy prepared by the Ministry of the Interior and Administration does cover securing the minor foreigner's best interest<sup>12</sup>.

## 12. Respect for the views of the child

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In Poland respect for the views of the child, including decision-making, listening to their opinion in matters relating to them is not a standard yet. Youth participation in the social life both at the national and local levels is just in its infancy. Various initiatives appear which create such opportunities but there are no organised nor systemic solutions which would enable youngsters to have real impact on decisions.

### Court procedure

The Civil Procedure Code stipulates the institution of hearing a minor in proceedings concerning them, however it is rarely applied. There is no training offer for judges in terms of minors' participation in the civil procedure.

### Minor foreigners

The legal norms governing the stay of accompanied minor foreigners do not establish a procedure of interviewing or hearing a child to consider their opinion on an issue.

Within legalising procedures authorities directly link children's stay in Poland with the parents' legal status.

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8 Pulchny, A. (2020), *The children's rights* [in:] ed. Jaźwińska, M., *SIP in action. The rights of migrants in Poland in 2019*, Warsaw, p. 37-38, available at <https://interwencjaprawna.pl/wp-content/uploads/2020/06/SIP-RAPORT-2019-ENG.pdf> (access: 15.06.2020).

9 The Border Police Head Quarters, *Postępowanie funkcjonariuszy Straży Granicznej w zakresie realizacji czynności związanych z powrotami cudzoziemców nielegalnie przebywających na terytorium Rzeczypospolitej Polskiej w oparciu o przepisy ustawy z dnia 12 grudnia 2013 r. o cudzoziemcach*, version of 15th July 2019.

10 Referenced II OSK 1041/18 m.

11 Jaźwińska M. (2018). *Immigration detention of children* [in:] ed. Jaźwińska, M., *SIP in action...* op.cit., p. 51-54; Górczyńska, M., Witko, D., *Research on the applicability of the best interests of the child principle as the primary consideration in detention decisions as well as the alternatives to detention*, UNHCR.

12 <https://www.interwencjaprawna.pl/wp-content/uploads/2019/06/Polityka-migracyjna-Polski-wersja-ostateczna.pdf> (retrieved 15.06.2020).

In the proceedings concerning granting international protection, under the applicable Act<sup>13</sup>, only the petitioner is interviewed, unless the authority conducting the proceedings deems the presence of persons represented by the petitioner necessary to clarify the matter.

One of the prerequisites of granting a permit to stay in Poland for humanitarian considerations (within the obligation to return proceedings) is human rights violation putting their psychological and physical development at substantial risk. Until 2018 administrative bodies conducted supporting activities consisting in hearing a child in the expert psychologist's presence only in very few proceedings. Currently, this practice is slowly changing following the Supreme Administrative Court ruling<sup>14</sup>.

While considering a petition to place a foreigner in detention together with their children the court should be guided, among other things, by the minors' welfare. However, as it is emphasised in the HFHR and UNHCR of 2018, in each of 96 cases examined between 1st May 2014 and 31st July 2016 no hearing of a child was conducted in the course of making a decision on placement/ extension of the stay in detention<sup>15</sup>.

### **Unaccompanied minor foreigners**

A legal guardian is appointed to guarantee an unaccompanied minor foreigner the right to be heard, they are the child's representative, especially when the child applies for international protection.

However, the scope of the legal guardian's competences is relatively limited and unless the court rules otherwise, they do not authorise them to represent the child before any other bodies or institutions, e.g. during the child's stay at hospital or when a consent to perform a medical procedure is needed. In the Polish legal order there is no "legal guardian" institution as understood in several other countries which often makes it difficult to implement the principle of securing the child's best interest. Additionally, in Poland the term "legal guardian" is not associated with care provision but rather with supervision, still national courts do not practice entrusting care over minors to legal guardians.

### **Alternative care**

The Civil Procedure Code<sup>16</sup> indicates the obligation of hearing a minor and accordingly to the circumstances, cognitive development, health status and child's maturity considering their opinion and reasonable wishes. Despite this, often the child's voice is neither heard nor considered, e.g. siblings are separated across different branches of a given facility (a complex of facilities), in particular younger children, under 10 years of age, with older siblings. Children under 10 are placed in socialisation facilities exactly under the provision concerning non-separation from the older siblings. Most children, especially the ones separated from the family or at risk of such separation, need adult representatives who will explain their situation to them and represent their interest during the stay away from the family and at the same time will be independent of all parties influencing the child's fate (parents, family support services, child's current actual caregivers, etc.).

## **The child's right to be heard, participate in the social and school life**

### **Participation in the social life**

Commune child and youth councils are one of the crucial tools of child and youth inclusion. Under the applicable Act<sup>17</sup> establishment of youth councils is not obligatory. Commune authorities may not agree to operation of their youth counterparts and limit their activity solely to the advisory function. The Act does not specify what kind of support youth councils should receive from communes, thus young people often are not provided with a budget, meeting place and substantive

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13 Article 44 point 3 of the Act on granting protection to aliens within the territory of the Republic of Poland.

14 The Supreme Administrative Court ruling of 29th August 2018 referenced II OSK 1041/18.

15 M. Górczyńska, D. Witko. (2018). *Research on the applicability of the Best interests of the child...* op.cit, p. 20 UNHCR.

16 In Article 2161.

17 Ustawa o samorządzie gminnym z dnia 8 marca z nowelizacjami Dz. U. z 2019 r. poz. 506.

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support which significantly limits their agency<sup>18</sup>. Another important element is inclusion of children from disadvantaged groups in the representative selection process. Until the end of 2017 only 408 commune youth councils operated in Poland<sup>19</sup>. Children and youth are not prepared to participate in the society's life as there is no education in this respect. Youngsters do not feel that their opinion is considered nor are able to co-decide on crucial issues relating to them. Even when meetings are organised with youth to learn about their opinions on a given topic, most often young people do not receive feedback on whether and to what extent their input was considered.

Although, in 2016 the Polish Child and Youth council was established, it operates only through MNE and does not cover other areas.

Non-existent teacher education on the topic, the core curriculum's conservative content concerning participation cause young people not to engage in social life, not always knowing that they have the option. Lack of incentives from the school leads to youth adopting a passive attitude. The passivity results from lack of knowledge and positive experiences in a given area, it effectively destroys the foundation of civic society development.

### **Participation of children at school**

Formally the education law provides tools for schools and children to consider children's voice and their inclusion in the school's life. The student council is an institution well enacted by law, however it remains an unused opportunity or even fiction. Students elect as their mentor a person indicated by the school management and organise elections of the council authorities which perform tasks "delegated" by teachers or organise school parties at most. They are rarely treated as partners in matters directly concerning them – teaching, assessment, relationship with teachers and class life or even organisation of school trips. Meanwhile a UNICEF study shows that a vast majority of children wish to have greater influence on decisions taken at school<sup>20</sup>.

The child's rights have been included for years in future teachers' training curriculum, still only 45% of them deem the knowledge<sup>21</sup> obtained at the university adequate. There are no models of applying it in daily contacts with students, including the participation rights area. Additionally, following the 2018 modifications the presence of the child's rights in the core curriculum has been substantially restricted.

Teachers lack training and support in listening, empowering and acknowledging children's voices in the school and class life. Sometimes teachers are not aware of the need.

Such opportunity is provided by educational programmes for teachers conducted by local and national social organisations which are focused on strengthening the youth's voice and involvement. Regrettably, access to schools for NGOs dealing with these issues is hampered. The actions of the Ministry of National Education and school commissioners may dissuade school management from using the knowledge, educational materials and support of independent organisations.

During the previous terms the Ombudsman for Children promoted the child's right to be heard. Since 2018 the Ombudsman for Children has been focusing rather on protecting parents' right to bring up children in accordance with their convictions and promoting the traditional family model<sup>22</sup>. Acknowledging children's right to be heard and participation at school requires a deeper cultural and pedagogic shift at kindergartens, schools and other institutions – treating the child as an active social actor and trusting their competences and agency.

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18 *O młodzieżowych radach. Analiza młodzieżowych rad w Polsce na rok 2018. Rada Dzieci i Młodzieży przy Ministrze Edukacji Narodowej* (2018). Rada Dzieci i Młodzieży RP przy Ministrze Edukacji Narodowej, Warszawa.

19 *O młodzieżowych radach...*, Ibidem.

20 UNICEF Poland (2019). *Prawa dziecka z perspektywy...* s. 45-47. <https://www.ore.edu.pl/2019/11/prawa-dziecka-z-perspektywy-dzieci-rodzicow-i-nauczycieli/> p.45-47.

21 UNICEF Poland (2019). *ibidem*.

22 <https://brpd.gov.pl/2019/03/07/rzecznik-praw-dziecka-wzywa-rzecznika-praw-obywatelskich-bronmy-prawa-rodzicow-do-wychowywania-dzieci/>.

**Recommendations:**

- 1. Proactive conduct by the government of activities to combat all manifestations of discrimination.**
- 2. Implementing systemic anti-discrimination education.**
- 3. Introducing a procedure of assessing the child's best interest with participation of entities independent of decision-makers i.e. child's rights experts, which will allow to take a decision in the child's best interest in each court/ administration proceeding regarding a minor.**
- 4. Including the child's best interest in the Polish migration policy.**
- 5. Conducting systemic training for justice system staff regarding proceedings involving a minor.**
- 6. Introducing a statutory obligation to hear a minor foreigner in procedures concerning legalisation, placement in a guarded centre and the obligation to return.**
- 7. Establishing for a minor foreigner such a care form which does not raise doubts and has precisely defined competences.**
- 8. In case of a risk of placing a child or placement of a child outside the family, especially in alternative care, establishing, via respective legal acts, the child's representative.**
- 9. For placement outside the family, implementing the principle of hearing the child and their participation in making decisions concerning them, with consideration of the age and development level as well as ensuring children with disabilities measures to be heard.**
- 10. Expanding teaching content regarding civic education by information showing children and youth mechanisms of involvement in social life, motivating and preparing them for full-value engagement in decision-making.**
- 11. Developing cohesive policy for child and youth participation at the local and national level.**
- 12. Introducing teacher training for teachers on the child's rights to participation.**
- 13. Strengthening the student council competences.**

## C. Civil rights and freedoms

### 13. Child statelessness

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Poland still is not a signatory of the 1954 and 1961 conventions on preventing statelessness.

Under the act regarding citizenship a minor acquires the Polish citizenship by birth, when born on the Republic of Poland's territory and their parents are unknown, stateless or their citizenship is not specified. Additionally, a minor acquires Polish citizenship when they were found on the territory of the Republic of Poland and their parents are unknown. The Act does not prevent statelessness of children born in Poland and whose parents are known or of specified citizenship which cannot be transferred to the child<sup>23</sup>.

### 14. Right to know one's origin

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Parents who do not wish to bring up their child are entitled to leaving them at hospital under the respective procedures which allows children to learn about their origin in the future. In 2018 472 children were left at hospital for non-medical reasons<sup>24</sup> (a decline by approximately 38% compared to 2015).

No national statistics are conducted on the number of children left in windows of life. According to media reports referring to Caritas' data<sup>25</sup> 94 children were left in windows of life in the 2006-2016 decade. Windows of life are a practice with no legal regulation thus lack of appropriate data collection may derive from this. Leaving a child in a window of life is completely anonymous and in this respect the child will not have the option to learn about their identity.

In case of adoption there is no clear procedure of collection and access to information on the child's origin. The civil registrar makes available to an adult the full birth certificate with the surname and mother's place of residence (the father's depending on the situation). However, the young person needs to know that they were adopted (there is no obligation to inform the child, it depends on the parents). Nor are collected any data on siblings and close relatives thus reaching this information is very difficult.

### 15. Freedom of thought, conscience and religion

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The school is obliged to guarantee lessons on each registered denomination if there are at least 7 students at the school interested in such lessons. In theory the school is to ensure the willing students an opportunity to attend both religion and ethics classes.

Regardless of the regulations, the school practice often looks slightly different. Though the new solutions decidedly contributed to improvement of the situation, still the Catholic Church members are in a privileged position. As demonstrated in the Ombudsman's<sup>26</sup> 2015 report law does not protect various denominational groups to a sufficient degree, the school practice shows that access to classes in line with their beliefs is not always ensured. The law permits a situation when the religion teacher also teaches ethics which raises doubts about the lessons' neutrality of views<sup>27</sup>.

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23 UNHCR (2019). *Acquisition and loss of citizenship under the national law and international regulations* [in: *Sytuacja osób bezpaństwowych w Polsce.*, p. 43.

24 Połączone piąte i szóste sprawozdanie z wykonywania przez Polskę KoPD oraz protokołów fakultatywnych, p. 37.

25 <https://www.edziecko.pl/rodzice/7,79318,22518480,okno-zycia-w-olsztynie-rodzicow-pozostawionych-dzieci-szuka.html>.

26 <https://www.rpo.gov.pl/sites/default/files/BIULETYN%20RZECZNIKA%20PRAW%20OBYWATELSKICH%202015%20nr%206.pdf>.

27 Kwalifikacje wymagane od nauczycieli etyki określają przepisy § 3 i 4 w zw. z § 2 pkt 10 rozporządzenia Ministra Edukacji Narodowej z dnia 1 sierpnia 2017 r. w sprawie szczegółowych kwalifikacji wymaganych od nauczycieli, Dz.U. z 2017 r., poz. 1575.

In 2018 the Ombudsman<sup>28</sup> also pointed out that schools seldom inform parents and students on the possibility to organise minority religion and ethics lessons on demand.

Stigmatisation of children not attending religion lessons constitutes another issue. It concerns younger children to a greater extent, especially those who do not participate in the First Communion. Even though there are no official data, the matter was covered many times by press<sup>29</sup>, also some teachers mention this (anonymously). Stigmatisation concerns both children not attending religion lesson and the ones attending lessons of a different denomination.

## 16. Freedom of expression, association and peaceful assembly

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In the state's education policy it is difficult to find actions promoting and supporting these rights and freedoms. On the contrary, obstacles appear, especially, when youngsters' civic activity does not fit the ideological vision promoted by the central authorities.

Dissuading and threatening young organisers of the so-called rainbow Fridays at school, a campaign of solidarity with LGBTQI (2018, 2019), may serve as an example. The Campaign Against Homophobia organisers resigned from registering schools and dispatching educational materials<sup>30</sup>. The authorities proposed another holiday – „School remembers” devoted to deceased heroes<sup>31</sup>. The Ombudsman for Children stated that “the school needs to be ideology-free”. The state media also participated in the “prevention campaign”. The Episcopate issued a statement: “the school is not a place to promote LGBT community”<sup>32</sup>.

Polish law currently does not guarantee minors the right to organise peaceful assemblies as the organisers bear responsibility which cannot be placed on a minor<sup>33</sup>. Adolescent activists of the Youth Climate Strike cannot register their protest marches without assistance of adults (in 2019 they were held in 73 cities) and their participants sometimes face unfavourable reaction from schools. A complaint was submitted to the Ombudsman's Office by secondary school students who were warned by the school director that the event's participants and organisers would face severe consequences<sup>34</sup>.

### Recommendations

- 1. Signing by Poland the Convention on the Reduction of Statelessness of 1961 and the Convention relating to the Status of Stateless Persons of 1954.**
- 2. Monitoring observance of regulations and elimination of practices violating the freedom of religion.**
- 3. Obligation to inform parents on principles of religion and ethics teaching at school.**
- 4. Oblige education authorities to observe the convention standards in terms of the child's and youth freedom of expression.**
- 5. Using the Convention on the Rights of the Child standards concerning young people's peaceful assemblies.**
- 6. Collecting by adoption centres the largest possible amount of data on the child's identity and providing them to them as an adult or earlier in agreement with the adoptive parents.**

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28 <https://www.rpo.gov.pl/pl/content/bariery-w-dostepie-do-lekcji-religii-mniejszosciowych-lub-lekcji-etyki-mog%C4%85-byc-dyskryminacja>.

29 <https://www.newsweek.pl/polska/spoleczenstwo/nie-idziesz-do-pierwszej-komunii-jestes-dziwakiem/y4w2qhh>.

30 <https://kph.org.pl/teczowy-piatek-sprawdzamy-jak-bylo-czyli-podsumowanie-akcji/>.

31 <https://www.gov.pl/web/edukacja/szkola-pamieta>.

32 <https://ekai.pl/episkopat-reaguje-na-teczowy-piatek/>.

33 <https://www.rpo.gov.pl/pl/content/z-mlodzieza-o-wchodzeniu-w-doroslosc-konferencja-18-plus>.

34 <https://www.rpo.gov.pl/pl/content/rpo-czy-szkola-moze-grozic-uczniom-konsekwencjami-za-udzial-w-mlodziejowym-strajku-klimatycznym>

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## D. Violence

### 17. Corporal punishment

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Regardless of implementation of a definite ban on corporal punishment in 2010, praise corporal punishment is a recurring<sup>35</sup> topic in the public debate, oftentimes expressed by state officials, MPs or even the Ombudsman for Children<sup>36</sup>.

### 18. Protection of the child from all forms of violence

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#### a. Strategy and policies against violence

Poland does not have any national programme for children nor strategy to counteract child abuse. There are no cyclical social studies. There is no monitoring of child abuse scale nor evaluation of the help offered through improvement and alignment of methodology of the officially collected data comprising, among others, gender, age categories, abuse type, residence address, nationality and risk factors.

There are no nationwide nor school prevention programmes including sexual abuse and common programmes concerning support of parents' educational skills and good parent-child relationship.

Neither there is any offer related to enhancing competences of services protecting children against ill-treatment, through exchange of practices, regular supervision sessions for professionals. There is no training and competence development policy for individual services, among other things, in terms of recognising child abuse risk factors, promoting protective measures, recognising abuse symptoms and intervention, helping the child and family, working with the abuse perpetrator, interdisciplinary co-operation, implementation of child protection standards and procedures within every institution where children stay.

In 2019 the Empowering Children Foundation submitted to the Polish President<sup>37</sup> a proposal on introducing in Poland a mechanism of analysing child abuse resulting in death modelled on the Serious Case Review in Anglo-Saxon countries. The President's legislative office undertook preparing a draft bill, however the works have not finished yet.

#### b. Ill-treatment of children in institutions

Institutions (both private and state-run) working with children are not obliged to develop a comprehensive policy of protecting children from harm. One of the requirements for institutions and employers is verification in the Register of Sexual Crime Offenders of a person recruited to work within upbringing, education, treatment and care of children as well as demand for a certificate from the National Criminal Register. In the past the Empowering Children Foundation initiated the "Protect Children" project in co-operation with the Ministry of National Education. The project's assumption was to introduce in education facilities policies of protecting children from harm, adapted to a given facility's particular context. The project funding ended in 2016 with the government change. It is continued from the Foundation's own means.

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35 Fundacja Dajemy Dzieciom Siłę (2018). Ogólnopolska diagnoza skali i uwarunkowań krzywdzenia dzieci. Raport z badań. <https://diagnozakrzywdzenia.pl/raport.pdf>.

36 <https://www.gazetaprawna.pl/artykuly/1418200,mikolaj-pawlak-rzecznik-praw-dziecka-wywiad-rigamonti.html>.

37 <https://fdds.pl/petycja-do-prezydenta-rp-andrzeja-dudy/>.

## 19. Sexual abuse

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The State Committee for Explaining Paedophilia Cases was established in 2019<sup>38</sup> and sworn in 2020<sup>39</sup>. Its scope and mode of work raises doubts<sup>40</sup>. As the legislator excluded from the Committee's competences cases of sexual abuse of children above 15 years of age. Moreover, if the reason for the prosecution not taking action in a given case of sexual crime against a minor was failure to establish the perpetrator, revocation of prosecution, the perpetrator's death, earlier completed criminal proceedings regarding the act, the Committee had no legal option to deal with a given case.

The Committee's object of interest may not be cases with a conviction by final judgment either. The legislator's wish was to deprive the Committee of the capacity to go beyond the court and law enforcement findings.

It should be added that some church-based facilities initiate works on implementing a mechanism of counteracting child abuse regardless of the lack of legal obligation to do so. The justice system focuses on reacting to the committed crime and not its prevention.

### b. Persons convicted of sexual abuse of children

The Sex Crime Offenders Register has operated since 2017. The register is divided into three parts – public access, post-registration access and as of 2019 a division with opinions of the National Committee for Explaining Paedophilia Cases.

### c. Reporting abuse by children

Enforcing the minor's option to report a sex offense is a problem. On initiating the proceedings the correspondence is directed to the legal guardians, it may happen that the child is sent away and asked to come with the parents.

### d. Protection against sexual exploitation of children on the Internet

In the recent years the pathological content phenomenon has become present in Poland. It consists in making available via social media to a limitless audience (especially children) clips depicting socially unacceptable behaviours. The said behaviours comprise beating, bullying, soliciting minors to display behaviours of sexual nature, filming third parties without their consent and other. The Empowering Children Foundation's studies show that 37% adolescents watch such content and 15% do so on a daily or nearly daily basis<sup>41</sup>. Although, there are regulations on prosecuting offences with such characteristics (the provisions of criminal law are also applicable to "the online" reality) their prosecution rate is quite low. It results from the low society's awareness, few reports, authorities not acting ex officio and the limited procedural role of social organisations (incapacity to challenge the criminal proceedings discontinuation). Currently the government has no concept of fighting pathological content authors who reap profits from its publication (the Ministry of Digital Affairs established a working group with NGO participation. The works have been suspended due to the epidemic).

In 2019 the Ombudsman's Office and the Empowering Children Foundation organised a social campaign against content on the Internet with the platform "zgłoś.to" (report it)<sup>42</sup>.

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38 The Act of 30th August 2019 on the State Committee for explaining cases of acts against sexual liberty and morality of a minor under 15 years of age (Journal of Laws item 1820 as amended).

39 The Committee members were sworn by the Sejm on 24.07.2020.

40 Katana K. (2019). "Komisja ds. Pedofilii" jako niewłaściwa odpowiedź na przypadki krzywdzenia, Dziecko Krzywdzone. Teoria, badania, praktyka, No 18(4), p. 144–174.

41 *Patotřeści w Internecie. Raport o problemie*. Fundacja Dajemy Dzieciom Sięę we współpracy z Rzecznikiem Praw Obywatelskich, Warszawa, 2019., <https://fdcs.pl/wp-content/uploads/2019/08/fdds-raport-patotresc-www.pdf>.

42 <https://www.rpo.gov.pl/pl/content/zglosto-kampania-spoleczna-rpo-i-fdds-przeciwko-szkodliwym-tresciom-w-internecie>.

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As a principle crimes committed on the Internet are treated equally as crimes committed in person or using other communication tools. Due to their character some crimes may be committed mainly via Internet. They comprise grooming (Article 200a of the Penal Code), production, distribution, possession of paedophile content (articles 202 points 3, 4, 4a, 4b, 4c of the Penal Code) and praising behaviours of paedophile character (Article 200b of the Penal Code).

According to the 2017 study performed by the Empowering Children Foundation on a representative group of adolescents aged 13-18, 9% of teenagers have experienced grooming for sexual purposes at least once in their lives<sup>43</sup>. Meanwhile the police statistics show that in 2017 there were 626 reports concerning article 200a of the Penal Code (grooming of a minor under 15 years by employing an electronic system or a telecommunications network)<sup>44</sup> but with only 17 convictions in 2018.

#### **e. Support for children who are victims of sexual exploitation and abuse.**

The Justice Fund operates within MJ which may finance activities for crime victims. The procedure of granting funds lacks transparency<sup>45</sup>. There is no systemic, specialist, interdisciplinary assistance for abused children, including sexual abuse victims. The Crisis Intervention Centres existing within the local government (municipality/ district) do not fulfil this role.

In Poland in 2018, owing to the Empowering the Children Foundation, it was possible to open 5 support centres for abused children modelled on the U.S. Child Advocacy Centres and Scandinavian Barnahus<sup>46</sup>. The centres offer to children – crime victims and witnesses – psychological, medical, legal, social support in one place as well as a friendly interviewing space. Facilities of this type have been recommended and implemented in other countries for years. Thus, introduction of this model in Poland was a milestone in counteracting ill-treatment of children<sup>47</sup>. Child support centres are financed from the state's central budget.

### **Recommendations**

- 1. Promoting and supporting establishment of child support centres where ill-treated children and their families receive comprehensive assistance.**
- 2. A public official who praises any form of violence against children, including using corporal punishment, should face at least disciplinary sanctions.**
- 3. Promoting social attitudes eliminating use of violence and ensuring broader access to expert knowledge and advisors for parents as regards upbringing without corporal punishment.**
- 4. Introducing analysis of child abuse cases resulting in fatalities.**
- 5. Conducting systemic prevention activities based on evidence.**
- 6. Introducing an obligation for institutions working with children to implement internal child ill-treatment prevention instruments and mechanisms for their evaluation by the state (child protection policies).**
- 7. Appointing specialist child protection services based on other European states' models.**
- 8. Expanding the knowledge of child abuse symptoms among justice system staff and sensitise them to treat each case, even reported by a child alone, seriously and as a priority and that the justice system should act ex officio.**

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43 Fundacja Dajemy Dzieciom Siłę (2018). op.cit.

44 The Police statistics, downloaded from: <https://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-6/64005,uwodzenie-maloletniego-ponizej-lat-15-z-wykorzystaniem-systemu-teleinformatyczne.html> [retrieved 16.07.2020].

45 <https://www.nik.gov.pl/aktualnosci/fundusz-pomocy-pokrzywdzonym.html>.

46 <https://rm.coe.int/090000168079426a>; <https://www.childrenatrisk.eu/promise/wp-content/uploads/sites/4/2018/04/PROMISE-Barnahus-Quality-Standards.pdf>.

47 Fundacja Dajemy Dzieciom Siłę, *Dzieci się liczą 2017, Raport o zagrożeniach bezpieczeństwa i rozwoju dzieci w Polsce*, Warszawa: 2017. p. 306, <https://fdds.pl/wp-content/uploads/2017/07/fdds-dzsl2017-calosc.pdf>.

- 9. Making the process of appointing a guardian for an underage child victim more efficient when a parent is the perpetrator.**
- 10. Including legal child protection issues into the bar training programme.**
- 11. Amendments to provisions presuming ex officio appointment of a representative for a minor crime victim when the statutory representatives are helpless and do not represent the child's interest in an appropriate manner (when a parent/ legal guardian is not the perpetrator).**
- 12. Changing the object of activity of the State Committee for Explanation of Paedophilia Cases so it includes all cases of sex crimes committed against children under 18 years.**
- 13. Broadening the Committee's range of activity so it includes the maximum scope of cases regarding sex crimes committed against children.**
- 14. Indicating the state's and non-state institutions' activity areas which were conducive to crimes against minors, concealing the truth and perpetrators' impunity.**
- 15. Adopting a strategy concerning conduct by law enforcement of cases regarding crimes related to recording and presenting pathological content.**
- 16. Ensuring transparent principles of dividing means from the Justice Fund.**

## E. Alternative care

### 21. Children in alternative care

In 2018 the number of children in alternative care amounted to almost 72 k and dropped by 1.1% compared to the previous year<sup>48</sup>. Despite the declared alternative care deinstitutionalisation, 21% children reside in institutions<sup>49</sup>. This number does not include a dozen or so children staying away from the family at institutions outside alternative care system such as nursing homes, care and treatment facilities and other round-the-clock stay options<sup>50</sup>. Since the introduction of the Act (2012) the number of care and education facilities has grown from 508 in 2011 to 1063 in 2018. This is partly related to adjusting to the standard in force since 1st January 2021<sup>51</sup> i.e. the maximum of 14 children per facility, notably the growth is also due to establishing brand new facilities by districts which until then had no institutions in their territory. Under the law as of 1st January 2020 as a principle alternative care institutions should accommodate exclusively children aged 10 or older<sup>52</sup>. Meanwhile, annually nearly 1800<sup>53</sup> children under 10 are placed<sup>54</sup> in care and educational facilities.

Development of family-based alternative care is too slow and does not respond to the needs, what is more, the number of family foster care entities drops year on year<sup>55</sup>. Both the government and local government undertake insufficient efforts which could alter the situation or retreat from the planned ones, as it was the case with the November 2018 revision of the Act, which following many months of works with non-governmental organisations and stakeholders was submitted to the parliament as a government bill proposal and was not adopted<sup>56</sup>.

Within the Polish legal framework alternative care is organised by districts. The government undertakes efforts to impact deinstitutionalisation<sup>57</sup> e.g. programmes of co-financing recruitment of assistants and co-ordinators. These actions fall short of the expectations. A project financed from the EU funds was completed in 2018<sup>58</sup> as a result of which a research tool was developed to facilitate verification of deinstitutionalisation status in districts. However, neither the tool nor the recommendations were implemented<sup>59</sup>.

Still there are no reliable, comprehensive statistics analysing placement both in alternative care and other institutions subject to various ministries e.g. welfare, education, health, justice. Shortage of consistent analyses and statistics blurs the picture concerning the number of children outside the family and hampers development of community based services, i.e. deinstitutionalisation.

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48 Informacja Rady Ministrów o realizacji w roku 2018 ustawy z dnia 9 czerwca 2011 r. o wspieraniu rodziny i systemie pieczy zastępczej (hereinafter: Informacja RM 2018).

49 The said statistics do not cover family-based care and educational facilities, calculated based on Informacja RM 2018.

50 According to SP data for 2018 4,466 children with disabilities resided in nursing homes, the presented aggregated data do not allow to determine the legal status of parental care over children placed in these institutions.

51 The Act of 16th April 2020 on special support measures related to the spread of SARS-CoV-2, suspends interminably the obligation to adjust to the 14 children standard.

52 The Act of 9th June 2011 on family support and the alternative care system, Journal of Laws no. 2020.0.821, i.e. Article 95.

53 The Ministry of Family, Labour and Social Policy 2018 data indicate 1790 children.

54 Excluding care and educational facilities of the family type.

55 In 2018 compared to 2017 the number of family-based alternative care entities declined by 1.7%. Data according to: Informacja RM 2018.

56 Druk nr 3023, Warszawa, 9 listopada 2018 r., RM-10-167-18, o zmianie ustawy o wspieraniu rodziny i systemie pieczy zastępczej oraz niektórych innych ustaw.

57 Understood in the spirit of „Common European Guidelines on the Transition from Institutional to Community Based Care”

58 Creating and implementing a research tool for verification of the alternative care deinstitutionalization process in districts.

59 The project was implemented from 1.10.2016 to 31.05.2018. The tool with all the project outcomes is in possession of the Ministry of Family, Labour and Social Policy. More on the project: <http://wise-europa.eu/fundusze-europejskie/projekt-deinstytucjonalizacja/>.

## Alternative care for children with special needs and infants

In 2018 specialist professional foster families constituted just 0.6% of the total of family-based alternative care forms<sup>60</sup>. Throughout 2012-2017 a continual decline was observed in their numbers, from 264 in 2012 to 246 in 2018. The family-based alternative care should be the first choice while placing the child in alternative care. Especially in case of children under 10 who should never land in institutions<sup>61</sup>. Unfortunately, still 1361 children under 7<sup>62</sup> and 1853 children aged 7-10 resided in facilities<sup>63</sup>. All the while the Act in force enables establishment of pre-adoption intervention centres (hereinafter: PIC)<sup>64</sup> for infants with special needs under 1 years of age. Up to 20 children may reside in one facility. In 2018 49 children stayed at PIC. Apart from these, also socialisation facilities for young children operate in Poland (in the past called "Small Children's Homes"). In the first half of 2017 there were over 1600 small children in alternative care<sup>65</sup>. It means that the United Nations "Guidelines for Alternative Care of Children" recommendations for children under 3 are not taken into account. The above mentioned act also introduced new institutions – regional care and therapeutic facilities for children with special needs. The admissible number of children in such a facility is 45. It is justified by the necessity to reduce care cost per child. As a consequence large facilities are established as they are cheaper. Additionally, from some facilities children are transferred to nursing homes once they turn 12 where they spend the rest of their lives.

## Barriers to development of family based alternative care forms

The information collected by non-governmental organisations demonstrate that in many instances districts do not implement the act's presumptions. The factors impacting deinstitutionalisation process were being identified in the course of 2014-2018 study. The most important factor is the awareness of decision-makers directing the social policy at the local government level, their knowledge of what deinstitutionalisation is and persistence in performance of their vision<sup>66</sup>. Some local governments spend significant amounts on keeping even young children in institutions instead of developing family based alternative care forms or finance family support. What is more, already since February 2020 there have been ongoing works on a national deinstitutionalisation strategy.

## Leaving care of children from alternative care

The 2015 Supreme Auditing Office report indicates that despite existence of regulatory solutions, the process of becoming self-reliant concerning children in alternative care is not always effective<sup>67</sup>. The act ensures support, among other things, in "obtaining adequate accommodation". For many children becoming self-reliant this provision remains a dead letter. Many children in alternative care (16%) return to their biological families. The offered community housing is usually located in low standard buildings and in the neighbourhood of families experiencing problems.

The situation concerning leaving care process of children with disabilities is even worse. Poland ratified the Convention on the rights of persons with disabilities in 2012 and should ensure supervised sheltered housing for persons with disabilities including children in alternative care.

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60 Own calculations based on Informacja RM 2018, family based care and educational facility were included in the total of all family based alternative care entities.

61 Under the Act as of 1st January 2020 children under 10 cannot be placed in institutional forms of alternative care (except for family based facilities). The same rule has applied to children under 7 since 1st January 2016. On the other hand, the COVID-19 pandemic resulted in introduction of regulations which suspend until further notice the minimum age limit provisions concerning admission of children to institutional care.

62 Including due to: staying with a minor mother – 107 children, health status – 130, staying with older siblings – 629 children, for other important reasons – 1101 and lack of places in family based care – 339.

63 Status of 31st December 2018, data based on the Information of the Council of Ministers on implementation of the Act of 9th June 2011 on family support and alternative care system (Journal of U. z 2019 r. items 1111 and 924).

64 Article 93 point 1 of the Act on family support and alternative care system Journal of Laws of 2011 no 149 item 887.

65 The estimation includes young children in family based facilities and minor mothers staying at facilities with their children. Calculated based on the Ministry of Family, Labour and Social Policy statistics concerning the first half of 2017.

66 *Postępy deinstytucjonalizacji pieczy zastępczej w Polsce. Raport.* (2018). Warszawa: Fundacja Przyjaciółka, Wise Europa, Koalicja na Rzecz Pieczy Zastępczej. [http://wise-europa.eu/wpcontent/uploads/2018/06/raport\\_deinstytucjonalizacja.pdf](http://wise-europa.eu/wpcontent/uploads/2018/06/raport_deinstytucjonalizacja.pdf).

67 *Pomoc w usamodzielnianiu się pełnoletnich wychowanków pieczy zastępczej. Informacja o wynikach kontroli* (2014). Warszawa: NIK. <https://www.nik.gov.pl/plik/id,7849,vp,9839.pdf> p. 7.

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It is worth noting the Act of 4th November 2016 on support for pregnant women and families “For life” under which local governments and NGOs may receive support for organising sheltered and assisted housing. Despite all this, still the prevailing offer available to children with disabilities becoming self-reliant is institutional care: nursing homes. Moreover, oftentimes in many acts there are diverging solutions regulating the same issues.

### **Teacher education system**

The teacher education system focuses too little on the particular character of working with a child in alternative care. Teachers’ insufficient knowledge and skills regarding coping with trauma-affected children leads to difficulty in children’s integration in the new school set-up.

### **Recommendations**

- 1. Preparation and implementation of a deinstitutionalisation strategy including, among other things, family support and alternative care, the Prime Minister holds responsibility for its implementation.**
- 2. A memorandum on establishing new institutions and operation of the existing ones where children under 10 reside or are placed, except for family based care and educational facilities.**
- 3. Introducing the obligation to place all the siblings in family based alternative care if one of the is under 10.**
- 4. Ban on placing children in nursing homes for children and adults.**
- 5. Preparing and running a nationwide campaign to improve the foster parent status and social awareness on foster parenthood.**
- 6. Monitoring the situation of children returning from alternative care to parents taking into account potential further placement in alternative care.**
- 7. Development of professional foster families for the youngest children as well as the ones with disabilities.**
- 8. Introducing a cohesive quantitative and qualitative reporting system concerning children outside the family in all institutions (e.g. nursing homes, care and treatment facilities, youth sociotherapy centres, youth education centres, special training and educational centres, etc.).**
- 9. Implementing effective supervision and support mechanisms for the deinstitutionalisation course in districts.**
- 10. Separating foster family support (co-ordinators) and assessment.**
- 11. Improving the leaving care process quality including development of assisted housing and personal assistantship for persons with disabilities.**
- 12. Introducing into teacher training content on the specificity of working with the child with difficult experiences growing up in alternative care.**

### 22. Children with disabilities

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#### a. Assessment of the effectiveness of policies

The population of persons living with disabilities, including children, is one of the least studied groups in Poland. There are no central bases with statistical data, founded on, albeit, the disability assessment system, apart from random ones concerning individual areas of life, including education. Quite detailed data is provided by national censuses, however these are performed too seldom to be able to shape the country and local government's policy regarding persons with disability on an ongoing basis.

The "For Life" programme review scheduled for 2021 will surely provide some significant information. Nonetheless, one year prior to the review, based on scarce data, it is hard to form clear up-to-date opinion on regulations' and actions' effectiveness with regard to children with disability.

It should be stated the 2017 State Fund for Rehabilitation of Disabled People "Study of disabled persons' needs" constitutes the most important analysis of this social group in recent years.

At the same time, as the authors of "The Social Alternative Report on implementation of the Convention on the rights of persons with disabilities in Poland" (2015) state: "Polish law guarantees the child's rights protection, however, in practice it is assumed that the family is the child's rights' guarantor and advocate which, in case of negligence and also parents' lack of relevant competences may substantially limit these rights. Parallel, any restrictions relating to all persons with disability, e.g. in terms of communication and access potentially cause the so-called double exclusion due to minority and disability, thus magnifying negative consequences of the barriers existing in the community".

#### b. Reform of the system of social assistance for children with disabilities and their families

The support system for persons with disabilities in Poland, including children and their families, lacks cohesion, continuity and communication mechanisms among various institutions. Subsequent solutions are added to it depending on the ongoing needs, thus creating a patchwork which is hard to navigate in. The "For Life" act and programme constitute the first attempt to establish a support system for children with disabilities and their families.

Individual activities under the "For Life" programme are slowly taking roots in the system, increasingly more children and parents benefit from them, yet from its very establishment experts have stressed a certain unevenness of specific actions, beside the very needed ones meeting the needs and postulates, there are some quite general ones bearing no guarantee of solving particular problems.

Despite the previous years' slight positive change, disability, also the one of a child, poses a risk of poverty to the entire family due to often substantial costs and statistically lower income.

According to SP<sup>68</sup> the extreme poverty rate in households with at least one child below 16 with a disability certificate stood at 6% and was higher than the national extreme poverty rate which stood at 5.4%. The authors of the government proposal "Strategy for persons with disability 2020-2030" confirm disability's negative impact on the family welfare and living standard.

Importantly, the financial support system (the option to receive care benefit amounting to PLN 1830 in 2020) presumes one parent's resignation from paid work, in practice most often the mother's, to provide round-the-clock care to a disabled child. Such solutions entail many risks, both for mothers

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68 GUS (2019). *Zasięg ubóstwa ekonomicznego w Polsce w 2018 r.*, Warszawa.

– emotional and physical burden<sup>69</sup>, anxiety, depression, burnout<sup>70</sup>, and children – „parents may negatively impact children’s development in fear of losing benefits”<sup>71</sup>.

Additionally, NGOs’ experience, including the ones providing occupational activation to adults with disability, shows that at later stages of life the child’s self-reliance may be a problem.

### c. Access to specialized health and rehabilitation

The “For Life” act as well as other implemented regulations facilitated access to health care for many children with disabilities, however some problems have not been solved.

According to the Supreme Auditing Office 2018 report “A system of organisation of early development support does not guarantee all children with dysfunction and their families support which is effective and relevant to the needs. It is confirmed by the length of the child diagnosis process, unreliable assistance planning and performance, including failure to assure its comprehensiveness”. The Supreme Auditing Office report states that “in the majority of inspected counselling centres children with dysfunctions waited from three to four months for the first contact with a specialist. A great number of children diagnosed in those centres (...) received a recommendation concerning the early development support need after further several months – from 4 to even 33”. At a later stage also “early development support planning and performance were incorrect”.

There is no treatment coordination in case of multi-organ illnesses, multiple disabilities and rare diseases (the announced for many years National Plan for Rare Diseases has not been developed yet).

In many instances the real costs of treatment, equipment and rehabilitation exceed the support level from public funds. Availability of modern hydrophilic catheters for children with spina bifida may serve as an example. The “For Life” act only seemingly brought improvement in this respect. In reality one had to additionally pay PLN 400 per month for them.

Health care facilities’ architectural accessibility for persons with disabilities requires improvement as well as procedure and staff preparation to accommodate patients with special needs.

### d. Education of children with disabilities

Despite the positive changes in the field of inclusive education, in numerous instances the reality and practice deviate from the regulations and assumptions. The document “Government’s programme. Accessibility Plus 2018-2025”<sup>72</sup> states that “The education conditions of pupils and students with disabilities are improving, the changes’ pace, however, is assessed as insufficient. The situation is particularly hard in smaller towns and rural areas where expenditure on education of children with disabilities is lower. The results of the 2018 Supreme Auditing Office inspection indicated that 50% of public education units catering to students with disabilities do not ensure appropriate conditions to meet those students’ needs. Attention was drawn, among other things, to lack of support by additional persons (44%), overpopulated classes (44%), shortage of qualified specialists (44%) architectural barriers and no suitable rooms (31%)”.

From “The Study on the needs of persons with disability” it can be concluded that persons living in larger towns, caregivers of youth not requiring individual home-schooling did not voice any reservations to the existing system of education of persons with intellectual disability. The situation is worse in the countryside where a home-schooled child often does not receive additional support of specialists and the necessity to cover it rests with the parent.

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69 Kózka-Jazłowska, A. & Przybyła-Basista, H. (2019). *Doświadczanie stresu i odnajdywanie pozytywnych aspektów rodzicielstwa w kontekście wychowywania dziecka z niepełnosprawnością intelektualną*. 18. 76-105.

70 Masulani-Mwale, Kauye, Gladstone, Mathanga, 2018; Resch et al, 2012.

71 „Społeczny Raport Alternatywny...”

72 *Program Rządowy Dostępność Plus 2018-2025* (2018). Warszawa: Ministerstwo Inwestycji i Rozwoju.

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The authors of "The Alternative Social Report" emphasize that "the right to inclusive education is ahead of practice" and the problem consists in individualisation at a particular schools' level.

The experience of NGOs providing support to students with disability shows that teachers' and parents' main concerns regard real capacity of children to participate in lessons, especially students with a greater degree or certain types of disability. The barrier is poor preparation of schools and teachers as well as no specialist support staff. Another problem may be buildings' and surrounding's inadequacy as well as also the commute to school. Teachers and parents point out that class sizes in combination with additional time which teachers have to devote to children with disabilities negatively impact entire classes' curriculum implementation, while lack of relevant staff preparation contributes to exclusion of students with disabilities. Lack of medical assistance/ nurse who would help with administering medicines and care activities is also of significant importance.

In Poland there are 200,000 children with disability certificates. 30 thousand in kindergartens, 100 thousand in primary schools, in the school year 2017/2018 there were 35 thousand of them in lower secondary<sup>73</sup> schools including 28 thousand children and youth included in individual tutoring.

#### e. Inclusion in all areas of life

Culture, leisure and sport accessibility to persons with disability in Poland is increasingly enhanced, these realms are continuously subsidised with public funds. Unfortunately, the infrastructure's condition leaves much to be desired the same goes for its availability to persons with impaired vision and hearing as well as intellectual disability and autism. The Accessibility Plus Programme stands a chance, within several years' perspective, partly to change the situation, regrettably the programme itself states: "The Statistics Poland 2016 data on cultural activity (centres, clubs, facilities and day care centres) indicate that facilities adapted to persons with disability comprised 56% of the total of 4.2 thousand"

The 2018 Supreme Auditing Office report demonstrates poor accessibility of public spaces<sup>74</sup>. Accessibility of tourist attractions and sports venues' condition is also a problem.

Though many facilities have been established in recent years, still according to SP "Among all the stadiums (...) 35.4% are adjusted to the needs of disabled persons practicing sports and 45.3% of disabled spectators (...) 1/3 of playgrounds (...) and 76% of swimming pools cater to training persons with disability<sup>75</sup>.

Accessibility of public transportation to persons with disability still remains a problem, especially in smaller towns and rural areas.

## 23. Health and health care

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#### a. Child and adolescent mental health

For many years we have been observing decline of child psychiatry. The existing system is characterised by uneven spread of child and adolescent support institutions and focus on inpatient care with the relatively poor development of community services such as counselling centres and clinics which are the most effective. At the same time, the Ministry of Health does not possess thorough data on mental disorders prevalence among children and adolescents which results in inability to determine the phenomenon's scope (the first data concerning mental disorders in children and adolescents are to appear only in 2020)<sup>76</sup>. The existing child psychiatry system not only does not

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73 [www.rpo.gov.pl/pl/content/MEN-odpowiada-RPO-w-sprawie-przygotowan-do-zmian-w-nauczaniu-indywidualnym](http://www.rpo.gov.pl/pl/content/MEN-odpowiada-RPO-w-sprawie-przygotowan-do-zmian-w-nauczaniu-indywidualnym).

74 *Dostępność przestrzeni publicznej dla osób starszych i niepełnosprawnych. Informacja o wynikach kontroli.* (2018). Warszawa: NIK.

75 *Kultura fizyczna w latach 2017 i 2018* (2019). Warszawa-Rzeszów: Główny Urząd Statystyczny i Urząd Statystyczny w Rzeszowie.

76 Odpowiedz MZ do Marszałka Sejmu. <http://orka2.sejm.gov.pl/INT8.nsf/klucz/ATTBDKHYQ/%24FILE/i31560-o1.pdf>.

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respond on an ongoing basis to the alarming signals concerning the youngest but is also inefficient. The number of suicide attempts among children aged 7-18 grew by 23% between 2017 and 2019.

- Too few active child psychiatrists and a slight increase in their number in recent years (419 in 2019, while in general psychiatry ten times more), it places Poland at one of the last positions in Europe as regards the number of children per psychiatrist ratio in Europe.
- The limited number of places in hospitals (906 beds in 2019 – occupancy in some hospitals reaches 150%-180%), placing older children in facilities for adults and a declining number of day wards as well as their uneven territorial distribution (in 2019 in 5 out of 16 provinces no contracts to operate day psychiatric wards were signed) result in only children and adolescents whose life is in danger being able to receive help<sup>77</sup>.
- Additionally, it is estimated that approx. 60% children and youth placed in psychiatric wards have never received psychological nor psychiatric support before. Frequently parents were forced to look for support at specialist private practice to which access is limited not only by funds but also lack of trained medical staff (the waiting time for a visit scheduled within the National Health Fund amounts to at least several months).
- At Polish medical universities the interest in child psychiatry among young doctors is very low and the topic of child and youth psychiatry is treated in a marginal manner in science programmes while the number of places within this specialisation courses is very limited, only 21 places were available for 2021<sup>78</sup>.

MH has started works on shifting the approach to child psychiatry. The change of the model is to create a three-tier system of child and adolescent care. The model has not been fully implemented yet, though some facilities already operate.

#### **b. Access to medical specialists, in particular to dental care**

The primary health care's problem is its quality and inconsistent availability. General practitioners have limited diagnostic authority thus when a serious illness is suspected (oncological, cardiological, etc.) instead of referring the patient for tests to confirm or exclude the option, they are forced to refer the child to a medical specialist which entails long queuing, prevents the timely accurate diagnosis and treatment.

At the same time there are no reliable analyses to determine the health needs in individual regions. In many provinces certain specialist services are not provided at all while in others the limits are exceeded by many times (e.g. paediatric diabetology and urology). Moreover, the number of paediatricians both in inpatient and outpatient care is too low and may decline in the coming years. In Poland, on average, there are five paediatricians per 10,000<sup>79</sup> children, in some provinces the paediatrician availability is much lower which does not guarantee children equal access to health care.

In Poland the problem of caries among children and availability of dentists is one of the more burning issues within paediatric medicine. Every other child below 3 has cavities, only 20% of children under 5 has no caries. The problem aggravates with age and concerns 90% of children over 12<sup>80</sup>. There are two underlying causes. The first one is related to the low level of parents' awareness, especially among those with low economic status, there are no information and prevention programmes directed both to parents and pre-school-age children.

The other reason results from limited access to public paediatric dentistry services. The regulatory amendments introduced in September 2019 stipulated implementation of obligatory dental care at schools. In reality only 700 facilities have dental surgeries (out of 24 thousand). The remaining

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77 *Psychiatria Dzieci i Młodzieży w Polsce. Raport.* (2019). Warszawa: Sieć Obywatelska Watchdog Polska. <https://siecobywatelska.pl/raport-watchdoga-jak-zle-jest-w-polskiej-psychiatrii-dzieci-i-mlodziezy/>.

78 <https://www.gov.pl/web/zdrowie/liczba-miejsc-rezydenckich-dla-lekarzy-i-lekarzy-dentystow-ktorzy-roz poczyna-szkolenie-specjalizacyjne-na-podstawie-postepowania-kwalifikacyjnego-przeprowadzonego-1-31-marca-2020-r>.

79 *Zdrowie i ochrona zdrowia w 2018* (2019). Warszawa-Kraków: Główny Urząd Statystyczny i Urząd Statystyczny w Krakowie.

80 <https://www.gov.pl/web/zdrowie/monitorowanie-stanu-zdrowia-jamy-ustnej-populacji-polskiej-w-latach-2016-2020>.

ones are to sign a contract with an available surgery or open one on their own. The costs related to establishing and maintenance of a new surgery hugely exceed local governments' capacity. On the other hand, signing a contract with an existing surgery is hampered as there are few willing to take up such co-operation due to the low profitability.

The situation has been marginally improved by the government purchasing dental buses. Their low number, limited service scope (mainly dental check-ups in 2018-2019) and lack of regular activities scheduled for a given facility make it impossible for them to fulfil the presumed role, their activities are just a facade with no real influence on children's' and adolescents' dental health.

### c. Health care for Roma children

Roma children in Poland have access to free health care. Roma immigrants (it refers to all immigrants) in Poland with no insurance, which means no access to health care, are in a difficult position. During the pandemic the situation is particularly dangerous, putting at risk people's health and lives.

## 24. Adolescent health

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According to *Monitoring of the core curriculum and family life education handbooks* (Grupa Ponton, within the project Verification of performance of adolescents' right to sex education, Warsaw 2015) including an analysis of the existing family life education handbooks: the presentation manner of sexuality related issues is subordinate to family and marriage. The family life education handbook analysis demonstrated that they are not founded on sound scientific knowledge and human sexuality is strictly connected with family and marriage.

This thinking model is very much present in the public discourse. Submission of two civic draft bills: one banning eugenic abortion<sup>81</sup> and the other introducing amendments to the Penal Code, which in fact prohibits sex education in educational facilities, marked the moment of great polarisation. The draft was protested by OO<sup>82</sup>. The increasing rate of mental crisis and suicide among youngsters is related to a feeling of inadequacy, being different or rejection. What is more, comparative WHO and HBSC studies as well as the Supreme Auditing Office inspections point to poor situation of the Polish child support system.

Interestingly, a survey performed by Ibris for Gazeta Prawna and Radio Zet<sup>83</sup> indicated that Poles wish to have sex education at school (over 80%) and do not believe, as indicated in the civic bill proposal, that teaching on sexuality incites children to sexual acts. While they list the family as the primary source of knowledge, they oppose resignation from the school lessons.

## 25. Environmental health and pro-ecological attitudes

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Smog and high atmospheric particulate matter concentration cause numerous illnesses and in case of children in growth and puberty, they lead to many negative consequences. In 2018 the government implemented the "Clean Air" programme with funds to replace heating systems for greener solutions. Houses' heating systems are just one of the reason of high air pollution in Poland. One should remember that the Polish economy is largely coal-based. Poland in many respects is not prepared for decarbonisation and the energetic policy does not envisage departing from coal in the coming years which makes it difficult to discuss any climate strategy. Polish authorities are also hostile towards renewable energy sources.

The society's education is a crucial area of environment protection and care for sustainable development, it should start at the earliest age. The education need is enormous as the Green Generation

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81 <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?documentId=BCD189DEECEDC8ECC12584BA0040FA02>.

82 <https://www.rpo.gov.pl/pl/content/rpo-o-obywatelskim-projekcie-zakazu-edukacji-seksualnej>.

83 <https://serwisy.gazetaprawna.pl/edukacja/artykuly/1436254,ustawa-stop-pedofilii-edukacja-seksualna.html>.

report data show Polish youth is not interested in ecology-related matters<sup>84</sup>. 24% young people below 18 declare interest in this area of life. Polish society is unaware of threats the global climate change entails, does not understand economic interdependencies in this area and lacks knowledge of basic terms such as e.g. carbon footprint (80% is unfamiliar with the term). The low environmental awareness should be attributed to poor environmental education at all learning stages<sup>85</sup>. Pro-environmental organisations appealed to the Ministry of the National Education for expansion of the curriculum content, MNE deemed the existing content sufficient. Also the young demand ecological education. In May 2020 the youngsters associated within the Youth Climate Strike sent a relevant petition to MNE<sup>86</sup>.

## 26. Standard of living

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The government has not presented a child poverty diagnosis. It has not set any specific goals to be achieved in this respect in the medium and long term, e.g. reduction of extreme poverty among children to less than 1%. With regard to this, claims that the positive trends of diminishing children's poverty are to the government's credit are unfounded. Undoubtedly, the government policy contributed in part to radical reduction of children's monetary poverty.

The extreme poverty rate between 2015-2019 decreased. In 2015 it amounted to 9% and in 2019 4.5% i.e. reduced by half. In absolute terms the number of extremely poor children declined from 621 k in 2015 to 316.6 in 2019. The relative poverty rate decrease was not as extensive but also significant. In 2015 this indicator amounted to 20.6% while in 2019 it decreased by 6 percentage points to 14.3%. In absolute figures for the first time the number of relatively poor children has dropped below one million – from 1421.8 k in 2015 to 993.5 k in 2019. The material and social deprivation rate among children (aged 0-17) declined from 15.9% in 2015 to 6.5% in 2019, i.e. threefold. These studies do not include children residing in homeless mothers shelters, 24-hour care and educational facilities of the socialising type or nursing homes.

Also in the years 2015-2019 the homeless children number fell from 1.89 k to 0.99 k. Homeless children stay mostly at homeless mothers shelters and residential spaces not fulfilling the dwelling definition.

Explaining the positive trends comes easily taken into consideration that the economic situation in Poland between 2015 and 2019 was improving, unemployment was constantly declining and wages were quickly rising. The government policy factors should be added to the above which consisted in introduction of the minimum hourly rate to atypical job contracts and the new universal cash benefit for children without cutting down previous family benefits. As a result of these processes the real income and expenditure of the lowest 20% were dynamically increasing in 2016 and 2017, they slowed down in 2018 but in 2019 they picked up again.

The poorest families receive the universal cash benefit and family benefits. Still, combining these benefits do not assure a family an income at the subsistence minimum level considered as the extreme poverty threshold. Another problem consists in the fact that child benefits are not systematically indexed hence all child allowances remained at the 2015 level, thus they lost in real value due to inflation which increased in 2018 and 2019.

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84 Green Generation. *Raport wspólnie na rzecz Ziemi* (2020). Warszawa: Mobile Institute i Izba Gospodarki Elektronicznej.

85 Tuszyńska, L. (2017). *Ecological education in the perspective of sustainable development*. Studies of Global Ethics and Global Education, no. 7/2017, p. 43-56.

86 <https://www.portalsamorzadowy.pl/ochrona-srodowiska/mlodziez-pisze-do-men-w-sprawie-edukacji-ekologicznej,179583.html>.

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## **Recommendations**

### **Children with disabilities**

- 1. A review of crucial comprehensive programmes such as “For life” should be held more often than 5 years.**
- 2. Policy creation requires cyclical, detailed population studies of children and adults with disability and their parents and caregivers.**
- 3. A reform of the disability assessment based on functional diagnosis and followed by individualisation of support for children with disabilities.**
- 4. Enabling the activity of parents of children with disabilities through popularisation of solutions requested by the community which offer chances for greater independence for children in their adult lives.**
- 5. Improvement of early development support organisation.**
- 6. Ensuring co-ordination of health care for all children with disabilities.**
- 7. Adjustment of the amounts and principles regarding equipment and rehabilitation support for children with disability.**
- 8. Active efforts to boost didactic staff’s competences as regards inclusive education.**
- 9. Improvement of school infrastructure accessibility as well as learning processes for students with diverse educational needs.**
- 10. Monitoring the impact of changes to individual tutoring with particular focus on the parent burden and student exclusion.**
- 11. Implementation of solutions included in the Accessible school programme and persistent modernisation and retrofitting of further facilities.**
- 12. Work with staff in the spirit of empathy, understanding and respect for diversity and expansion of teacher teams in a manner ensuring comfortable working conditions both for children and educators.**
- 13. Ensuring presence of medical/ nurse assistance at school.**
- 14. Improvement of public spaces’ accessibility, including cultural, sports and leisure venues.**
- 15. Improvement of public transportation accessibility to persons with disability, especially in rural areas.**

### **Child and adolescent mental health and access to sexual education.**

- 1. Ensuring efficient public child and youth support network staffed with psychologists and therapists and its territorial accessibility.**
- 2. Implementation of prevention activities based on widespread social campaigns concerning mental disorders directed to children and youth as well as teachers and parents.**
- 3. Increasing, as promptly as possible, financing of inpatient psychiatric care for children including ensuring specialist and support medical staff as well as improving living conditions in hospitals.**
- 4. Continuation of works on establishment of Mental Health Centres for Children and Youth in each district.**
- 5. Increasing availability of paediatricians and paediatric specialists, especially in regions where paediatric health care is insufficient.**
- 6. Implementation of long-term information measures concerning oral hygiene directed both to parents and children already at early childhood stages.**
- 7. Improving availability of dental care services, particularly in smaller towns and among low economic status families.**

- 8. Introducing solutions to facilitate immigrants' (including Roma ones) access to health care in special circumstances, including the SARS-Cov-2 pandemic.**
- 9. Introducing reliable, knowledge and research based sex education classes.**
- 10. Developing a new core curriculum and handbooks for family life education.**

#### **Ecology**

- 1. Expanding teaching content concerning natural environment protection, ecology and pro-ecology attitude promotion in core curricula at each education stage.**
- 2. Educating the society on the need to change the lifestyle into a more environmentally-friendly one. Indicating short and long term consequences of irresponsible attitudes.**
- 3. Developing a national ecological policy with mechanisms of implementing solutions aimed at reducing the atmospheric concentration of particulate matter. Allocating more budget funds for the purpose and establishing subsidy programmes to modernise households and enterprises with ecological solutions.**

#### **Standard of living**

- 1. Adopting by the government a strategy to reduce extreme poverty among children to below 1% and total elimination of homelessness among children in the medium-term until 2030. This strategy or programme should be based on research evidence on child poverty and its causes and opinions of various stakeholders such as child and anti-poverty NGOs and social workers and family assistants representatives.**
- 2. Considering in the child benefits model a support level reference to the minimum sufficient expenditure of families with children (social minimum) and the automatic annual adjustment at least against the price index.**
- 3. Reducing the gaps in using early childhood care and education services between children from underprivileged families and others in particular in case of children under 3.**

### 27. Education

#### a. Education system reform – overpopulated classrooms and problems concerning travelling to school.

The education system reform significantly aggravated both the learning conditions and issues concerning travelling to school – no effective action was taken to counteract these matters and the responsibility for the reform's consequences was to a great extent shifted to local government.

According to the Supreme Auditing Office report (May 2019)<sup>87</sup> changes to the education system had been prepared and introduced too carelessly which negatively affected learning conditions in 1 out of 3 schools<sup>88</sup>. The Ministry had not prepared thorough financial nor organisational analysis of the reform's effects which placed excessive burden on self-government. Classrooms are overpopulated and maladjusted to a greater number of students. Already at the 2019/2020 school recruitment stage 8 provinces lacked the sufficient number of places for students graduating to post-primary and post-middle schools.

Moreover, as per the same report, in 8-grade primary school the shift work ratio increased: classes are held on average 11 hours a day – from 7.15 a.m. until 6.30 p.m. There were some schools to introduce 3 shifts despite more numerous classes.

In the 2019/2020 school year the problem concerned also and even most of all post-primary schools.

It was in relation to double classes in post-primary schools (joint post-middle and post-primary school classes) overlapping double recruitment from prior years (as a result of the option to send 6-year-olds to school).

The recruitment accumulation impacts cost augmentation of transporting students to school which is covered by government. Based on the transportation costs one can also conclude that (though it is not a linear relationship) students need to spend more hours per day commuting. There is a concern that this will contribute to inequalities among students residing further away from the school, in poorly connected and rural areas.

The tough organisational situation at school leads to unnecessary and excessive concentration on ongoing logistical matters and pushes back the work on the education quality which should constitute the main focus of everybody responsible for the Polish education<sup>89</sup>.

#### b. Education and integration of Roma children

100 Roma assistants work in Poland who support Roma children and are in charge of the communication between schools and parents. Unfortunately, these assistants are included in no systemic support to elevate professional competences, their status at school is not regulated and they are poorly remunerated, all this affects frequent resignation from the job or occupational burnout. One should add that particularly in crisis periods such as the current COVID-19 pandemic the assistant role is of paramount importance as many children are not able to take advantage of distance learning without their support (lack of computer equipment and also assistance from uneducated parents). As a result of the said problems many Roma children were not promoted to the next grade.

Still a relatively small group of parents decide to send children to kindergarten which may adversely impact school education due to the lower language competences and bilingualism of Roma

87 *Zmiany w systemie oświaty. Informacja o wynikach kontroli* (2019). Warszawa: NIK. <https://www.nik.gov.pl/kontrola/P/18/027/> and <https://www.nik.gov.pl/aktualnosci/edukacja-i-nauka/reforma-oswiaty-w-czesci-sfinansowana-przez-samorzad.html>.

88 Ibidem.

89 <https://www.rpo.gov.pl/pl/content/seminarium-ws-podwojnego-rocznika-w-szkolach-srednich>.

children. Teachers without the assistance consisting in education to support work with the culturally and linguistically different child often are unable to undertake relevant action to integrate the child who is often referred to psychological and pedagogical counselling centres due to low language competences (Polish language).

There is no regulatory obligation to use culturally-sensitive tests and non-verbal tests which should be applied for testing of minority group children. Poor test results may lead to the child's referral to a special school.

The Roma integration programme in Poland 2014-2020 has been carried out since 2014. The programme finances activities regarding education on Roma people. It is worth mentioning that these are initiatives directed to some groups in Poland as they are implemented by NGOs or institutions which receive funding within competitions. Importantly, the Programme is focused mostly on areas related to social assistance hence educational programmes on Roma communities do not always become accepted by evaluators. Unfortunately, in Poland there are no educational programmes focusing on intercultural competences or anti-discrimination, also including Roma people. Nor there are any systemic educational solutions addressed to the school community. Programmes on the Roma people history and culture for Roma children are non-existent, due to the gap the children do not acquire this knowledge at school.

### **c. Elimination of discrimination against persons living with HIV/AIDS**

According to the National AIDS centre data currently in Poland there are 97 children undergoing ARV therapy<sup>90</sup> (data of December 2019).

In children and adolescents the awareness of being infected is a cause of psychological problems, feeling of alienation, low self-esteem. The support provided by the state, parents, teachers and community is inadequate and activities in this area are limited to work of NGOs lacking steady financing.

It is worth noting above all that stigmatisation of children with HIV constitutes a part of a greater problem of lack of tolerance, exclusion or hate crime in Polish schools while the government's actions to improve the status quo are actually non-existent.

It is necessary to develop mechanisms to counteract various forms of discrimination, including the one against persons with HIV, and awareness-building. Parents of their peers are afraid of their children becoming infected, kindergarten and school teachers fear the responsibility related to care over an ill child. Discussions with HIV/AIDS activists show that there are situations when parents fearing children's exclusion and discrimination do not inform education facilities on the fact that children are HIV-positive and sometimes even hide it from the child themselves. It causes many problems all the while showing the deep roots of concerns about contacts with HIV-positive persons.

Children with HIV also experience problems with admission to kindergartens, extracurricular activities and camps. At the moment, due to lack of funding among other things, such camps are not available at all. For years, the means for organisation came nearly exclusively from private sources. In 2018 the Social HIV Committee organised summer camps for HIV-positive children. It faced many organisational hardships: many centres offered accommodation after the season or declined co-operation altogether.

There are no systemic solutions to build awareness concerning HIV/AIDS at schools and within peer groups: training for teachers, social campaigns. Also direct psychological support is inexistent: the community of persons with HIV is very dispersed which hampers the outreach.

### **d. Education of minors in detention**

As Poland lacks systemic regulation of providing compulsory education to minors in guarded detention centres for foreigners, access of these children to education is significantly restricted.

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90 [https://aids.gov.pl/hiv\\_aids/450-2-2/](https://aids.gov.pl/hiv_aids/450-2-2/).

Educational activity is held solely at detention centres within a substantially limited scope and, as the Ombudsman points out, does not comply with the core curriculum. There are no legal regulations concerning education of minor foreigners at guarded centres. It is also unclear which principles should guide such teaching or its financing. As a consequence, education of this group of foreigners is based only on mutual agreement of the Border Guard, state schools and education authorities and depends on these institutions' will and capacity"<sup>91</sup>.

#### **e. Access to early education**

##### **Nursery care accessibility**

Educational inequalities in Poland begin with limited access to nursery care. Despite the real and systematic growth in the number of nurseries, still taking advantage of these care forms is possible mostly in large cities. In 2019 nursery care was provided to 18.4% children in towns and only 3.7% in rural areas<sup>92</sup>. Moreover, according to SP in 2019 78% of all care facilities for children under 3 were from the private sector<sup>93</sup>. Simultaneously, it is not possible to fulfil the EU postulate of reaching by 2020 33% participation of children younger than 3 years old in nursery care, in 2019 the percentage was just 12.4%.

##### **Access to kindergartens**

Changes introduced into the education system by the Act of 29th December 2015 restored compulsory education from the age of seven and abolished compulsory education for 5-year-olds. The above modifications aggravated the problem of kindergarten accessibility: 6-Year-olds remained at kindergartens "taking away" places from 3,4 and 5-year-olds, in particular in rural areas. The data demonstrate that in 2018 nearly 40% of children aged 3 and 4 in rural areas did not have access to kindergarten education<sup>94</sup>. It is worth highlighting that limiting compulsory kindergarten education to 6-year-olds and shifting the school starting age to 7 limits educational opportunities, especially for children residing in the countryside or originating in families with low cultural capital.

Last years' experiences show that local governments appreciated the value of early childcare and education. However, with the existing level of commune debt and burden of additional costs related to the recent educational reform, on their own they are not able to find means allowing to ensure places to all children whose parents wish to send them to a kindergarten.

##### **Support for rural communes in improving accessibility of preschool education**

Other forms of preschool education (commonly referred to as: small kindergartens, kindergarten centres) were introduced into the Act on educational system in 2007. It was presumed that these organisational forms will be more adjusted to rural communities' needs than regular kindergartens. The lower number of children, exclusively educational role, close co-operation with parents and decreased organisational requirements were to allow rural communes creation of more flexible solutions adapted to their needs and capacity. However, the ordinances to the Act, which introduced organisational requirements just slightly below the ones for kindergartens, caused that other forms bear increasingly less differences from regular kindergartens and do not provide opportunities for rural areas to bridge the gap in preschool education accessibility. Subsequent ordinances, under the pretext of implementing new health and safety regulations, in fact aim at eliminating NGO/ preschool companies from schools.

It is necessary to return to the "other forms" concept and making them flexible so that communes can adapt them to their needs and capacity. It requires new ordinances, especially concerning reduction of the number of children in a group, simplifying construction and sanitary provisions

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91 *Uwagi Rzecznika Praw Obywatelskich na temat działań mających na celu wdrożenie postanowień Konwencji w sprawie likwidacji wszelkich form dyskryminacji rasowej, w latach 2014-2019*, point 59 Warszawa: Biuro RPO. available at: [https://www.rpo.gov.pl/sites/default/files/Raport%20RPO%20dla%20Komitetu%20ONZ%20%20%28j%C4%99z.%20polski%29\\_0.pdf](https://www.rpo.gov.pl/sites/default/files/Raport%20RPO%20dla%20Komitetu%20ONZ%20%20%28j%C4%99z.%20polski%29_0.pdf).

92 *Żłobki i kluby dziecięce w 2019 roku* (2020). Warszawa: GUS.

93 *Dzieci w żłobkach i klubach dziecięcych*. Statystyki GUS

94 *Dzieci w wieku przedszkolnym i objęte wychowaniem przedszkolnym w 2018*. Statystyki GUS.

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(while keeping the regulations which guarantee safety to children), ensuring additional training for teachers. Public entities, NGOs and companies in particular, should also be allowed to establish other forms of preschool education, which sometimes are the only solution for small rural communes, enabling to ensure access to early education to children younger than 6.

## 28. Right to leisure and play

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In 21st century Polish youngsters notably progressed in terms of development of language, mathematical and environmental competences which is confirmed by the substantial advancement in the international PISA study<sup>95</sup>. At the same time the research shows that Polish students are overburdened which results from the new core curriculum requirements and the related tests and exams<sup>96</sup>. The overloaded core curriculum leads to, among other things, excessive homework which limits time for play, physical activity and developing one's interest. Sadly, casual play is not treated as a priority or even an added value and the rigorous provisions of the core curriculum for pre-school and early school education (grades 1-3) may incline some teachers to limit casual play for the benefit of didactic activity and highly structured games with a defined purpose. Children attending kindergarten are in the best position (70% children are included in pre-school education). Each kindergarten is obliged to ensure the option of using a playground. If it does not have one, it should enable children to use a playground outside its premises.

The situation is harder in schools due to a greater number of children using yards and playgrounds. As a result of changes introduced into the education system in the years 2016-2019 learning at primary schools was extended (by two years) and thus the student numbers in facilities rose significantly. It increased congestion at schools and diminished availability of places and play equipment. In turn, middle schools which wound up under the reform and transformed into primary schools usually did not possess relevant infrastructure for younger children<sup>97</sup>. The situation in secondary schools is even harder due to rollover of two grades (graduates of primary school's 8th grade and 3rd middle school grade). It is impossible to fully adapt school buildings and equipment so they provide adequate learning and stay hygiene, including relaxation areas. In numerous schools students are affected by hindered access to toilets and canteens during breaks. The 2019 Supreme Auditing Office report shows that 38% of school premises did not meet the health and safety requirements<sup>98</sup>. Additionally, the amount which local governments are forced to spend on operating kindergartens and schools has augmented in recent years<sup>99</sup>. Most of the funds are assigned to subsidise teachers' salaries and indispensable school renovation, hence too little is left to finance playgrounds and relaxation areas. Ensuring conditions for casual play and relaxation to a great extent is up to families. It leads to inequalities in access to them, which is dependent on the parents' economic and social situation, it further marginalises children from underprivileged backgrounds.

At the same time, one should give credit for the efforts of local governments, kindergarten and school complexes as well as care facilities which jointly with local communities and parents subsidise and equip playgrounds and play areas.

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95 <https://www.evidenceinstitute.pl/wp-content/uploads/2019/12/EI-Policy-Note-3-2019-PISA.pdf>

96 The need to verify and/or change the core curriculum so its content accommodates students' and teachers' capacity was confirmed by nearly 1/3 (31%15out of 2.8 k) primary school directors participating in the survey. The respondents claimed that the existing core curriculum is too extensive, notwithstanding the school reality and most of all burdensome for children. Additionally, a great deal of content is dispensable and as a result there is not enough time to consolidate useful and important matters." <https://www.nik.gov.pl/plik/id,20607,vp,23235.pdf>.

97 As the Supreme Auditing Office states: "In 2016-2018 the Minister of National Education incorrectly prepared and implemented changes to the education system. While preparing the reform, they did not perform thorough analysis of financial and organizational consequences of the designed changes. They did not possess full and reliable information on the topic of: the reform's costs, middle school transformation or liquidation status, number of teachers trained as regards the new core curriculum, post-primary and post-middle schools' capacity to accept 8th-grade primary school graduates as well as the ones of 3rd grade middle schools which were being closed (the so-called double class)." <https://www.nik.gov.pl/plik/id,20607,vp,23235.pdf>.

98 Zmiany w systemie oświaty....op.cit.

99 <https://www.prawo.pl/samorzad/luka-w-finansowaniu-oswiaty-zagraza-rozwojowi-i-pkb-samorzadowcy,495752.html>.

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Environment pollution is a new problem: there are towns where smog concentration for many days exceeds the admissible level which makes play and sports activities on playgrounds dangerous<sup>100</sup>.

#### **Recommendations:**

- 1. Increase school subsidies for local governments (at present the percentage share of subsidies dropped from 63% to 60% following the rise in reform-related costs).**
- 2. Regulating Roma assistants' status.**
- 3. Implementing obligation to use culturally-sensitive and non-verbal tests at psychological and pedagogical counselling centres for children from minority groups.**
- 4. Introducing educational programmes (courses, workshops, etc.) on Roma people addressed to teachers and students.**
- 5. Initiation of educational programmes for Roma children to enhance their cultural and historic identity.**
- 6. Organising an anti-discrimination educational campaign including the Roma community (a wider context of raising awareness of the marginalised and discrimination-susceptible groups).**
- 7. Reinstitution of government programmes to support children living with HIV/AIDS.**
- 8. Initiating anti-discrimination programmes and training (stigmatisation of people with AIDS/HIV constitutes a part of a greater problem).**
- 9. Introducing a ban of placing minor foreigners in detention.**
- 10. Intensifying actions to increase nursery care accessibility.**
- 11. Introducing subsidies for local governments for educational tasks for children below 6.**
- 12. Initiating by the government activities to ensure access to preschool education to all children, especially in rural areas.**
- 13. Introducing solutions (new ordinances) to facilitate establishment by local governments of the so-called small kindergartens adapted to small communes', in particular rural ones, needs and capacity.**
- 14. Development and promotion of educational programmes for adults and children, promoting casual play as the child's emotional, social and cognitive development foundation. Supporting actions to change education authorities' attitudes as well as parents' and caregivers' themselves to play.**
- 15. Organisational and financial support for grass-roots initiatives of establishing play and relaxation areas in co-operation with communities, local authorities and NGOs.**
- 16. Problematic areas monitoring, including situation of children in the rural areas and small towns as well as overpopulated schools.**

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100 <https://www.rpo.gov.pl/pl/content/smog-narusza-dobra-osobiste-rpo-w-sprawie-mieszkanca-rybnika> <https://www.rpo.gov.pl/pl/content/ochrona-srodowiska-i-uczalliwe-inwestycje-spotkanie-rpo-z-mieszkancami-lublinca>

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## H. Special protection measures

### 29. Asylum-seeking and refugee children, unaccompanied refugee children

#### a. Minor foreigners in detention

Provisions of law stipulate placement of minor foreigners in guarded centres for aliens, both with the family and without care, however unaccompanied minors may not be placed in detention, when they seek international protection.

While deciding on placement in a guarded centre the court is obliged to consider the child's best interest. In practice courts very seldom refer to the child's situation. In the vast majority of cases the child's best interest is neither examined nor duly assessed<sup>101</sup>. As a result in all cases concerning immigration detention of children in Poland resolved by the ECHR it was ruled that Poland violated Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>102</sup>. The ECHR indicated that courts did not examine or unduly considered securing the child's best interest while deciding on detention<sup>103</sup>.

According to NGOs' opinion, the existing system of placing minors in detention centres does not ensure actual and effective guarantee of protecting their rights, including the procedural ones<sup>104</sup>.

It should be particularly emphasised that the court often does not analyse the alignment of detaining the family with the child's best interest, limiting itself to stating that the aliens are ensured medical and psychological care in a guarded detention centre for foreigners and the centre's doctor sees no contraindications for further detention<sup>105</sup>.

The Polish authorities indicated to the Committee (point 29) that since 2014 alternative measures are applied during the first arrest: "Only on subsequent arrests the Border Guard petitions to the court for placing the family in a guarded centre if it considers there is an escape risk and alternative measures will not suffice". NGOs are familiar with cases of placing families with minors immediately after filing an international protection petition.

It can be concluded from NGO experience that provision of legal assistance to a unaccompanied minor in a guarded centre for foreigners is often hindered by technicalities. Court rulings on placing or prolonging the stay at a guarded centre are handed not to the minor but to their guardian with whom frequently the child has no contact. Consequently, the assistance in preparing an appeal against the court's decision regarding placement or extending the stay at a guarded centre may be impossible<sup>106</sup>.

#### b. Right to information

Under the applicable Polish law, foreigners applying for international protection are entitled to free of charge information and legal assistance. It should be noted that the information and legal assistance are intended for children's legal guardians.

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101 Górczyńska M., Witko D.(2018). *Research on the applicability of the best interests of the child principle as the primary consideration in detention decisions as well as the alternatives to detention*. Warszawa:UNHCR.

102 Cases no: 23685/14, 75157/14 and joint cases 15845/15 and 56300/15

103 One should point to communication in 2019 to the Polish government of the complaint lodged with the European Court of Human Rights concerning violation of the ban of arbitrary detention of the family with minors (case no. 11247/8). In confinement one child's mental condition significantly deteriorated. Their further detention posed a threat to their health or life. A significant threat to health and life of children in guarded centres may constitute a basis for the entire family's release from the centre. It demonstrates the highly traumatising character of detention for minors.

104 Jaźwińska M. (2018). *Immigration detention of children* [in:] SIP in action... op.cit. p. 53.

105 See, among other things, the ruling of the District Court in Kętrzyn of 25th October 2017, reference no. II Ko 1578/17/Cu and of 31st October 2017 refernced II Ko 1606/17.

106 Jaźwińska M.(2018). *Immigration detention of children* [in:] SIP in action... op.cit. p. 42.

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Unaccompanied minors receive free of charge assistance of a legal guardian whose task is to represent the child in the international protection or obligation to return procedure and also to inform the child on their legal status. It is also noteworthy that no translator support is provided to guardians which oftentimes impairs communication in a language understood by the child, sometimes the guardian contacts the child through third parties who are not translators but speakers of the language understood by the child and Polish which affects translation quality or (for rare languages) e.g. Google Translate. Importantly, some guardians do not initiate personal contacts with the child and represent them exclusively within the proceedings to which they were appointed e.g. by preparing a complaint or an appeal. Then, the child is entirely deprived of information on their actual and legal situation. The Association for Legal Intervention practice demonstrates that the most common situations concern guardians appointed within obligation to return procedures. Notably, unaccompanied minor foreigners have no access to information in the form of leaflets or websites adapted to their age.

### **c. Free legal assistance**

Children and parents within the refugee procedure are entitled to free of charge legal assistance only at the appeal stage, not during the procedure before a first instance administrative body where the principal evidence is gathered<sup>107</sup>.

In the course of proceedings regarding obligation to return no legal assistance is granted during the first instance administrative procedure nor the appeal regardless of the child's and family's material status<sup>108</sup>.

On deciding about administrative detention of children for migration reasons, in theory they or their parents have the right to apply for appointment of a public defender for them (if they do not have sufficient means to pay for professional representation). However, due to not bringing foreigners to hearings regarding extension of their detention and failure to share petitions on detention extension with them, this option is significantly limited, especially within the first instance proceedings. In 2019 "foreigners were represented by a public defender only in 1% of cases before the court of first instance while in the second instance in 2% of cases". It applied to all procedures concerning extension of foreigners' migration detention, including children<sup>109</sup>.

### **d. Accommodation needs**

The existing legal solutions in Poland are insufficient to meet housing needs of refugee families or persons applying for international protection in Poland.

The Polish legislation guarantees foreigners seeking international protection social assistance including, among others, the right to reside in a centre for foreigners or support outside the centre in the form of cash benefits to cover their costs of staying in Poland<sup>110</sup>.

Due to conditions in the centres, unadjusted to the needs of families with children, many foreigners apply for cash benefits and a stay outside the centre. These individuals face multiple problems, first of all, no possibility of ensuring appropriate living conditions for children and necessity to rent substandard accommodation as a consequence of insufficient benefits granted by the Polish authorities. The benefits are below the so-called existential minimum, a poverty measure indicating the needs' level below which there is a biological threat to the human life as well as psychological and physical development<sup>111</sup>.

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107 Jaźwińska, M. (2018). *Procedural guarantees* [in:] ed. Jaźwińska, M., SIP in action ... op.cit, p. 32-33.

108 Jaźwińska, M., Mickiewicz, P. (2018). *Procedural guarantees* [in:] ed. Jaźwińska, M., SIP in action..., op.cit., p. 42

109 Jaźwińska, M.(2018). *Procedural guarantees*, [in:] ed. Jaźwińska, M., SIP in action.... op.cit., p. 58.

110 Article 70 point 1 in relation to Article 1 point 1 items 1 and 2 of the Act of 13th June 2013 on granting protection to aliens in the territory of the Republic of Poland (Journal of Laws of 2019, item 1666 as amended).

111 A definition according to Instytut Pracy i Spraw Socjalnych <https://www.ipiss.com.pl/?zaklady=minimum-egzystencji-2>.

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Many foreigners under international protection, including families with children, are at risk of homelessness or experience homelessness. The above should be attributed to deeply-rooted stereotypes and dislike of foreigners, many times it prevents renting accommodation on the open market, coupled with unfavourable law interpretation which prevents migrants from applying for community or social housing from municipalities. Monitoring of refugees' accommodation conditions conducted by the Association for Legal Intervention in 2015<sup>112</sup> demonstrated, among other things, that:

- Refugees mostly live in substandard conditions being an affront to human dignity and negatively impacting their integration potential.
- A common refugee experience is the necessity to change residence many times, however it is rarely connected with improved housing conditions, on the contrary, rather with their degradation.
- Fining appropriate accommodation for large families remains an enormous challenge.
- Single mothers are in a particularly difficult situation. They are at risk of extreme poverty as it is hard for them to find their way on the job market (they have nobody to leave their children with).
- Conditions in accommodation provided by communes/ municipalities are no better or frequently even worse than in flats rented on the market<sup>113</sup>.

Polish authorities pointed out to the Committee that each family who sought refugee status or subsidiary protection is entitled to participate in the Individual Integration Programme within which they receive assistance in finding accommodation and cash benefits to cover, among others, housing fees. Within this context, it is noteworthy that the programme is not adapted to foreigners' individual needs. It is usually limited to payment of cash benefits and does not include relevant social work with the assistance beneficiaries. Only few of them may count on community or social housing, while cash benefits from the IIP do not suffice to cover foreigners' basic needs, including most of all renting accommodation in the open market. Another issue is the integration assistance's too short duration. 12 months is not enough to find one's way in a new setting – obtaining employment and securing accommodation.

### 30. Housing conditions of Roma children

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In some places in Poland Roma people reside in terrible conditions. Many buildings inhabited by them are illegal construction which as a result cannot and are not renovated. There are attempts to ensure Roma families other, safe housing. Unfortunately, local governments, which for this purpose use the Polish Roma Integration Programme means, sometimes buy property in areas (another commune or town) far from the Roma peoples current place of residence. This causes conflicts with local communities. It has happened several times that residents opposed Roma families settling in their towns and hence the families did not move to the new flats.

### 31. Sale of children

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NGOs (La Strada) do not have major reservations to treatment of child victims or alleged victims of human trafficking by the law enforcement and justice system. Interviews are held in the so-called child friendly room in the psychologist's presence (Polish law requirement) and the child's legal guardian (for children under La Strada Foundation care – its representative). The effectiveness of trafficking victim identification raises objections. Interviewers do not always have relevant competences and qualifications which stems from high staff turnover, especially in the past five years.

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112 Chrzanowska A., Czerniejewska I. (2015). *Mieszkamy tutaj, bo nie mamy innego wyjścia... Raport z monitoringu warunków mieszkaniowych uchodźców w Polsce*. Analysis, Reports, Expertises No 2/2015, Warsaw: Association for Legal Intervention,, available at: <https://interwencjaprawna.pl/docs/ARE-215-monitoring-warunkow-mieszkaniowych-uchodzcow.pdf> (access 15.06.2020 r.).

113 Ibidem, p. 53-54.

## 32. Administration of juvenile justice

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The number of juvenile delinquents has been declining for years<sup>114</sup>. In 2005-2018 their number decreased from 41682 to 24168 which impacts the number of rehabilitation facilities for minors, including the youth at educational centres, correctional facilities and shelters for minors. There are plans to transform some correctional facilities into educational and adaptation centres. It seems that this change is to convince family courts to more frequently apply educational detention for minors and thus improve operation conditions of juvenile rehabilitation system units, in particular the cost-related ones.

Currently, the AJDP solutions do not guarantee that each case of juvenile detention will be the last resort. This principle applies only to correctional facilities and shelters for minors but not to youth educational centres.

Child detention for educational reasons may only happen when it is necessary and proportionate, especially when other measures do not suffice.

### **System of minors becoming self-reliant**

Poland has not established a uniform support system for the so-called self-reliance of minors who exited rehabilitation facilities. The existing legal regulations, juvenile justice organisation, rehabilitation facilities' form and function as well as benefits available to youngsters under their care to support becoming self-reliant do not constitute a cohesive system for the process. Numerous formal criteria, such as the minimum stay duration at the rehabilitation facility or income, result in no support being granted as regards self-reliance for a large group of people exiting such facilities. It is a direct threat to the well-being of children leaving rehabilitation facilities.

### **Stay at the rehabilitation facility for underage mothers with children**

AJDP does not ensure solutions to guarantee an underage resident of a correctional facility the option to stay there with a new-born. Such situation may lead to the underage mother's separation from her child. It also poses a risk of inhumane treatment of the young mother and child.

### **Access to a lawyer**

AJDP<sup>115</sup> does not warrant effective access to a defender's support. Under the Act the court president is obliged to grant to a child a public defender only when they deem it necessary. It may happen even when the child and their parents indicate that they are unable to pay for a defender of choice.

Additionally, AJDP does not sufficiently protect the right of the child answering to the family court to effective legal assistance. Under the Act, the court is obliged to appoint a public defender for the minor always when the child's and their parents' or caregivers' interests are contradictory and the minor has no defender. To the contrary, when the child has a defender of choice, the court has no obligation to appoint a public defender even when they find a conflict of interest between the child and their parents. This solution is repeated in the draft bill on minors.

What is more, AJDP imposes on the child's defender an obligation to guide their actions by the child's due interest, therefore they may only undertake procedural steps to the minor's favour. According to scholars, it means the necessity to base the defending function on the child's interest which in some cases should even result in resignation from an appeal when the ordered educational measure meets the minor's needs. This situation puts at a direct risk the child's right to substantive defence and deprives a minor of real defence. Moreover, a similar provision has also been included in the considered draft bill on minors.

### **Tightening legislation on minors' criminal liability**

The draft bill on minors stipulates liability for commitment of each offence or a fiscal offence. Meanwhile, some misdemeanours do not necessarily demonstrate demoralisation, e.g. failure to pay

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114 The Act of 26th October of 1982 on Act on Juvenile Delinquency Proceedings (i.e. Journal of Laws 2018, item 969)

115 Draft bill on minors, version of 8th March 2020, at: <https://legislacja.rcl.gov.pl/docs//2/12321373/12577449/12577450/dokument385866.pdf> (retrieved 29 June 2020).

attention while holding an animal or bathing in places off-limits. Such solution will significantly increase the number of minors in family court trial procedures.

### **Limiting contacts with the family**

The draft bill on minors vests in the rehabilitation facility director the right to arbitrarily limit the minor's contacts with persons outside the facility, including the family. The director will have to inform the family court on the restriction only at the minor's request.

### **Recommendations**

- 1. Introducing an absolute ban on placing children in detention.**
- 2. Translation and substantive support for minors' legal guardian in the process of provision information to unaccompanied minor foreigners.**
- 3. Preparing in child-friendly language information for minors on granting international protection and obligation to return procedures.**
- 4. Introducing publicly financed legal assistance ex-officio in all procedures concerning granting international protection, obligation to return or placement in a guarded centre for foreigners whose final outcome also regards minors.**
- 5. Increasing benefits within the procedure of granting international protection to a level allowing to support a family and rent accommodation in the open market.**
- 6. Individual approach to integration work by introducing support in finding accommodation and employment as well as extending its duration.**
- 7. Regulating the illegal construction issue, a provision preventing moving Roma people to locations far away from their current place of residence.**
- 8. Obligatory training on human trafficking victim identification for new prosecutors, judges and other persons who due to their role may come in contact with human trafficking victims.**
- 9. Introducing stronger guarantee of the right to a public defender.**
- 10. Resignation from tightening legislation on minors' criminal liability.**
- 11. Introducing a guarantee that child detention for educational reasons may only be possible when it is necessary and proportionate, in particular when other measures prove to be insufficient.**
- 12. Only the family court may decide on limiting contacts with the family and friends.**
- 13. Introducing a more effective and cohesive system for self-reliance of minors.**

# I. Optional Protocol on the sale of children, child prostitution and child pornography

## 33. Optional protocol

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### a. Child prostitution and sale definition

In the Penal Code there is no definition of sexual exploitation of children nor the sale of children. Ratification of the optional protocol to CRC means that definitions included therein have become national law and may be directly applied by courts.

Although the Penal Code includes Article 199 on sexual abuse of dependency or critical circumstances, it is rarely applied as child (minors under 18) prostitution in Poland frequently is not treated as sexual exploitation so the child is not perceived as a victim. Thus the liability is transferred onto them.

Another issue are unaccompanied children arriving in Poland who were raped or sexually exploited. Here prosecution of the perpetrator and access to justice system are even harder as the crime was committed abroad.

### b. Support for child victims

EU law implementation and NGO efforts to ensure support for crime victims resulted in the offer of centres for child crime victims. There are assistance points operated by local government units and NGOs where victims obtain psychological and legal help. There is no support system exclusively for child victims of crimes indicated in the optional protocol. However, the offer of centres for victims is insufficient<sup>116</sup>, additionally the specialists employed at these centres have inadequate knowledge on assistance for child victims of crimes described in the optional protocol.

### d. Sexual exploitation of children in tourism

It is necessary to involve both public and private entities in tourism to counteract sexual exploitation of children in the industry. The Code of Conduct was introduced by the ECF in co-operation with Accor-Orbis and the Police Headquarters in all the networks' hotels. Within the "Don't turn away" campaign, ECF in collaboration with the police prepared a website to facilitate child exploitation reporting. The knowledge of its functioning is insignificant.

### e. Liability of legal entities

Under the Act of 28th October 2002 on liability of collective entities for acts prohibited under penalty it is possible to apply sanctions against collective entities in case of crimes against sexual freedom and morality.

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116 Pomoc ofiarom przestępstw w ramach Funduszu Pomocy Pokrzywdzonym (Funduszu Sprawiedliwości). Informacja o wynikach kontroli (2018). Warszawa: NIK. Available at: <https://www.nik.gov.pl/aktualnosci/fundusz-pomocy-pokrzywdzonym.html>.

**Recommendations:**

- 1. Increasing the support offer for child victims of crimes included in the optional protocol.**
- 2. A need to develop a national plan of counteracting child sexual exploitation.**
- 3. Introducing an obligation of the Code of Conduct in the tourism industry.**
- 4. Training care facilities and justice system staff as regards sex child exploitation.**
- 5. Information campaign on child sex exploitation to change perception of children selling sex and legal consequences of paying a person under 18 for sex.**

## III. Statistical information and data

### 50. Collection of data on child refugees and child asylum-seekers

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One cannot agree with the government's statement (point 5, page 42) that all child asylum-seekers and refugee children and migrant-children have access to education, health care, accommodation and legal assistance. Most of all, as it has been noted in remarks to point 29 (a) that children in guarded centres for foreigners do not have access to reliable education. Polish provisions also limit access to health care to some categories of children: these are undocumented children and children whose parents are not entitled to public health services, persons staying in Poland based on visas other than the visa for the purpose of work or permit for temporary stay regarding the so-called special circumstances (Article 181 point 1 of the Act on foreigners). As it has already been indicated in point 29 c, only a small group of foreigners in Poland has access to legal assistance financed from public funds; these are people whose petition for international protection is being examined by the court of second instance and at a request of a person placed in a guarded centre for foreigners. Legal assistance is not available to other categories of minor foreigners.

#### Recommendations

- 1. Diligent data collection regarding children with no access to health care, education and legal assistance.**

