**SR housing- Questionnaire on homelessness and the righttohousing-for NHRI**

Re 1.2, 6, 7

The Commissioner for Human Rights uses a statutory definition of homelessness specified in the provisions of the Act on social assistance in the matters related to social assistance. According to the definition, a homeless person is a person who does not reside in a residential premises in the understanding of the provisions on the protection of tenants and the social housing available in the municipality and who does not have a registered permanent place of residence in the understanding of the provisions on population registration, as well as a person who does not reside in a residential premises and who has a registered permanent place of residence but is unable to reside there.

Dr Adam Bodnar, the current Commissioner for Human Rights, appointed on 9 September 2015, made homelessness one of the priorities of his five-year term of office. For this purpose, a Homelessness Prevention Committee was established, made up of experts in various areas of social life (lawyers, sociologists, representatives of NGOs). The Committee aims at, including but not limited to, diagnosing the phenomenon of homelessness, its causes, scale, and working out conclusions and proposals of legal solutions that will be of help in the attempt to fight this issue. In the course of its work, the Committee will also attempt to assess the usefulness of the legal definitions of homelessness currently in use and to work out a more adequate definition, if necessary. The Committee will try to identify the most frequent causes of homelessness, to assess the activity of local government units in terms of drawing up and implementing individual plans to transition out of homelessness, as well as to coordinate the government policy with respect to preventing homelessness. The results of the Committee’s work will include calls to the government with individual legal solutions that should be changed or introduced to the legal system; plans also include drawing up a national programme to support transitioning out of homelessness.

Re 3

Based on the activity of the Office of the Commissioner for Human Rights so far and the contents of the complaints filed by the citizens, it might be stated that one of the causes of homelessness lies in the faulty legal order with respect to the execution of administrative decisions that enforce emptying the premises as well as enforcing eviction orders, where the court did not grant the debtor the right to a social or replacement premises and if the debtor has no legal title to another premises where they could move in.

As regards the court-based execution (if it is the court in a judgement that imposes the obligation to leave a flat), if the debtor is not entitled to a social / replacement / another premises, the debt collector refrains from following through with the eviction until the relevant municipality indicates a temporary premises, yet for no longer than 6 months. After the said period of time lapses, the debt collector evicts the debtor to a night shelter, a shelter, or another facility that ensures night-time accommodation indicated by the relevant municipality and notifies the municipality about the necessity to ensure a temporary premises for the debtor.

According to the Commissioner for Human Rights, the provisions on temporary premises provide for only illusory protection against evictions onto the streets. In practice, as the municipalities lack temporary premises, they do not indicate such premises in many cases. Then, after ineffective lapse of 6 months, the debt collector moves the debtor to a night shelter, shelters, or other similar facilities. The situation is not changed much if the municipality does indicate a temporary premises, as the stay in such premises is still temporary and short-term.

Both the debtors for whom a temporary premises was specified and those who did use such a temporary premises, become *truly* homeless very soon. This is actually caused by the shortage of municipal services for the poorest, which currently are in very short supply, with long waiting lists. The number of residential premises owned by municipalities has been insufficient to meet the need of the population for many years. New social residential buildings are not built at a pace that would meet those needs.

Subsequent Commissioners for Human Rights have signalled the dramatic situation in the sector of municipal (and social) housing in the Republic of Poland multiple times. Letters were sent to the competent state authorities, including Prime Ministers of Poland, indicating that Poland lacks a housing policy and systemic solutions in this area.

Despite the fact that a governmental programme to provide financial support to build social housing was drawn up, the development of social housing is very slow, also due to the limited funds that the municipalities may allocate to this purpose. From the report published by the Supreme Audit Office it follows that the governmental programme to provide financial support to social housing is not attractive to the municipalities. In 2011-2013, the financial support plan was not executed in 100%. According to the municipalities, the reasons ranged from insufficient own funds of the municipalities, low level of financial support from the state budget, and lack of relevant real estate or investment land, where the municipalities could build social housing.

While the legislator did provide for illusory protection of a debtor against being evicted onto the streets if the eviction is carried out under court execution, no such protection, as a rule, was granted, if the obligation to empty and surrender the real property/premises is due to a decision of an administrative authority. Then, the eviction takes place onto the streets, i.e. without ensuring any shelter to the debtor. As the calls made and the letters sent by subsequent Commissioner for Human Rights, indicating that it is necessary to introduce a minimal standard of protection against evictions onto the street under the administrative procedure, did not incur the desired response of the relevant state authorities, the Commissioner for Human Rights filed a complaint to the Constitutional Tribunal with respect to the provisions of the act that regulates administrative execution, where it entitles the debt collector that carries out an execution from the real property / premise (rooms) used to meet the residential needs of the obligor, to remove the obligor and their household members from the real property / premise (rooms), if the obligor did not receive a notice of a premises where they are to move in, and if the obligor is not able to meet their residential needs on their own. The Commissioner for Human Rights stated that such provision is contrary to the Polish Constitution (as it infringes human dignity) and to Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Re 4

Homeless persons often encounter problems with accessing social assistance (temporary, permanent benefits), as they are not able to indicate a place where the so-called community inquiry may be conducted, or if the municipality of their last registered place of residence, though obliged to provide assistance, does not want to refund the assistance granted. This is contrary to the provisions of the Act on social assistance.

Homeless persons also encounter problems with accessing public healthcare services. The Commissioner for Human Rights has signalled it to the Minister that obtaining the right to healthcare services by homeless persons pursuant to the Act on healthcare services financed from public funds and the Act on social assistance is preceded by a formal and complex procedure, which does not consider the essence of homelessness. This applies in particular to homeless persons of unknown identity. In response, the Minister of Health pointed out multiple difficult problems, which might be resolved by introducing simpler solutions. Unfortunately, the legal order in this respect has not changed so far.

Re 5

The homelessness might lead to infringing the civic rights and freedoms, including Articles 30, 31, 32 and 67 of the Polish Constitution – the right to dignity, the right to equal treatment, the right to social security. The inactivity of the state, lack of sufficient and effective actions of the public authorities, might be construed as an infringement of the standards introduced in Article 71(1) of the Polish Constitution, which orders the state to take into account the good of the family in its social and economic policy, and in Article 75(1) of the Polish Constitution, which stipulates that the public authorities shall pursue policies conducive to satisfying the housing needs of citizens, in particular combating homelessness, promoting the development of low-income housing, and supporting activities aimed at acquisition of a home by each citizen.

Re 6

The Commissioner for Human Rights is entitled to challenge acts of local law (ordinances) issued by local government units specifying the principles of providing housing assistance by the communities before an administrative court and to demand that the challenged provisions are recognized as invalid. The Commissioner for Human Rights takes advantage of this right frequently, leading to elimination of provisions from the challenge acts that unreasonably restrict the ability to use housing support provided by the municipality (for example, by making the ability to apply for a social premises dependant on having a registered place of residence in the given municipality for a given period of time; by preventing access to housing assistance to persons who had had a legal title to any premises in the past without considering their current situation; by making it impossible to apply for housing assistance by persons currently in custody or in nursing homes).

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