



## NEWS REPORT

<b>Date:</b>	30 June 2011
<b>Expert:</b>	Łukasz Bojarski
<b>Title:</b>	New Polish equality body – illusory or real?
<b>Country:</b>	Poland
<b><u>Context:</u></b>	New law on equal treatment – ‘Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment’ – that entered into force on January 1 <sup>st</sup> , 2011 designates Ombud institution (Commissioner for Civil Rights) as an equality body. However Ombud was not given adequate competences by law and lack resources to fulfil existing competences.
<b>Ground of discrimination:</b>	All grounds
<b>Source:</b>	Legislation, national equality body, political development
<b>Field:</b>	All fields
<b>Legislative provisions:</b>	“Act of July 15 <sup>th</sup> , 1987 on the Commissioner for Civil Rights” ( <i>Ustawa z dnia 15 lipca 1987 r. o Rzeczniku Praw Obywatelskich</i> ) as amended by the “Act of December 3 <sup>rd</sup> , 2010 on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment” ( <i>Ustawa z dnia 3 grudnia 2010 r. o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania; Dz.U. 2010 nr 254 poz. 1700</i> ).

### Content

**Case/law/political development:** The “Act of December 3<sup>rd</sup>, 2010 on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment” that entered into force on January 1<sup>st</sup>, 2011 (*Ustawa z dnia 3 grudnia 2010 r. o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania; Dz.U. 2010 nr 254 poz. 1700*) finally designates as an equality body the existing Ombudsperson office (Commissioner for Civil Rights Protection – *Rzecznik Praw Obywatelskich*).



The law adequately amended existing Law on the Ombudsperson imposing on the Ombudsperson new competences.

The law have been in power for 6 months already and it raised two major problems that need to be solved if the Ombudsperson is to take up responsibilities of the equality body. Until now it does not act as an equality body.

The first problem refers to the competences of the Ombudsperson. The relevant directives envisage that the equality body should provide “independent assistance to victims of discrimination in pursuing their complaints about discrimination”.

The situation is easier when discrimination complaint concerns the public authority and remains unclear when the complaint concerns private entity.

According to the Constitution (Article 80) the Ombudsperson deals only with relations between state organs and individuals (and, consequently not in between private parties). The changed law on Ombudsperson (art. 11 para 2 and para 1.2) stipulates that “In the implementation of the principle of equal treatment between private parties the Ombudsperson may take actions” [...] “limited to pointing out to the applicant possible means of action”. As it was argued on some occasions expanding competences of the Ombudsperson to the matters in between private parties would be in breach with the law and Constitution (see for instance memorandum of the *Senat*, upper house of Parliament, Druk nr 3632, 25 November 2010r.). Therefore Ombudsperson may only refer the applicant to other institutions and not provide any concrete assistance.

But more generally according to law (Art. 11) Ombudsperson is not obliged to provide any assistance even in case of complaint concerning public authority. In Polish system Ombudsperson has full discretion in deciding whether to take up the complaint or not – it may simply not take any action on the complaint informing the complainant.

These aforementioned provisions undermine declaration that the Act enacted fully implemented relevant directives.

The second problem is even more evident. The new law imposed on the Ombudsperson a number of competences regarding conducting independent research and issuing independent reports and recommendations, however it did not provide any additional resources or funding to fulfil this role. The

explanatory memorandum part to the draft law, prepared by the government, explained that this was not needed and that the Ombudsperson office can conduct new competences within the existing structure and budget.

However according to the current Ombudsperson, prof. Irena Lipowicz, it cannot. There is no special antidiscrimination unit, there is no single person in the office (out of around 250 employees) that would be responsible for new competences. Prof. Lipowicz on several occasions complained about the situation of lack of funds and called decision makers to change it. She argued that it is not legal and it might be unconstitutional to impose on the public institution new serious competences/obligations and not provide funds and resources to fulfil these duties. Prof. Lipowicz spoke about it inter alia in the Parliament (25.05.2011, report before the Parliamentary Commission on Justice and Human Rights), Constitutional Tribunal (6.04.2011, annual assembly of the CT) and during the meeting with NGO Coalition for Equal Opportunities (14.04.2011). It should be also mentioned that the lack of funds concerns not only the equality body function of the Ombud but also the function of National Preventive Mechanism under Optional Protocol to the Convention against Torture, OPCAT.

**Internet link source and additional information:**

Protocol from the Ombud report to the Parliamentary Commission on Justice and Human Rights, 25.05.2011:

<http://orka.sejm.gov.pl/SQL.nsf/Main6?OpenForm&SPC>