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of Foreign Affairs  
Republic of Poland



HUMAN RIGHTS DEFENDER

# COOPERATION BETWEEN OMBUDSMEN FROM EASTERN PARTNERSHIP COUNTRIES

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SEMINAR IN WARSAW, POLAND – 25-27 SEPTEMBER 2012

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## **DAY 1 (25 SEPTEMBER)**

### **Protection of Children's Rights**

#### **Opening Ceremony**

The first day of the seminar devoted to the Cooperation between Ombudsmen from Eastern Partnership Countries started with an official opening ceremony during which welcome speeches by Prof. Irena Lipowicz, Human Rights Defender of the Republic of Poland, and Mr. Antoine Grezaud, Director of Cabinet in the Office of the Defender of Rights of the French Republic were presented.

Prof. Irena Lipowicz welcomed the guests and participants on her own behalf and on behalf of the Ombudsman Office of the French Republic, the co-organizers of the project. She also thanked the different institutional actors engaged in the implementation of the project and highlighted the importance of sharing of experiences and the fact that in times of crisis, sure and certain investments such as investing in human rights are needed. The universal subjects of utmost importance selected for the seminar which were mentioned were the protection of children and the situation of persons with disabilities. Prof. Lipowicz also assured that the guests would be able to have contacts with institutions and persons of key importance in the field of the protection of human rights and freedoms in Poland. Other details of the seminar programme were also announced by the Human Rights Defender. Prof. Lipowicz then expressed her conviction that the seminar would provide its participants with food for thought and reflection and constitute a good ground for planning the future of the joint project, including the choice of topics for future seminars. To conclude, Prof. Lipowicz expressed her hope that the seminar would be a pleasant experience, presented some further organizational details and gave the floor to Mr. Grezaud.

Mr. Grezaud welcomed Prof. Lipowicz, all the guests and participants and apologized for the absence of Mr. Baudis, the Defender of Rights of the French Republic. He also mentioned some facts related to the history of the Eastern Partnership from the perspective of the French Defender of Rights. He then presented the other members of the French delegation from the Office of the Defender of Rights, namely Ms. Marie Derain, Defender of Children, Deputy to the Defender of Rights, and Ms. Stéphanie Carrère, European and International Affairs Officer and their participation in the project. Next, he thanked the European Union for supporting the initiative and stated that the Office of the Defender of Rights was also highly interested in the themes of the seminar. He also announced that the initiative would be continued in the following year.

Then the guests were asked to present short speeches. Mr. Andrzej Grzyb, MEP, Vice-Chair of the Subcommittee on Human Rights of the European Parliament, thanked the organisers and talked about the position of the Eastern Partnership countries and how the initiative of sharing experiences and good practices had been presented at the European Parliament in 2011 and included in a report opening a new era of human rights in the European Union, also linked with the introduction of the Treaty of Lisbon. He also cited a number of other documents and studies

in which information on the initiative was included. Mr. Grzyb also reminded that it was the year of Janusz Korczak and that the topic of children's rights could not be unnoticed also due to that fact.

Mr. Grzyb was thanked by Prof. Lipowicz for mentioning Janusz Korczak who was a person who changed perspectives for children and who perceived them as citizens and human beings having great dignity.

Ms. Ewa Synowiec, Head of European Commission Representation in Poland thanked the organisers for the invitation and congratulated them on the initiative and expressed her happiness due to the fact that further seminars were being planned in the future. The speaker highlighted the importance of errors in experience and best practices sharing as learning from one's own mistakes can be very fruitful. She also expressed her belief that the seminar was a good preparation for the European citizens' year.

Prof. Lipowicz then introduced the persons responsible for the organisation of the seminar and assured the previous speaker that errors would be taken into consideration as well. Then she introduced the moderator of the first panel, Ms. Krystyna Kupczyńska, Chief Specialist, Division for Judicial Proceedings, Department for Criminal Law in the Office of the Human Rights Defender of the Republic of Poland and announced the speakers taking part in the panels during that day.

## **Panel 1. Protection of Children's Rights in Criminal Law**

### **Protection of the Rights of Child Victims in the system of Polish Criminal Law**

In turn, Ms. Kupczyńska once again highlighted the importance of children's rights. She then followed with the presentation of children's rights in the Polish criminal law system concentrating on two aspects, namely protection from domestic violence and sexual abuse which were highlighted with special legal acts. She mentioned a Polish Act from 2005, amended in 2010, on counteracting domestic violence which took into consideration the need to protect child victims. She stressed that the Act separated the perpetrator from the victim and stated that it was the perpetrator who had to leave the apartment, not the victim. Measures of implementing the injunction to use the flat were also discussed. It was mentioned that a National Programme of counteracting domestic violence was also put in place and an annual report on the matter was submitted to the Parliament of the Republic of Poland in 2012, showing a considerable rise of public awareness. The establishment of the National Partnership for the Protection of Children from Violence with the participation of a number of NGOs which organized a vast social campaign against violence and other actions were also spoken about. The issue of baby victims and the special mode of hearing of children up to the age of fifteen along with the difficulties linked with its implementation counteracted by the Ombudsman were then presented by Ms. Kupczyńska. A draft act prepared to amend the one-off hearing procedures in case of children was briefly presented, with special impact on children with health problems. The speaker also briefly talked about the proposal of friendly hearing rooms presented by the Nobody's Children

Foundation. Then, she presented the measures being taken by the Polish Ombudsman in cooperation with other actors in order to fight sexual abuse of minors, a crime on the rise at that time due to the availability of the Internet, and their outcomes. The measures presented, among others, included the efforts to rise the age to which children were covered by special protection, the introduction of grooming as a new form of crime as well as general ways of counteracting pedophilia and rising social awareness.

Prof. Lipowicz thanked the speaker and asked her to take over the full moderation of the panel.

Ms. Krystyna Kupczyńska invited Ms. Anara Novruzova, Chief Specialist from the Office of the Commissioner for Human Rights of the Republic of Azerbaijan to take the floor.

### **Protection of Children's Rights**

Ms. Novruzova presented the characteristics of the protection of children's rights including awareness rising in Azerbaijan and cooperation of different state and non-state, also international, actors in this respect since the regaining of independence by the country, which fostered the introduction of important reforms in the field. The speaker also enumerated a number of international treaties and conventions on children's right protection signed by the country and various activities related to the subject. Ms. Novruzova also presented the Azerbaijan NGO Alliance on Children's Rights and how it was cooperating with the Ombudsman, including the establishment of the Children Rights Clinic Network. The scope of activities of the Commissioner for Human Rights and their outcomes were also talked about in detail, with special impact put on monitoring, research, participation in law drafting and cooperation with relevant bodies and institutions. Subsequently, the speaker talked about the activities of the Center for Children's Rights created with the help of UNICEF and of the Child Resource Center for the Ombudsman. Initiatives such as the year 2009 which was the Year of the Child in Azerbaijan and the National Action Plan which resulted from it as well as the Month of Children's Rights organised yearly were described in detail. At the end of the presentation, the speaker expressed her hope that as the cooperation of different actors continued, the problems of children in Azerbaijan will be gradually solved.

Ms. Kupczyńska thanked the speaker and announced the next speaker, Ms. Tamara Tentiuc, Consultant Principal, Service Children Protection in the Center for Human Rights of the Republic of Moldova.

### **Protection of Children's Rights in Moldova**

Ms. Tentiuc presented the role and the activities of the Ombudsman for Children's Rights of the Republic of Moldova, a fairly recent institution, and acquainted the participants with the most important legal developments in the area of protection of children's rights in that country, including the influence of the UN Convention on the Rights of the Child. One of the developments cited was a free hotline for abused children. Among the children's rights most often violated in Moldova, the speaker mentioned the right to medical examination and the right to education. The importance of cooperation with the media was also stressed by Ms. Tentiuc.

Ms. Krystyna Kupczyńska thanked the speaker and announced the time for questions and for a discussion.

## Discussion Time

Prof. Lipowicz mentioned that there was also a free hotline for all citizens in Poland set up with the help of the Nobody's Children Foundation. In the context of the things that failed, she also mentioned that there were still not enough friendly hearing rooms for children and that there was also the problem of irregular minor migrants staying in detention centers without education and that these issues were being discussed with the Minister of Interior at that moment.

The question that followed from a representative of Georgia was addressed to Ms. Kupczyńska and was connected with the methods of enforcement of the injunction to leave the apartment by the perpetrator of violence in Poland and its relation to the right to property in cases when the perpetrator owned the apartment.

Mr. Kupczyńska replied that there had been a discussion about it as well in Poland and that the need for the perpetrator to leave the apartment was only temporary and stressed that the injunction to leave the apartment was a penal legal remedy in the preparatory proceedings and that it did not solve the problem of assets. It was noted that the perpetrator was obliged to leave the flat, if not, some more drastic measures such as temporary arrest could be applied.

A representative of Moldova also stated that in their country even if somebody was the owner of the flat he or she would also have to leave it.

One of the participants stated their opinion that the experience of Poland and Moldova in this respect was being seen as very positive and that in their country due to appropriate legal regulations it was the victim of the crime who had to leave the apartment and move to centers for victims.

A speaker from Poland informed that for some time there was also a tendency to move in the direction of establishing centers for women and for children who were victims of domestic violence, which was very costly, but that at that moment it was the perpetrator who had a choice between leaving the apartment and being put in a detention center. She also mentioned that Austrian studies showed that this solution is not that costly for the state as most perpetrators go live with their parents and start a new life so the state does not have to provide accommodation to them in most cases.

Another speaker mentioned the fact that in their country the perpetrators had to participate in a special recovery programme and asked about the procedure of forcing perpetrators out of the apartment.

A speaker from Poland replied that this is a preventive measure, the perpetrator received an injunction to leave a flat with a time limit, and if it did not happen more strict preventive measures would be applied and that they would be implemented by the body which ordered them.

Another participant from Armenia once again raised the question of collision of these proceedings with the right to property and brought up the example of Armenia, where the right to property could be limited only by decision of a court of law, not a prosecutor. The person

asked whether it was correct to have merely a prosecutor's decision to deprive someone of their right to property.

A speaker from Poland replied that there was a possibility for the perpetrator to file a complaint concerning the prosecutor's decision and then the matter would be examined by a court, thus assuring the protection of the perpetrator's rights as well.

A speaker from Moldova added that in their country in cases where court judgments were not respected, the police would use coercive measures.

A representative from Poland clarified that in her country all the preventive measures which were freedom-limiting had to be controlled by a court. It was also said that temporary detention was only the competence of a court, so complaint against a decision of a court would be checked by a higher instance court.

A speaker from Ukraine asked a question concerning procedural deadlines, i.e. the limits to be obeyed by the perpetrator as regards leaving the apartment. He said that in his country, the child would be immediately taken away from parents by a social worker assisted by a doctor if its life and health were in danger, the deadline for the court to issue a decision being twenty-four hours.

Another speaker asked once more about defined deadlines ensuring the removal of the perpetrator from the flat.

A speaker from Poland replied that preventive measures could be enforced immediately and added that the agreeability of the perpetrator was caused by the perspective of stricter measures such as detention arrest.

One of the participants noted that in Georgia in criminal cases concerning minors, prosecutors and judges were supposed to have good pedagogical and psychological education and that it was not the case in their country and wanted to know if other countries also encounter such difficulties and what role did the Ombudsman play in such cases.

A participant stated that judges were obliged to enhance their qualifications also in this respect and that during a hearing, also an expert psychologist attended to ensure that the child was well cared for. Also the existence of special family diagnostic centers was brought up.

Another participant wanted to know what happened when the mother was the perpetrator as especially smaller children are very attached to their mothers and stated her opinion that there should be special trainings for parents on how to raise children.

A speaker from Poland stated that the question of the mother being the perpetrator was complex and that in Poland the child's benefit was put in the first place, so the child should be placed in such conditions where it would have proper conditions for development.

Ms. Kupczyńska added that in Poland, alcohol is the main cause of domestic violence and that leaving a flat was a painful consequence which could lead to overcoming of the addiction. She then thanked everyone for their attention and announced a coffee break.



## Panel 2. Protection of Children's Rights in Civil Law

The moderator, Ms. Małgorzata Świąteczak, Deputy Director of the Department for Civil Law in the Office of the Human Rights Defender of the Republic of Poland, invited the participants back, announced the speakers taking part in that part of the seminar and gave the floor to Mr. Michał Kubalski, Senior Specialist, Division for Civil Law and Real Estate Management, Department for Civil Law in the Office of the Human Rights Defender of the Republic of Poland.

### Interests of the Child in Practice of Family Courts from the Perspective of the Human Rights Defender of the Republic of Poland

Mr. Kubalski greeted the participants, introduced the topic of his presentation and the issue of the definition of child's interest, which was then not strictly defined in the Polish law which allowed the amending of provisions according to changing conditions. The speaker stated that following the Convention on the Rights of the Child, it needed to be assumed that the interest of the child was of primary value in Poland and that this applied also to relations between parents and children and was in line with the Convention on Human Rights. He then pointed out to competencies of the Polish Human Rights Defender, in this topic and to several main areas in which the citizens address the Ombudsman in matters related to well-being and interests of the child. He explained that the Ombudsman was functioning aside the triple division of powers, that he could apply for a legislative initiative and he could submit applications to the Polish Constitutional Tribunal and opinions on draft acts but that his role was limited to rights and freedoms of persons in the territory of Poland and subject to the principle of subsidiarity. Mr. Kubalski then added that the Ombudsman was monitoring the activities of other public authorities and bodies, was acting as a prosecutor in family cases and cooperated with the Ombudsman for Children as their competences were complementary. The fact that the cases of family matters are very delicate and often exploited by the media and that in many cases the Ombudsman has to choose the lesser evil was also highlighted. The problem of children under thirteen was also mentioned as these children are given special protection in the criminal law and they are heard in a special way even though they are seen as having partial capacity for legal matters. The categories of matters where citizens seek the Ombudsman's help as proposed by the speaker were the following: fathers wishing to deny their fatherhood, establishing contacts with the child, establishing alimonies, raising them or enforcing the already adjudicated ones, including a growing number of cases concerning alimonies from abroad. The issues of the 'Euro orphans' and of the children 'high jacked' abroad by one of the parents and their relation with the Hague Convention were also raised. Summing up, the speaker stated referring to the observation made by Prof. Wanda Stojanowska that the interest of the child was at the core of all legal provisions concerning children's rights and the basis of all the cases where the Ombudsman had a say. The speaker then thanked the audience for their attention.

Ms. Świąteczak thanked the speaker and gave the floor to Ms. Marie Derain.

## **Taking into Account the Best Interest of the Child in the Choice of the Place of Residence after the Parents' Separation**

Ms. Derain expressed her happiness due to the fact that the event was taking place in the country of Janusz Korczak, the father of the children's rights. She mentioned that the institution of the Defender of Children exists in France since 2011. She declared that apart from the supreme benefit of the child, they decided it was necessary also to set limits to the child's interest. Then she gave the following explanation: It is in relation to cases where a child is living in incomplete families and an issue is brought up on how to take the child's interest into account in such cases. The point of reference adopted was the definition developed by the Commissioner for Human Rights in the Council of Europe, a general principle and a procedural requirement in which public bodies taking the decision have to examine the situation and see to what extent it was compatible with the best interest of the child. The specifics of an individual case also have to be taken into account and a comprehensive methodology including a special questionnaire has been developed for the purposes of assessing the situation in cases of separation of parents and in cases of adoption. While assessing the situation in cases of separation of parents, factors such as the specific needs and will, as well as the maturity and stability of the situation of the child are taken into account, only then the situation of the parents is examined, including the factors of the relation with the child and its security. Then the relation between parents is examined. In cases of adoption several additional issues are also examined.

After finishing her speech, Ms. Derain thanked the participants for their attention.

Ms. Świątczak thanked the speaker, congratulated her on the achievements and the work of her team and expressed hope that the French Ombudsman would be willing to share the documents mentioned as they seemed to be of universal value. Then the moderator gave the floor to Ms. Nato Antia, a lawyer at Child and Woman Rights Centre in the Office of the Public Defender of Georgia.

## **The Child's Right to Be Heard in Civil Judicial Proceedings**

Ms. Antia started with providing the participants with information about the Public Defender of Georgia, who has the authority to address special recommendations to state body officials or legal persons whose actions violated human rights and freedoms. She also stated that the Defender disposed of a special Center for Children's Rights which activities were based on the Convention on the Rights of the Child and which aimed at protecting and popularizing the rights of children. It was added that in line with the Convention, the child has to be given a right to express itself freely in all the matters that affected it and to be heard, in accordance with its age and maturity and that the question of age at which the child is mature enough for its views has a big weight according to the court. The deduced rule from this was as follows: a child's voice can be heard when a given child, even at a very young age, is capable of forming it and is able to express it, even in a non-verbal way, in the administrative and judicial proceedings in accordance with the domestic laws. The speaker emphasized that every effort should be made to ensure that the child had the opportunity to express its views to the court as it was really important that the court fully understood the position and opinion of the child and that it needed to be determined still how the capacity of a child to express its views could be adjudicated considering its maturity and ability. Ms. Antia also mentioned certain problems in the Georgian legislation, such as the

one related to the process of adoption in which there at the moment were no procedures for establishing the true interest of the child or where the right to protection of private life of a child was violated in certain circumstances. She however cited some limitation in adoption, namely a provision which prohibits adoption of children aged ten or older without their consent, but in the case of younger children there was a problem in terms of taking their opinion into consideration in Georgia, which is a violation of children's rights in light of the Convention. The complexity of the issue of maturity of children was also addressed along with a conviction that the person taking decisions should provide a child with all the necessary information for it to understand its situation. Ms. Antia then enumerated the recommendations of the Public Defender of Georgia for public bodies, such as the one addressed to the Minister of Labour concerning the need to elaborate specific regulations for establishing the best interest of the child. At the end, she stated her conviction that the Georgian Parliament should amend the provisions of Georgian law concerning adoption and foster parenting in view of the best interest of the child.

Ms. Świętczak thanked the speaker and gave the floor to Ms. Aksana Philipishyna, Representative of Commissioner, Head of the Department for the Rights of the Child, Non-discrimination and Gender Equality in the Office of the Ukrainian Parliament Commissioner for Human Rights.

### **Protection of Children's Rights in Civil Law of Ukraine**

Ms. Philipishyna started by saying that protection of children's rights in Ukraine had been declared a strategic national priority and that the country was one of the first UN members to ratify the Convention in 1991, the year its independence was declared. She also explained that the policy of taking care of a child in recent years was declared in a very active way and that some positive achievements in the area were visible in legal terms and in the form of normative documents in line with international standards. A number of legal documents related to the matter was also mentioned including the Law on the Protection of Childhood, the Civil Code of Ukraine regulating issues connected with the assets of the child, the Family Code regulating the child's rights connected with the origin and duties and rights of parents in relation to the child and many other related issues, including the right with no age limit of the child to be heard in matters that concern it, the Civil Procedure Code, Law on Ensuring Organizational and Legal Conditions for Social Protection of Orphans and Children Deprived of Parental Care. The speaker characterized the biggest problem for Ukraine as the mechanisms which allow implementing those rights and the most problematic issue in this respect mentioned was defining the place of residence of a child linked to the problem of implementing the Convention by Ukraine within the illegal moving of children. Another problematic area mentioned by the speaker were the right of the child to receive alimony in relation to which she stated that her Office worked very intensely, the exercise of right to residence and the issue of taking children away from their parents and balancing between necessity and justification. Then Ms. Philipishyna elaborated in detail on the history, position, rights and activities of the Ombudsman of Ukraine and of the Office which were aimed at protecting the rights of children. She also provided data on applications received by the Ombudsman, which included applications concerning the protection of rights during the adoption or foster procedures, rights of children to the place of residence, sexual exploitation and abuse, right to alimony, material help, maintenance and other issues. The issue of residence of orphans and orphanages in Ukraine and measures planned to improve the matter were also brought up in the presentation. At the end, the speaker defined the

topics important for the activities of the Ombudsman, namely implementing the concept of establishing special legislation for children, regulation of children's rights, of children who are born of foster mothers, of refugee children, of children staying in Ukrainian territory without parents and the protection of economic emigrants' children's rights.

Ms. Świątczak thanked the speaker, announced that it was time for discussion and invited the participants to ask questions and exchange experiences.

### Discussion Time

The first question was addressed to the representative of Ukraine and concerned the possibility of creating a special state compensation in cases when alimony was not paid and then penalizing the perpetrators.

The representative of Ukraine said that in cases where the parent had no revenue and was not able to pay alimony there could be some kind of state aid given to the other parent and added that the law in Ukraine foresaw penal liability for intentional avoidance of alimony payment.

The next question was addressed to the representative of Azerbaijan and concerned adoption with parents pointing out to a concrete family and how it was treated according to the law as in Poland there was a problem related to this matter resulting in a sort of human trafficking.

The representative of Azerbaijan replied that such a private adoption was forbidden by law.

The question afterwards concerned the matter of changing care after parents split in France and how this issue was resolved by law there at that time. The person asking the question said that in Poland this was quite a new issue and that there was a principle that the court took into account such an agreement between parents if it was not against the interest of the child and mentioned an interesting case of a child which by ruling of the Irish court was supposed to live alternately a year in Poland and a year in Ireland.

The representative of France replied that their country had taken the decision not to adopt any concrete principles for alternating guardianship and that it was considered on a case by case basis. The person added that studies show that alternating guardianship is not that easy for a child to adapt to and that this system is not beneficial for children younger than three. It was also stated that the case of the example of the ruling of the Irish court would be inadmissible in France.

The following question concerned the existence of allowances for parents who adopt disabled children.

One of the participants responded that in their country there was such an aid and also that foster family custodians also received a monthly support and there was a draft act being prepared concerning these matters.

A representative from Ukraine mentioned that the problem of paying alimonies was also vital in their country and that they suggested creating a special alimony fund.

Ms. Świątczak thanked all the speakers and stated that indeed the topic of alimonies was a current problem in every country and it would be useful to mention this very important topic during

other meetings. She then provided the participants with practical information concerning lunch and the agenda for the rest of the day.

## **Visit at the Office of the Ombudsman for Children and Meeting with the Ombudsman for Children, Mr. Marek Michalak**

Mr. Michalak greeted the participants and expressed his happiness that talks on the topic of the Polish solutions concerning the protection of children's rights and institutions specializing in such protection were going to take place. He then followed with a detailed presentation of the institution he represents including history, definitions, role, powers and the relevant legal basis. He then presented his activity subdivided into different levels: individual activities, controlling activities, activities of legislative nature, promotion of children's rights and education concerning children's rights. Mr. Michalak brought the speakers' attention to one of the biggest achievements in Poland concerning the protection of children, namely the statutory prohibition of beating children. He also talked about the complexity of certain situations and choices to be made, for example between supporting families and taking the children away from their families when their security was threatened, which is a painful experience.

### **Discussion Time**

One of the participants asked a question concerning the procedure of punishing the perpetrator in case of repeated offences.

Mr. Michalak replied that even offences which were repeated should lead to punishment and that it had to be borne in mind that the Ombudsman could not take the work of the enforcement bodies and that he was there to control and monitor.

A participant wanted to know if there were many such complaints which were filed against parents.

The Ombudsman for Children replied that they had got just very little percentage of unjustified claims.

One of the participants wanted to know in which cases the Ombudsman was addressed most often by children and mentioned that in their country problems related to separation of parents were very numerous as adults often treated their children instrumentally and did not care for their best interest.

One more question was asked concerning violence.

Mr. Michalak replied that violent situations did happen and sometimes when parents could not assure the children's safety such children were raised with foster families, their relatives or in care institution, but the general rule was that the first place where a child should be placed was with its closest relatives.

The following question concerned citizenship and whether the Ombudsman received any reports.

Mr. Michalak answered that he was obliged to present to the Parliament information on his activities carried out in the previous year and to present his remarks on the protection of children's rights which would be a starting point for a debate in the Parliament on this very topic.

Then a participant asked if there were any rehabilitation centers for children who were victims of violence.

The Ombudsman for Children replied that such centers for helping families existed and they provided support, especially psychological support but there were also therapy groups organised.

The Ombudsman was then asked if his institution cooperated with preventive institutions.

The answer provided was that he tried to cooperate with all the intuitions which took activities for the benefit of children.

The question that followed concerned conducting analyses of the information that the Ombudsman for Children had obtained.

The Ombudsman answered that they were conducting monitoring as well as studies involving participation of different institutions. He also then once again stressed that they could not execute the law but could only submit proposals and provide state social control and that in cases when they were not listened to they could file a cassation complaint or a complaint to the Constitutional Tribunal.

Afterwards, the Ombudsman for Children announced a short break.

The first question that followed was connected with the share of participation of children in decision-taking in Poland and whether children were being involved in the process of choosing the Ombudsman of Children?

The Ombudsman for Children replied that children did not choose the Ombudsman for Children but that children in Poland participated in decision-making above all in the structures of local government by means of teenagers city councils, county councils or youth parliaments where they participated in giving opinions on the decisions of adults and often their opinions would be then taken into account by the grown-ups. The Ombudsman also mentioned the institution of the Order of the Smile.

A participant asked for what reason the Ombudsman for Children was awarded the Order of the Smile.

Mr. Michalak disclosed that before he became Ombudsman, he had worked with abused children for 21 years and added that at the moment he was the Head of the International Committee of the Order.

The next question concerned the necessity to undertake very quick interventions and who should be addressed in such cases.

Mr. Michalak stated that it depended on what kind of intervention it was. He also stressed that there were very complex family cases and that sometimes he asked to change the decision of a court if he saw that the wellbeing of the child could be better protected. He also announced that he was going to take the last question.

One of the participants wanted to share their experience and brought up a case where the court decision of putting a child in a care facility due to conflicted parents was withdrawn by a court of second instance as it was too far reaching.

One of the participants from France congratulated Poland on the high number of motions submitted by children.

Mr. Michalak thanked everyone for coming and encouraged them to listen to children.































## **DAY 2 (26 SEPTEMBER)**

### **Ombudsman and the Judiciary**

#### **Panel 1. Ombudsman and the Judiciary – Practice and Relations**

##### **Ombudsman and the Judiciary – Introduction**

Ms. Katarzyna Łakoma, Director of the Department for Administrative and Economic Law in the Office of the Human Rights Defender of the Republic of Poland and the moderator of the second day of the seminar welcomed the participants and presented the topics to be discussed that day. She informed that the participants would get acquainted with the practice and relations between the jurisdiction and the Ombudsman and she then briefly mentioned the different levels and modes of cooperation between them. She then announced the first speaker of the day, Mr. Piotr Mierzejewski, Head of the Division for Administrative Law and Health Protection, Department for Administrative and Economic Law in the Office of the Human Rights Defender of the Republic of Poland.

##### **Competences of the Human Rights Defender of the Republic of Poland in Legal Proceedings**

Mr. Mierzejewski greeted the participants, and stated that there was a wide range of competences of the Ombudsman in this respect and that they were as follows: the possibility of initiating judicial proceedings and the possibility of joining proceedings which have already started, both not controlled by the court. Then he informed that in his speech he was going to concentrate on civil and administrative proceedings in this respect and addressed the issue of the procedural legitimacy of the Ombudsman and the substance of the cases in the area. He then presented the role, functions and competences of the Ombudsman, first in civil proceedings, then in administrative proceedings. One of important competences of the Ombudsman, namely the entitlement to address the Supreme Court and the Supreme Administrative Court to adopt resolutions in order to clarify legal provisions producing divergent case law was mentioned as a very important consequence. He also noted that in a situation when the Ombudsman joined a proceeding, he had to be treated by the court like all the other parties of the proceedings. In terms of civil proceedings, the speaker explained that the Ombudsman acted on the same principle as the prosecutor and as regards the scale of competences of the Ombudsman, certain limitation in cases of the family law existed. The importance of the principle of subsidiary upon which the Ombudsman acts was also stressed. Then, premises which the Ombudsman had to take into account when he decided whether he should act in a given case were enumerated by Mr. Mierzejewski. The speaker stressed that in some cases the Ombudsman was not entitled to start an action, but he could join proceedings at any given time. Then the speaker discussed the possibilities which occurred whenever an Ombudsman brought a case before the court proceedings and stated that the most common issue in civil procedure was using extraordinary measures of appeal by the Ombudsman. Then the extraordinary measures were explained in detail. In turn, the speaker talked about the administrative proceedings, in which the competences

of the Ombudsman are broader and which are the most important for the Ombudsman, next to the ones before the Constitutional Tribunal. This was followed by the enumeration of activities and competences in administrative proceedings and by the explanation of the additional premise in case of administrative proceedings, namely the rule of law and of the possibility of the Ombudsman to address the court whenever there was a competence dispute between administrative organs and the local administration. Other thing mentioned was the so-called “complaint legitimacy” of the Ombudsman in the Polish legal system and the issue of deadlines which the Ombudsman has to abide in order to file complaints. The presentation ended with two examples from the daily work of the Ombudsman.

The moderator thanked the speaker and followed up the previous presentation with some statistics and one more relevant legal example. Then Ms. Łakoma invited Mr. Rashad Novruzov, Senior Advisor in the Office of the Commissioner for Human Rights of the Republic of Azerbaijan.

### **Ombudsman and the Judiciary**

Mr. Novruzov welcomed the participants on behalf of the Ombudsman of Azerbaijan and stated that the Ombudsman in Poland had the longest history and experience and could be a source of information for everybody. He provided the description of the reality in Azerbaijan, which ratified the Convention in 2001 and in line with it the country’s Constitution was adopted according to which courts in the country were supposed to follow the rules of the Convention. He then acquainted the participants with information about the constructive and broad legal reforms which were carried out recently in his country which led to a higher efficiency of the judicial system to ensure proper enforcement of court decisions in the area of human rights, taking into account European case law in their decisions. He pointed out to the activity of the Court Council, a body managing the judicial system. Subsequently, a number of other elements related to the Ombudsman Office were presented, including the principles on which the activity of the Ombudsman in Azerbaijan is based, the Act on the Ombudsman and some statistical data was also provided. The content of the appeals, other activities and the fact that the Ombudsman could address the Constitutional Court with a request for an opinion in case of violation of rights and aspects of cooperation of the Ombudsman with different bodies were also brought up by Mr. Novruzov. At the end of his presentation, the speaker pointed out to the fact that Azerbaijan already had an alimony fund that was created and which would be used to pay alimonies.

The moderator thanked the speaker and invited Ms. Gvantsa Chkhaidze, Chief Specialist of the Department of Justice in the Office of the Public Defender of Georgia.

### **Ombudsman and the Judiciary**

Ms. Chkhaidze presented the relations between the Ombudsman and the judiciary in Georgia. She started with the basic functions and the status of the courts and continued with the functions and role of the Ombudsman. The speaker then delineated the frameworks of cooperation between the Ombudsman and the courts in Georgia, along with the broad competencies and rights of the Ombudsman in this respect. She stressed that it was very important that the Ombudsman did not substitute the court and that the Ombudsman’s decisions were not binding in nature and that they were just recommendations for parties. Other important aspects brought

up by the speaker were that the Ombudsman is independent, neutral, impartial and responsible only to the Parliament to which he is obliged to file an annual report on his activities.

The moderator thanked the speaker, summed up the main problems and points presented in the speeches on the relation between the courts and the Ombudsman which was a very delicate matter provided the independence of the judiciary system. She emphasised that dealing with complaints concerning court procedure was very common for Ombudsmen and she opened the discussion by asking Ms. Marta Kolendowska-Matejczuk, Deputy Director of the Department for Criminal Law for Realisation of Equal Treatment in the Office of the Human Rights Defender of the Republic of Poland to ask her question.

### Discussion Time

Ms. Kolendowska-Matejczuk asked the representative of the Ombudsman of Azerbaijan whether the Ombudsman could demand court files to look through and whether the Ombudsman received complaints from citizens who said that they had no access to the court files, and if so, what could the Ombudsman do about it.

Mr. Novruzov stressed that in such cases they had a competence to help that person and a question was being sent to the court with a demand that this party should be acquainted with the files of the case. Furthermore he asked if the speaker could repeat the first question.

Ms. Kolendowska-Matejczuk said that she wanted to know if the Ombudsman had the right to look through the court documents.

Mr. Novruzov confirmed the existence of such a provision but stressed that it did not mean that the Ombudsman could influence the decision of the court in any way.

One of the participants asked the Polish speaker to provide information on the percentage of positive decisions given as a result of the application filed by the Ombudsman.

Mr. Mierzejewski started by reminding the participants about the independence of the court and mentioned some cases involving resolutions passed by self-governments which were problematic. He also stated that sometimes courts did not satisfy their complaints but that in general in the administrative court system, their arguments were taken into account and satisfied but that in practice there was a need to convince courts using arguments and experiences. He added that from 2011 until that very moment there was a case where the original court issued a negative decision.

Ms. Łakoma said that Ms. Kolendowska would provide more information on criminal cases and the system of common courts later on. Some statistic data was presented illustrating how strongly the cassations of the Ombudsman can affect court decisions.

One of the participants from Poland informed the speakers that if he tried to assess, in case of complaints filed in the previous year, how many complaints were satisfied and how many were rejected, or not satisfied, he thought that about half of those complaints which had been examined, had been considered in a positive way and that these were decisions issued by the original administrative courts and the Ombudsman could also file in a cassation with the

Supreme Administrative Court. He explained that due to some reasons the data was fluctuating making it very hard to assess how many cases from a given year have been considered.

One of the participants presented the request to see the Act on the Polish Ombudsman in Russian or in English.

Ms. Łakoma promised to pass the request on to the organisers and that it would be satisfied.

A participant asked Ms. Chkhaidze what was the experience of the Georgian Ombudsman, what was the impact and in what cases were the opinions presented before the court.

Ms. Chkhaidze answered that so far they had not addressed the Constitutional Court and that only twice they acted as a consultant in criminal cases, which was a new thing in Georgian law and due to that their experience was limited and that they were still working on *amicus curiae*.

Then the participant asked Ms. Chkhaidze when this new competence was introduced.

Ms. Chkhaidze answered that that was about one year before.

One of the participants asked the representative of Azerbaijan to say something more about the Consultative Board established with the Ombudsman talked about in the presentation.

Mr. Novruzov replied that the goal of the Consultative Board was to monitor the activities which were taken and coordination and control of the enforcement of the National Action Plan.

Ms. Łakoma ended the panel and invited everyone for a coffee break.

## **Panel 2. Ombudsman and the Judiciary – Cooperation with High Courts and Constitutional Courts**

Ms. Anna Bogucka, Head of the Division for Economic and Tax Law, Department for Administrative and Economic Law in the Office of the Human Rights Defender of the Republic of Poland who moderated the second panel welcomed the participants, introduced the topic of the panel and gave the floor to Ms. Marta Kolendowska-Matejczuk.

### **Relations with the High Court and the Polish Constitutional Tribunal on the Examples of Criminal Cases**

Ms. Kolendowska-Matejczuk welcomed the participants and announced that she would be talking about the relationship between the Ombudsman, the Supreme Court and the Constitutional Tribunal in Poland on the example of criminal cases and she then referred to some specific practices. She highlighted that the Ombudsman had some important powers to appear before the Constitutional Tribunal and the Supreme Court and that these activities were of a broader scope. Then she discussed in detail the right of the Ombudsman to appeal or to submit motions in the Constitutional Tribunal also backed up with statistical data on the matter for the year 2011. She then, among other, explained the effect of the decisions of the Constitutional Tribunal and provided a number of examples. Then the speaker talked in a detailed way about

the Polish Ombudsman's right to join constitutional complaints submitted to the Constitutional Tribunal by citizens, also presenting some statistics for the previous year, and provided an example of one of the cases where the Constitutional Tribunal shared the position of the Ombudsman. Then the right of the Ombudsman to submit questions to the Supreme Court was thoroughly explained and backed with data available for the year 2011 and a case from the beginning of the year 2012 in which the Ombudsman's position was supported by the ruling of the European Court of Human Rights. The speaker ended her presentation with acquainting the participants with one example regarding a cassation and asked the other participants whether in their countries Ombudsmen had as efficient remedies as the Polish Ombudsman did.

The moderator thanked the speaker and gave some comments concerning the presentation. She then gave the floor to Mr. Aram Vardevanyan, Leading Specialist in the Legal Research Department in the Office of the Human Rights Defender of the Republic of Armenia.

### **Cooperation with High Courts and Constitutional Courts**

Mr. Vardevanyan thanked the moderator and announced that he would address the issue of the possible cooperation with the Constitutional Courts and the Supreme Courts by the Ombudsman and the issue concerning probable cooperation with the Constitutional Court of Armenia, after which he would present the possible options of cooperation with courts of other instances. He referred to the Constitution of Armenia which explicitly specifies the power of the Ombudsman to file cases to the Constitutional Court, provided the audience with details on the application of this power and with certain statistics from the previous year. Then the definition of the so-called "normative legal acts" which the Ombudsman could take to the Constitutional Court was provided and it was stated that this was the most effective power of the Ombudsman, some more numerical data was also provided. Then the second power according to which the Ombudsman could apply to the Supreme Court in order to receive clarifications regarding the practice was brought up by the speaker. Mr. Vardevanyan also emphasized that in Armenia, there was a specific body called the Council of Courts and mentioned an example of a case related to it. After that, the powers concerning courts in general were presented in comparison with those of the Polish Ombudsman, revealing the differences and some problems faced by the Ombudsman in Armenia in this respect. The last power that was raised in the speech concerned the fact that the Ombudsman could take cases to the Administrative Court of the Republic of Armenia regarding either full or partial invalidation of the normative legal acts of the state and local self-governing bodies or officials that violate human rights and freedoms. The limitation of this power was also explained to the participants.

The moderator thanked the speaker and asked him whether there was also such an authority that the Ombudsman in Armenia could initiate proceedings before the courts or administrative bodies.

Mr. Vardevanyan replied that the only proceedings that they could start in front of the court was when they referred to the Administrative Court regarding normative legal acts of state bodies, officials, etc., and elaborated on that matter.

Ms. Bogucka then asked the speaker to present some of the complaints they had filed to the Constitutional Court and asked about statistics.

Mr. Vardevanyan stated that they had developed the amount of cases taken to the Constitutional Court and provided some more statistics and examples of the cases, the first of which concerned the administrative arrest institution, the second concerned the right to property and the third case was a financial case that they had taken to the Constitutional Court.

Ms. Bogucka thanked the speaker and gave the floor to Mr. Igor Muntean, Specialist Principal, Service Investigation and Monitorization at the Center for Human Rights of Moldova.

### **Cooperation with the Constitutional Court**

Mr. Muntean greeted the audience and informed that he would be talking about the normative system and the constitutional system guaranteeing the protection of human rights in the Republic of Moldova. He covered the normative and the institutional components of the system and acquainted the participants with the institution of the Parliamentary Advocate. More details about the legal system and the court system of Moldova, with special emphasis on the Constitutional Court of Moldova and characteristics of constitutional cases and their examination along with examples and statistics followed. Mr. Muntean also stated that one could say that the relations between the Ombudsman and the Constitutional Court was based upon cooperation, as well as is the case with other state institutions, so this was not a relation of subordination. At the end of his speech, the speaker highlighted that the existence of the institutions in the legal system of the Republic of Moldova was a clear proof that it was a democratic state.

Ms. Bogucka thanked the speaker on his informative lecture about the activity of the Parliamentary Advocates and their particular role. She then asked Mr. Iuriy Bielousov, Representative of Commissioner, Head of the Department for the Implementation of the National Preventive Mechanism in the Office of the Ukrainian Parliament Commissioner for Human Rights, to deliver his lecture.

### **Ombudsman and Criminal Judiciary: Specific Issues of Human Rights Protection**

Mr. Bielousov announced that he would speak about the role of the Ombudsman and about the cooperation between the Ombudsman and the Constitutional Court and provide information on the relevant legal acts. He talked about the rights of the Ombudsman and his limitations. In his speech, Mr. Bielousov also mentioned that pursuant to the decision of the Assembly of the Council of Europe, a resolution was adopted which defined the role of the Ombudsman and according to which the Ombudsman had to have limited powers in terms of the supervision of courts, but that according to the Ukrainian Constitution he had the right to interfere in all violations of human rights in the country. He then presented his views as to what he would like the Ombudsman to have in terms of powers. He also underlined that the role of the Ombudsman in criminal proceedings was very limited and that, for example, he could not submit cassations. At the end he stated that in this matters Ukraine stayed loyal to the Council of Europe.

The moderator thanked the speaker and opened the floor for discussion.



## Discussion Time

Ms. Kolendowska-Matejczuk explained the criminal procedure case in Poland and said that the Polish Ombudsman could undertake measures in criminal matter when an act was legally binding and that the powers in the civil and administrative procedure are different than in the criminal procedure, she then explained the specificity of the criminal law.

A participant asked Mr. Vardevanyan to say more about an institution of law, namely about the administrative temporary arrest till ten days and to state which kind of procedure it was.

Mr. Vardevanyan provided a detailed description of this institution and noted that at the end of November that year it would already be unconstitutional.

The moderator encouraged the speakers to ask questions and to present their point of views about the activity of the Ombudsman in their respective countries and on the cooperation with the Supreme Court or the Constitutional Court.

Mr. Vardevanyan wanted to know the reasoning of Poland used while adopting the important powers of the Ombudsman.

Ms. Kolendowska-Matejczuk replied that the institution of the Polish Ombudsman was established in 1987 and ever since the Act provided for these powers. She also stated that the Resolution of the Council of Europe mentioned earlier, which is the so-called “soft law” doesn’t have any real binding powers and elaborated on many aspects of this case and asked if anyone had some opposing positions concerning the topic.

Mr. Vardevanyan agreed with the previous speaker that this power was acceptable under the Paris Principles which were the fundamental principles for Ombudsman institutions and thanked her for her reasoning.

The moderator asked whether there were some opinions on the systems of different countries that somebody would like to share.

The questions and discussion which followed concerned, among others, the possibility of the constitutional court in Moldova to control legal acts which entered into force before the Constitution of Moldova, the fact that the Armenian Ombudsman cannot intervene in cases pending before the court and how it was being solved elsewhere, whether Georgia had already received complaints from applicants to address the Constitutional Court to examine if a given act was in conformity with the Constitution, the institution called “Constitutional Complaint”, whether the new Criminal Code of Georgia would change the role of the Ombudsman, verdicts of the European Tribunal, relations with the judiciary on a non-procedural level in the countries of the participants, trainings for judges on the topic of human rights.

At the end of the session, the moderator thanked the speakers and passed on some organizational details.

## **Visit to the Polish Constitutional Tribunal and Meeting with the President of the Constitutional Tribunal, Prof. Andrzej Rzepliński**

At the beginning of this part of the seminar, Mr. Mariusz Bobiński and Ms. Agnieszka Szemetyłło-Popowska welcomed the participants at the Constitutional Tribunal of the Republic of Poland. They showed the participants some parts of the building, including the place where meetings with the President of the Constitutional Tribunal are held, and the courtroom. They also provided the guests with information concerning the composition of the court, the modalities of the election of the judges, on how the courtroom is being used and explained who takes part in the sittings held before the court. The participants were also reminded that the Polish Ombudsman had the possibility to join the proceedings before the Constitutional Tribunal, especially whenever constitutional complaints were dealt with. Then Prof. Andrzej Rzepliński arrived and started his presentation.

Prof. Rzepliński warmly greeted the guests and announced that he would present to them the Polish perspective of cooperation between the Constitutional Tribunal and the Ombudsman. He highlighted that already since the very beginning, the Ombudsman gave the biggest amount of work to the Constitutional Tribunal and explained the matter in detail using also statistical data and characterized the cases presented as result of the complaints received by the Ombudsman. He also stressed what would happen when it was impossible to achieve a pro-constitutional interpretation on the provision which was painful for the citizens, without their intervention and cited an example of an interesting case which was being examined at that time including a special law which enabled immediate deprivation of property of the owners due to construction of public roads and motorways in Poland. He also elaborated on cases concerning the situation of prisoners and presented one example of a case concerning challenging a provision describing minimum salary for work which was deemed unconstitutional, a case of particular interest as in the end, it was interpreted in the contrary way than the Constitutional Tribunal wanted it to be interpreted. The speaker then continued with more information about the competences of the Ombudsman and stressed that a lot depends on what kind of person the Ombudsman is, once more highlighted the fact that the Ombudsman had got a very strong democratic legitimacy, that there were a lot of differences between Ombudsmen and that it had never happened before for any of the Ombudsmen to fulfill this function twice. The next thing stressed by the speaker was the importance of people who worked closely with the Ombudsman. He then pointed out that the Ombudsman in Poland was a category of a public institution in case of which positive opinions of the citizens were much more abundant than negative ones comparing to judicial institutions. Mr. Rzepliński then elaborated on the public access to court documents online and on the fact that the Ombudsman was a very active factor in comparison to Constitutional Courts which were a passive element in the sense that they could not put forward matters that they considered important to be solved or ruled upon and had to wait until a matter was submitted to them. The fact that for the Ombudsman the Constitutional Tribunal was just one of the partners and one more example of a case concerning a very important matter of constitutionality of several provisions of the Act on the Educational System were brought up. At the end of his presentation, Prof. Rzepliński also talked about the Ombudsman for Children and



expressed his opinion that the position of the Ombudsman for Children should be strengthened also due to the fact that the Ombudsman for Children very seldom appeared before the Constitutional Tribunal because he could not directly present matters and he could do it only upon an express wish of the Constitutional Tribunal.

Then Prof. Lipowicz arrived and asked Prof. Rzepliński to elaborate on his experience, knowledge and contacts with the countries of the Eastern Partnership and what sort of countries he had contacts with.

Prof. Rzepliński disclosed there was the institution of the Conference of Constitutional Courts and that he participated in visits in other countries such as Ukraine or Germany and in cases when there were foreign judges coming to Poland, he would organise a public lecture of the President or the Vice-President of the Court, depending on who was visiting. He also mentioned discussions with the German Court on the relationship between Constitutional Courts of EU Member States and the European Court of Justice in Luxembourg. Another form of contacts mentioned were those linked to events organized by Constitutional Courts celebrating anniversaries. Prof. Rzepliński also talked about the particular cases of the Constitutional Courts in Turkey and Romania and the problem of the sometimes complicated relations between the Supreme Court and the Constitutional Court in some countries, the place of the Court in Luxembourg and the Human Rights Court in Strasbourg and the Human Rights Committee in Geneva and some other institutions in the landscape of the protection of human rights. He stated that some people were pleased with the complex situation because there were many different court bodies or bodies which were similar to courts but that others were not pleased because this was not the way to create a sensible system. The speaker also expressed the opinion that without any doubt, every judge and every public functionary, every Ombudsman had to respect the Universal Declaration which was a stroke of a genius and mentioned his experience from a seminar held for Georgian judges where he had to tell the visiting judges to change the perceptions of their rulings and that they did not have to please the President who nominated them, so in the time that followed, many Georgian judges were passing decisions as they should had passed so he suspected that maybe there was his small contribution in it. In the last part of his speech, the speaker referred to the division of powers in current democratic states and to the separation of the Ombudsman from these powers and expressed the opinion that legislators should know the limitations of their power as well. He then finished by pointing out to the particular case of the Constitutional Courts in Europe which were controlling one another and of the specific truce with the Court in Luxembourg which was illustrated with examples of famous Polish and German Constitutional Courts' decisions according to which the European Court had a sovereign authority to pass decisions in the area of the European law only to the extent allowed by the European law. The last topic brought up was the democratic legitimacy of the President of the Constitutional Court and the role that non-governmental organisations played in assuring this legitimacy, as the election of the judges of the Constitutional Court was a political decision, therefore some sort of scrutiny was necessary.

After the speech the participants were invited to a reception.























## **DAY 3 (27 SEPTEMBER)**

### **The Rights of Elderly Persons and Persons with Disabilities in Labour Law**

#### **Panel 1. The Rights of the Elderly Persons in Labour Law**

Ms. Dorota Bieniasz, Deputy Director of the Department for Labour Law and Social Security in the Office of the Human Rights Defender of the Republic of Poland and the moderator of the third day of the seminar greeted the participants and introduced the topics of the first panel. She then invited Ms. Anna Figurniak, Chief Specialist, Division for Employment and Social Security, Department for Labour Law and Social Security in the Office of the Human Rights Defender of the Republic of Poland.

#### **Protection of Elderly Persons against Termination of Employment – Rights Resulting from Employment Legislation**

Ms. Figurniak greeted the participants and presented a speech on the subject of protection of elderly persons from giving notice to terminate a contract of employment according to the legal system binding in Poland. She also spoke about the major acts regulating this area, including the Labour Code and the Act on Old-Age and Disability Pensions from the Social Insurance Fund. Ms. Figurniak highlighted that the two basic conditions which had to be met by the employee in Poland in order to be covered by protection from terminating a contract of employment were the age criterion and secondly an employee had to prove that he had been employed for a period of time that was long enough. The speaker then discussed those conditions and recent changes in them in detail. She then made reference to the extension of the retirement age and to important articles of the Labour Code. Ms. Figurniak also stressed that reaching retirement age and obtaining the right to draw retirement money could not constitute the only reason for handing in a notice to terminate a contract of employment and that it was a very important issue regarding the labour law. The speaker then discussed the right to pension due to total inability to work and a notice on changing the conditions of work or pay to an employee. The last important issue mentioned was severance pay to which an employee is entitled in a situation of reaching the retirement age.

The moderator thanked the speaker and invited Prof. Gertruda Uścińska, Member of the Expert Commission for Elderly Persons in the Office of the Defender of Rights of the Republic of Poland to take the floor.

#### **Social Rights of Elderly Persons in Connection with Movement within the European Union**

Prof. Uścińska welcomed the participants and presented her belief that one should take up a number of very important initiatives which would be conducive to the implementation of human rights, especially social rights and economic rights which were of particular interest to her. She

said she would present social rights of senior persons due to their movement in the territory of the European Union, social rights to which citizens of the European Union are entitled. She stressed the importance of the European citizenship, a legal category which was introduced in the treaty on the European citizenship and which gave rise to a number of rights, also those applicable to elderly persons. The most important of these rights according to the Professor was the right to free movement within the European Union, staying in the territory of a foreign state and of course using other rights provided for by the state where a person is living. She then developed the concept of European citizenship and emphasized that it established a number of rights which should be provided for the citizens of the European Union and provided some information concerning the compliance of the Polish regulations and the European Union law in the area of social rights. One of the other rights mentioned was keeping one's legal status that one acquired in the country which one was living in. Prof. Uscińska then explained that the category of the European Union citizenship was an accessory category and that it was additional to the category of the citizen of a Member State. She also said that the legal instruments which were conducive to the realization, implementation of this citizenship right to free movement and staying in the territory of foreign states were called the right on coordination social protection systems and provided the participations with more information on those instruments. Among other things, she stressed that every Member State in accordance with the European Union law maintained full sovereignty as regards the social protection system and in relation to this the European Union provisions on coordination were provisions of the character of collision norms. She then explained that in the area of the rights of elderly persons, the provisions included principles concerning summing up the periods of insurance, employment and residence in case of persons who lived in different Member States. Upon reaching the retirement age those persons could apply to a competent institution which would take into account the previous periods when the person had worked and this guarantees the right to receive retirement money. She also stated that the elderly persons would keep the right to health benefits also in a foreign Member State in the period when they were drawing retirement money. Other important issues presented were the legal position of the third states citizens having an appropriate legal position guaranteed in the EU regulations, changes in the social protection systems in the twenty-seven Member States developing in a way preceding the European Union regulation from the position of the elderly persons using the right to move, the directive 2004/38 consenting the right to move and stay of the EU citizens including the definition of the three periods of stay depending on the length of stay, the rights of elderly persons in the soft law adopted in those areas where European Union lacks competences, retirement systems, the European Year of Activity of Elderly Persons and Intergenerational Solidarity, two important documents - a green book and the white book, social rights of the elderly realized through the norms of primary law and soft law measures.

The moderator thanked the speaker and announced Mr. Aram Minasyan, Head of Criminal Procedure and Military Servicemen Rights Restoration Division in the Office of the Human Rights Defender of the Republic of Armenia.

### **Protection of Rights of Elderly Persons in Labour Law**

Mr. Minasyan greeted the participants and introduced the topic of his speech which was the protection of rights of the elderly in the labour law. He stated, among others, that it was a topic dealt with by the Ministry of Labour and Social Affairs and that the constitutional rights of the

elderly usually covered three kinds of norms, that is norms that provide rights to all citizens independent of their age, norms which are directly related with the rights of the elderly employed by the government and outside the government and norms which are related to the elderly as special groups. He informed that the Armenian law did not use the term elderly person and that discrimination related to age or any social factors was prohibited. He then explained how the Labour Code in Armenia dealt with the matter, including that it provided for a principle that all employees are equal in front of the law. In the course of his speech, the speaker also stated that the wording of article three of the Labour Code should be changed and that according to him, international documents as well as the Labour Code needed to characterize the term discrimination whose definition was developed back in 1958 by the International Labour Organization. He then discussed some other provisions of the Labour Code, concerning among others the provision stipulating that the termination of a contract of employment cannot be caused by the age of the employee and informed the speakers that the Armenian Constitution guaranteed every person the possibility to terminate a contract of employment without any discrimination. The speaker then pointed out that in some cases definition of maximum age in a contract of employment could be justified if it was related to legal objectives and if it was conditioned upon the nature of the exercised work and that there were very concrete criteria described in the law regarding the right to terminate a contract upon initiative of an employer when the employee reaches the retirement age. He stressed that in the Armenian legal system the retirement pension was not defined on the basis of age and that the loss of ability to work could not be the ground for discrimination. The fact that the legal framework for a working relationship is not strictly defined was pointed out and it was nevertheless added by the speaker that the law tried to make sure that there were no conflicts between the employer and the employee. Other important matters brought up were the need to treat the contract of work for a specified or unspecified period of time as extended in special circumstances mentioned in the law, loss of the capacity to work being one of such circumstances, the possibility of signing of a contract of work with people who reached their retirement age, some solutions from Labour Codes in different countries. At the end of his presentation, the speaker pointed out to the fact that it was important in the international practice that upon reaching the retirement age, the termination of the contract of employment was dependent on the social circumstances of a person and what was then necessary was the job seniority plus other features. He stressed that the contract for unspecified period of time had to be justified and had to be enshrined in law.

The moderator then announced Ms. Yegana Jafarova, Head of Protocol Sector in the Office of the Commissioner for Human Rights of the Republic of Azerbaijan.

### **Rights of Elderly Persons in Labour Law**

At the beginning of her speech, Ms. Jafarova presented the role of the Ombudsman for employees' rights, especially as regards elderly persons and the role of the European Social Card in the social development of her country. She informed the participants that they were currently trying to improve their standards and catch up with the European ones and presented some legal bases assuring the right to fair working conditions, the hygiene at work, the right to work of mentally and physically disabled persons, the professional rehabilitation reinstatement to employment and the right of elderly persons to social protection. She then explained the Ombudsman's efforts to smoothen the implementation of reforms. Then she mentioned a

couple of articles of the Labour Code of the Republic of Azerbaijan assuring the right to address the court in order to have one's workers' rights protected and giving the right to be legally protected. She also pointed out to the fact that in workers' relationships it was prohibited to discriminate anybody on the basis of factors which were not connected with their professional value. Other important problems mentioned in the presentation were as follows: guarantees and allowances on a non-discriminatory basis for persons who require social protection, the cases in which a labour contract can be entered into for a specific period of time, complaints which the Ombudsman received from the population, successful results of the actions taken by the Ombudsman, punishing employers who employ without contracts, ways of fighting violations of human rights, the National Action Plan and other related activities, some demographic data, Azerbaijan as a young population, the idea to create a group of elderly persons affiliated with the Ombudsman and creating a network conducive to building intergenerational bridges, the situation of disabled persons, activities concerning the fulfillment of duties provided for in the UN Convention on the Rights of Persons with Disabilities, the need to change the social approach to better protect the rights of the disabled persons, violations of work conditions of the disabled persons and their rehabilitation and the approach of the employers who believe that the government should conduct a special policy in order to give them incentives to employ disabled persons.

The moderator thanked the speaker and congratulated her on the fact that despite of being a young population, Azerbaijan was trying to use the potential of the senior persons and include them into the society in a very perspective way. She then opened the floor for discussion.

### **Discussion Time**

One of the participants asked whether in the countries of the other participants the term elderly persons was specified in the law.

A participant from Georgia replied that in Georgian legislation they had also not defined the term and that it constituted a problem and she asked Prof. Uścińska if there was some unified European definition.

Prof. Uścińska replied that when one talked about this definition, one had to look at it at different levels, such as the non-legal level as the definition of an elderly person functioned outside of law. She precised that as regards defining the term in the legal sense, then over the last couple of years they were leaving such a definition aside because this was a very contractual kind of term and that it was very difficult to adopt criteria to define an elderly person. She then discussed the retirement age which differs across European countries and presented her belief that they had got a certain unofficial definition of an elderly person being legal limit of the retirement age and that it constituted one approach. She then mentioned another approach adopted for statistical purposes in the EU Member States and in Eurostat which was the limit of working activity being this is sixty years. The Professor also observed that the definition of an elderly person was also the subject of a number of interdisciplinary studies from which lawyers and social officials should draw, but that there was no such definition in the European Union.

A participant from Poland said that in the Polish law there was no definition of an elderly person as well and that different legal acts which regulate allowances only mentioned the age and



presented the case. She stressed that they were always trying to use their intuition and on the basis of this intuition they tried to find out who an elderly person was and that the criterion of the retirement age was quite often used.

A participant asked Ms. Figurniak if Poland would have a mechanism for increasing the retirement age according to the new provisions.

Ms. Figurniak replied that the obvious result of the whole process was shifting the protection period which would still last four years and which would start from increasing the retirement age every four months.

Another participant pointed out that in her country they had a law on the rights of the elderly but at the end of the previous year, a new law was adopted on the social protection and this law mentioned both the elderly and the disabled and that the age threshold was not provided within it.

A participant wanted to know what the minimum pension was and what the average size of pension in Poland was.

A participant from Poland replied that the amounts were defined by law and that the lowest pension amounted to seven hundred something zloty and that more figures would be provided after the break.

Ms. Bieniasz invited everyone for a coffee break.

## **Panel 2. The Situation of Elderly Persons in the Field of Social Security**

Ms. Bieniasz provided the answer to the question from the previous panel concerning the amount of Polish benefits and disclosed some details on the level of benefits and also on different categories of pensions. She then briefly presented the agenda of the second part of the meeting and then announced Ms. Aldona Ignatowska, Chief Specialist, Division for Employment and Social Security, Department for Labour Law and Social Security in the Office of the Human Rights Defender of the Republic of Poland.

### **The Rights and Duties of Working Pensioners in the Field of Social Security**

During her speech, Ms. Ignatowska discussed matters related to the legal situation of pensioners who decide to return to the labour market. She talked about the legal basis, some legal history of Poland related to entitlement to a pension, possibility of returning to the labour market by pensioners, issues related to social insurance of working pensioners, matters related to gainful activity of pensioners and how it impacts the pensions, matters related to suspending the entitlement to pension or reducing the amount of pension, the calculation of the size of person as well as benefits to which pensioners are entitled on account of social insurance, the ongoing reform of the Polish social insurance system and showed the differences between the old system, the so-called system of defined benefit and the new system including the different principles for calculating the amount of the pension. The last topic of the speech concerned benefits received

due to accidents at work.

Ms. Bieniasz thanked the speaker and asked Ms. Liudmila Bodrug, Consultant Superior, Service Investigation and Monitorization at the Center for Human Rights of Moldova to take the floor.

### **Social Rights of Elderly Persons in Moldova**

Ms. Bodrug's presentation touched upon the subject of the rights of elderly persons in Moldova. She discussed the problem of the ageing population in the world of today and showed some concepts oriented at improving the social status of an individual in the society from the developed states. She indicated how elderly persons were at that moment defined according to the UN and Russia. She then talked about the problems linked with the preparation of the society for demographic changes, including strengthening of the system of welfare services, improving psychological family existence, changing the status of elderly persons and the maximum prolongation of their independence and life activity. She defined the specific needs of the group that the elderly people represent and signaled that these persons were not protected socially and that they needed better social and welfare care from the state. The speaker then described the aims of social policy for elderly persons and characterized the directions of social policy vis-à-vis elderly persons in Moldova, also referring to the legal basis, including international agreements, the constitution of Moldova, the Civil Code, the Family Code and the Labour Code, and presented the situation of the elderly in the country also using the Ombudsman's reports. She explained that in Moldova there was no norm which would give priority to the protection of the rights of the elderly persons. The challenges of the social care system vis-à-vis the elderly persons in Moldova were then characterized and the role of the Parliamentary Advocates in the protection was explained, with impact on monitoring of the old people's housing institutions and issuing recommendations. In response to questions asked earlier by other participants, the speaker replied that in Moldova's legislation, just like in Poland, there was no definition of an elderly person and that in Moldova there was a category of persons who receive pensions and characterized the types of pensions and benefits. In the final part of her speech, Ms. Bodrug stressed the importance of raising the awareness of experts working within the social field who should understand that they work with elderly people representing great value to the society due to their wisdom.

Ms. Bieniasz thanked the speaker especially for her universal message concerning the value of the elderly people and stated that it would be great if any country could take advantage of the wisdom and experience of the elderly people on a daily basis. She then announced the speech of Mr. Volodymyr Khomenko, Deputy Department Chief for Socio-Economic and Humanitarian Rights in the Office of the Ukrainian Parliament Commissioner for Human Rights.

### **Problems to Protect Rights of the Elderly Persons in the Field of Social Security**

Mr. Khomenko talked about topics related to the protection of the elderly in Ukraine, a very current topic in the country as one in five people in there are elderly and that Ukraine ranked on the thirtieth position in the world when it comes to the share of persons aged more than sixty. He then explained the system of allowances and of benefits for the elderly in Ukraine, including the legal basis, the issue of defining an elderly person, financial data, statistics and information on

the proposed law and reforms. He mentioned that there were certain preferential categories such as the invalids of war or the children of war. The speaker said that unfortunately the proper financing of the social programmes is difficult for Ukraine and there was a strong need for reforms. He then continued to talk about issues related to pension age and the serious problem of poverty in his country where the consumer basket had not been indexed for the past twelve years. The speech also contained information on the participation of the Ombudsman in the issue, also in terms cooperating in legislative work. The fact that the number of complaints submitted by the elderly to the Ombudsman's Office had been on the rise was also noted. The speaker also highlighted that the Supreme Council adopted a special decree which obliges the state authorities to execute the motions submitted in the annual report by the Ombudsman. At the end of his speech, Mr. Khomenko stated that they were trying to focus on the systemic problems and that thanks to the insights from the seminar they would increase their efforts to reach some new results.

Ms. Bieniasz thanked the speaker and noted that the problems mentioned by representatives of different countries were quite similar and pointed out to the fact that it was most respectable that the countries of the Eastern Partnership were striving at ratification of international documents that set the norms rather difficult to implement. Then the moderator opened the ground for discussion.

### **Discussion Time**

The questions and answers in this session concerned the homes for elderly persons as a solution of the problems of the elderly, the division into old persons and elderly persons in Moldova, how effective the financing system of the establishments for elderly people from local and state budgets in Poland and Ukraine is, conditions in establishments for old persons in Moldova and complaints that the Ombudsman receives in this respect, the obligation of the children to take care of their elderly parents, payment for staying in old person's establishments, the age at which old persons start to be covered by assistance and the Polish projects to introduce special carer's vouchers to families in case of disabilities of elderly persons.

Once the discussion was over, Ms. Bieniasz ended the meeting and invited the participants to lunch.

## **Panel 3. The Rights of Persons with Disabilities in Labour Law**

### **Meeting with the Deputy Director of the Office of the Government Plenipotentiary for Disabled People, Ms. Alina Wojtowicz-Pomierna**

Ms. Bieniasz started the panel by inviting Ms. Alina Wojtowicz-Pomierna. The moderator then announced that the presentation will be followed by a brief Q and A session as Ms. Wojtowicz-Pomierna had to leave earlier.

Ms. Wojtowicz-Pomierna shared information about the functioning of her Office aimed at ensuring the right of disabled to employment and about the legal environment, including Polish and international solutions presented in detail, the office was functioning in at that time helping



to protect the disabled in terms of employment and explained what factors were conducive to the employment of the disabled. In terms of Polish law, she presented the Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities and other acts pertaining to work in public institutions concerning the employment in public institutions and all matters related to employment in those structures, namely the law on the civil service, on local government employees and act on state employees, the Polish Constitution, the Labour Code and the Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment. In terms of international solutions, the UN Convention on the Rights of Persons with Disabilities, the Council Directive establishing the general framework conditions for equal treatment in employment were presented. She also emphasized, among other, that in their Office they tried to promote the employment of the disabled and she stressed that it was necessary to create such working conditions for them that would not be an obstacle in performing their work. The speaker also provided her contact details to the participants and invited them to ask questions.

Ms. Bieniasz thanked the speaker for her presentation and welcomed Doctor Ryszard Czerniawski, Deputy Human Rights Defender of the Republic of Poland, who was going to participate in the last part of the meeting. Then she opened the floor for discussion.

A participant wanted to know what was Ms. Wojtowicz-Pomierna's opinion on whether tax exemptions for employers or quotas would serve as effective measures to help raise the number of employed persons with disabilities.

Ms. Wojtowicz-Pomierna replied that tax exemptions were being used in Poland as a means of support for those employers employing persons with disabilities, but that not all employers were using such tax exemptions. She characterized the exemptions and in what cases and under what conditions they were used. The speaker also added that it was not easy to answer the question whether this was a good idea or not, because on the one hand this was a big motivation for those employers who decided to employ disabled persons, but on the other hand, there were some divisions in the labour market because of that. She then explained her point of view and presented the current situation in Poland in this respect.

Mr. Novruzov asked whether there was a solution according to which employers not hiring disabled persons were obliged to pay a certain sum of money to the state budget.

Ms. Wojtowicz-Pomierna replied that the Polish system for supporting disabled persons was based on the pillar that is the state fund for rehabilitation of disabled persons and from that fund such employment of disabled persons was supported and explained where the funds came from and provided the amounts and some figures. She also explained why disabled persons tend to be much more loyal employees and assure a continuity of action and shared her personal experiences connected with employing disabled persons and stressed that the way of thinking about the disabled needed changing.

A representative from Azerbaijan wanted to know if in Poland disabled persons were also entitled to work shorter hours and to receive full pay and to some additional benefits and mentioned the case of Azerbaijan in this respect.

Ms. Wojtowicz-Pomierna replied that the situation was similar in Poland and that disabled employees with serious and moderate degree of disability were entitled to additional ten days of holiday and that shorter working hours were an independent decision of the disabled person, but that the norm of working time could be shorter for the disabled person. She added that this norm could be used under the condition that the disabled person received a medical certificate certifying the necessity of applying this shorter working time.

There were no more questions, so Ms. Bieniasz thanked Ms. Wojtowicz-Pomierna for coming and expressed her hope that in other situations the Ombudsman Office would be able to count on her presence.

Ms. Wojtowicz-Pomierna assured that that was the case, thanked the participants and left the meeting.

The moderator then announced Mr. Jacek Zadrożny, Member of the Expert Commission for Persons with Disabilities in the Office of the Human Rights Defender of the Republic of Poland who was going to present a speech on traps in the employment of the disabled persons.

### **Traps of Supported Employment for Persons with Disabilities**

Mr. Zadrożny presented his greetings to the speakers and expressed his respect for them. He said that he was going to present a bird's eye view of a social politician over the support system in Poland and in some other countries. Afterwards, the speaker presented the traps that could be avoided when developing an employment system. He indicated the first trap that one could fall into as treating an indicator as a target that has to be met, which could turn to be very dangerous in case of choosing a wrong indicator, the example of the indicator of employment of the disabled was then provided. At one point the speaker asked the participants to ask questions to him straight away due to the fact that he was blind. The second trap that Mr. Zadrożny explained using examples from Poland and other states was burdening the employers with certain duties which are actually duties of the state. The next trap pointed out by the speaker was switching support for money or substituting support with money, it was stressed that you should offer support instead of money. Another trap presented was a situation where there is a company where a lot of disabled are employed. Then the last trap, the trap of benefits was explained in detail by the speaker. At the end of his speech, Mr. Zadrożny expressed his belief that in order not to get lost, a true respect for the disabled was needed as the disabled were educated people and one only needed to get rid of the obstacles for them.

The moderator thanked the speaker for his original speech presented from the point of view of a disabled person and announced the following speaker, Ms. Aida Muradyan, Head of Vulnerable Groups Protection and Cooperation with Non-governmental Organizations Department in the Office of the Human Rights Defender of the Republic of Armenia.

### **The Rights of Persons with Disabilities in Labour Law**

Ms. Muradyan started with a short presentation of statistical data on the rights of people with disabilities in Armenia accompanied by a number of facts concerning the history and social changes. The situation of the disabled in the country was presented along with the main challenges like lack of accessibility to buildings and public transport or weak enforcement of laws protecting the disabled. The legal framework and its functioning, proposed and implemented

remedies like salary reimbursements for employers and various actions like public awareness campaigns were also covered in the presentation. Ms. Muradyan also presented certain achievements of the Ombudsman of Armenia in the field such as the establishing of a special Department for the Protection of Vulnerable Groups which include refugees, women, children, minorities and people with disabilities. She also stressed that the Ombudsman's general approach was to include the disabled people in all decision-making process that somehow concerned their rights.

The moderator thanked the speaker for her presentation and pointed out that the experiences of Armenia were similar to experiences of many states and were being solved in a similar way. She then announced the final speaker of the day, Ms. Nino Tsagareishvili, a legal expert from the Human Rights Center of Georgia.

### **The Rights of Persons with Disabilities in Labour Law**

Ms. Tsagareishvili talked about the labour rights of disabled persons in Georgia. She first presented two laws and their provisions referring to the disabled, namely the Labour Code and the Law on Social Protection of Persons with Disabilities. She then highlighted the related core problems including the lack of adapted general infrastructure and environment, the debate in the country that is not comprehensive enough to assess and evaluate the professional experiences and education that the disabled persons have in order to carry out more relevant planning and foresee adapted trainings and, finally, the lack of proper enforcement of a number of provisions of law. The speaker also talked about the efforts of the Ombudsman to change the situation of the disabled persons and the Action Plan which was not very well implemented by the relevant state bodies.

The moderator thanked the speaker and encouraged the participants to take part in the discussion.

### **Discussion Time**

The topics covered in this discussion included reasonable ways of helping the disabled, the psychological complexes of the disabled and the research concerning the number of the disabled persons willing to work, the relation between the type of schooling of the disabled children and their future outcomes on the labour market and providing accessibility to cyberspace for the disabled persons.

The moderator ended the discussion, thanked the participants and announced Mr. Czerniawski who was going to deliver the closing speech.

## **Closing of the Seminar by the Deputy Human Rights Defender of the Republic of Poland, Mr. Ryszard Czerniawski**

Mr. Czerniawski thanked the guests for their participation, for sharing their information and messages. He said that enough space and time was needed for things to happen as every country was different and that the conclusions that it would draw would belong to each country

individually and to each Ombudsman individually. He stated, among others, that the seminar was a rare opportunity where they could meet together purely at the Ombudsman level and share and exchange information, which was extremely important also from the practical point of view. He enumerated the aims of the seminar and stressed that such meetings were needed because experiences collected by other countries are of value and could lead to better solutions. He also expressed his gratitude to the representatives of the French Republic, to the European Commission, the Ministry of Foreign Affairs of the Republic of Poland, to the staff of the Polish Ombudsman's Office and to the interpreters. At the end, he asked the participants to think about worthwhile topics and promised that they will try to continue their good tradition also in the future.

Ms. Bieniasz declared the seminar closed and thanked Mr. Czerniawski for his closing speech.











